

Thursday 7 October 2021

Senators the Hon. Anne Ruston and Linda Reynolds
Ministers for Social Services and Families and the NDIS and Government Services
Parliament House
CANBERRA ACT 2600

RE: Physical Disability Australia's (PDA's) Submission Regarding Proposed NDIS legislative improvements and the Participant Service Guarantee

Dear Ministers

Thank you for inviting submissions on the proposed NDIS legislative improvements and the Participant Service Guarantee as promoted on the DSS Engage website on 9 September 2021. What follows are our thoughts on the actual changes to the *NDIS Act 2013* (the Act) that have been proposed in the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021*¹ (the Bill). Regrettably, the consultation process does not provide us with adequate time nor resources to make more fulsome commentary on the other materials accompanying the Bill.

Positive parts of the Bill

PDA welcomes several positive inclusions in the amendments to the Act proposed in the Bill. Specifically, we appreciate the Bill's efforts with regard to:

- improving transparency of the NDIA's annual performance review through requiring the Commonwealth Ombudsman to report against the Participant Service Guarantee in addition to individual participants' experience;
- reducing of the ambiguity of the frequently used term of 'review' with 'reassessment' and 'variation' in numerous NDIS contexts;
- the commitment to strict timeframes around NDIS decision-making processes, participant plan development, internal reviews and access provisions;
- embracing the concept of 'co-design' with people with disability for future revisions/changes of funding and assessment modelling;
- granting the NDIA more defined powers to undertake market intervention on behalf of participants especially in relation to rural and remote areas where access to quality disability supports may be limited; and
- simplifying the Administrative Appeals Tribunal (AAT)'s processes for its function in reviewing plans varied or replaced by new plans throughout an appeal process.

Qualified support is also given to:

- Granting the CEO the power to vary a Plan on their own initiative for 'light touches', whereby minor technical changes can be made to resolve minor

¹ https://engage.dss.gov.au/?page_id=12871

issues. However, as discussed later, we are not in favour of the Bill's other proposed amendments in this section that do not require the CEO to consult with participants in exercising this and similar authorities.

- Providing improved access pathways for people with psychosocial disability because of these impairments' episodic and fluctuating nature. However, it is not just psychosocial disability that is episodic and fluctuating so we would like the same latitude given to many physical disabilities that are similarly episodic and fluctuating.

Negative parts of the Bill

PDA does not approve of the Bill's efforts to:

- Allow Plan variation without consultation (Section 47A).

This measure shows a lack of respect for people with disability. All changes to plans should involve consultation particularly because the CEO's power to vary plans is not constrained (see Rule 10 of the new Plan Administration Rules). We believe the existing CEO powers are sufficient and can see no reason why the NDIA should be able to vary plans without consultation with the participants concerned. PDA recommends that this extension of power be excised from the Bill.

- Make certain changes to the 'Becoming a Participant' Rules as it blurs the boundary between disability and health determinations.

The new requirements for potential participants to undergo 'appropriate treatment' is problematic in that medical decisions (usually acknowledged to be the private domain of patients and the treating practitioners) are potentially opened-up to second guessing by NDIA employees. PDA recommends that these measures be excised from the Bill until a better set of definitions can be developed in consultation with people with disability and their representative organisations.

- Make other changes to the Plan Management Rules.

PDA is concerned about proposed changes to Section 45 of the Act, regarding the way in which supports are paid. These changes are purportedly intended to make it easier for self-managing participants to make claims however, the power provided to the CEO to determine the person to whom payments are made makes the situation uncertain for self-managed participants around being able to continue their existing payment methods. We recommend that the NDIS, *in consultation with people with disability and their representative organisations*, re-draft section 45 to provide greater clarity and security to self-managed participants regarding their existing payment methods.

- The changes around 'Reasons for Decisions'

PDA regards requirements for decision reasons to be a positive move towards greater inclusion and transparency. If well implemented, it will facilitate better participant understanding of decisions made about their Plans. However, as the proposal stands, participants must request information regarding the decision. This excludes participants who may not have the capacity to make the request. Furthermore, there is no corresponding requirement for reasons to be provided once

a review of the decision has been made under Section 100(6). We recommend that the need for participants to make a request be removed, and that this be included as an automatic requirement on the NDIA to provide reasons for decisions to all participants who are subject to any decision being made about them.

- Other discretionary powers for the CEO

As noted above, the CEO's discretionary power to make various decisions and changes has been increased. PDA feels these go well beyond what was recommended in the *Tune Review*² and we are concerned that this lack of constraint may result in arbitrary and subjective decisions being made by the CEO that, potentially, may result in inequitable participant outcomes. PDA therefore recommends that any proposed changes to the discretionary power of the CEO be revised to align with the recommendations made in the *Tune Review*.

In Conclusion

Again, we thank you for the opportunity to provide feedback on the Bill and we hope the advice we provide in this submission is informative and useful. In a separate letter, we will raise issues around this consultation and our work generally.

Yours sincerely,



Liz Reid
President and Director (NT)
Physical Disability Australia



Simon Burchill
Manager
Physical Disability Australia

Cc Hon. Bill Shorten MP, Shadow Minister for the NDIS and Government Services,
Hon Linda Burney MP, Shadow Minister for Social Services and Families.

About Us

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded 21 years ago and we have over 1,000 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.

² <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-insurance-scheme/review-of-the-ndis-act-report>