

Vision Australia submission

NDIS Amendment (Participant Service Guarantee and Other measures) Bill

Submitted to: Senate Community Affairs Legislation Committee

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# Vision Australia submission: Senate Community Affairs Legislation Committee, NDIS Amendment (Participant Service Guarantee and Other Measures) Bill

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## Introduction

Vision Australia is pleased to provide this submission to the senate Community Affairs Legislation committee concerning the review of the National disability Insurance (Participant Service Guarantee and other Measures) Amendment Bill 2021. It is our view that, with only a few notable exceptions, the changes proposed to the legislation are broadly positive and will lead to increased clarity throughout the access and planning process for participants and families.

## Recommendations

* There should be a requirement encompassed in S 47 for the CEO to notify variation or replacement of a plan where this occurs on the CEO’s own initiative.
* While Section 47 states that plan variations must occur “with” the participant, further clarification of this wording is needed to specify the scope of the participant’s involvement in that process.
* Sections 47 and 48 of the legislation should be qualified by a requirement that the CEO must make reasonable efforts to consult with and notify the participant prior to a plan variation or reassessment.
* Rules created for the purposes of sections 47 and 48should be designated as Category A rules, as is currently the case. Decisions made around a participant’s supports are not only key matters of policy, but also have potential financial implications, given they may impact allocation of funding between the Commonwealth and the States and Territories. The designation of these matters as category D rules should not be utilised as a tool to dilute influence and input from the states and territories.
* It is crucial that service providers and participants alike should be involved in the co-design of any new payment model, to ensure that it will operate effectively once introduced.

## Participant Service Guarantee

The implementation of the Participant Service Guarantee is clearly set out in Schedule 1 to the Bill. This is a positive change which will provide much needed certainty to participants and families around the expected timeframes for decisions to be made with respect to NDIS access and planning processes. Mandatory reporting by the NDIA concerning implementation of the Participant Service Guarantee, and the independent monitoring functions of the Commonwealth Ombudsman are welcome changes that will increase transparency and accountability within the Scheme.

## Plan Variations and Reassessments

While Vision Australia is broadly supportive of the changes concerning plan variations and reassessments, we have some concerns around the drafting of section 47 of the Bill. Section 47 allows the CEO to vary a participant’s plan, either at the CEO’s own initiative, or at the participant’s request. Section 47A(7) states that the CEO must notify the participant of a decision to vary or replace the plan, if the participant has made a request for that to occur. There appears to be no requirement encompassed in S 47 for the CEO to notify variation or replacement of a plan where this occurs on the CEO’s own initiative. It is noted that, following initial consultation, , some limitations have been added in the most recent draft of the bill, to the effect that plan variations must be prepared ‘with’ the participant. This wording is a welcome change, but is unlikely to be sufficient to address participant concerns. Section 47 still allows the CEO to vary a plan at any time, with no requirement to obtain the participant’s consent to this process. It is not clear from the new wording exactly what capacity the participant has to be involved in the variation process. Sections 47 and 48 of the legislation should be qualified by a requirement that the CEO must make reasonable efforts to consult with and notify the participant prior to a plan variation or reassessment. Limited exceptions to this requirement could be provided, for example, where urgent access to supports is required. Clarity concerning these issues is crucial, particularly at a time when trust and confidence in the NDIA and its operational powers has been, from the perspective of many participants, severely eroded. It is recognised that these changes have been implemented to reduce administrative burden and create greater plan flexibility. These aims are admirable, however, if the powers vested in the CEO are interpreted and applied too broadly, this may ultimately lead to a significant reduction in participant choice and control, particularly if the CEO can vary funding amounts, or place restrictions on how they should be used. Additionally, Section 47A(11) states that the Agency must provide the participant a copy of their varied plan within 7 days, but doesn’t state that the copy must be provided in the participant’s preferred format. This seems an unfortunately missed opportunity, particularly given the Act’s increased focus on the central role of people with disability in co-designing the Scheme, a task they cannot effectively be involved in without tangible commitments to the provision of accessible information.

Finally, Section 100(1)(b) of the draft Bill states that if a person receives a notice of a reviewable decision made by the CEO, the reasons for the decision must be provided. This provision has evidently been amended since release of the initial consultation draft. We consider that this is a positive change that will significantly reduce administrative burden upon participants and families and will facilitate greater transparency of the Scheme overall. It is noted, however, that there is no corresponding requirement, under section 100 or elsewhere, for reasons to be provided once a review of a reviewable decision is completed. This should be a legislated requirement, such that every decision by an NDIA reviewer is accompanied by a statement of reasons.

## Expansion of discretionary Powers and reliance on Delegated Legislation

Vision Australia has some concerns regarding the use of broad discretionary powers vested in the CEO, as well as increased reliance on delegated legislation. Delegated legislation should only be used for administrative purposes, with key matters of policy retained in the Act itself. The introduction of the NDIS Amendment (Participant Service guarantee and Other Measures) Bill will also result in the creation of several new and updated rules, thus increasing complexity of the NDIS framework overall. Vision Australia is particularly concerned about the use of Category D rules in detailing matters for consideration with regard to plan variations and reassessments under Sections 47 and 48 of the Bill. Rules created for the purposes of these sections should be designated as Category A rules, as is currently the case. Decisions made around a participant’s supports are not only key matters of policy, but also have potential financial implications, given they may impact allocation of funding between the Commonwealth and the States and Territories. The designation of these matters as category D rules should not be utilised as a tool to dilute influence and input from the states and territories.

## Flexibility Measures

Schedule 2 of the Bill clearly sets out the intended changes with respect to flexibility of supports, permanence of disability for those with psychosocial disabilities, additional protections for plan managed participants and the importance for people with disability to be involved in co-design and Board membership capacities.

It is noted that the risk assessment process currently applied to determine whether self-management of funding is appropriate, will also extend to participants using registered plan management providers. Vision Australia recognises that this is intended to provide additional protection for participants and to alleviate the risks that may exist when engaging unregistered providers. It is important, however, to ensure that the application of this process does not impede access to products and services, particularly in remote locations or thin market environments. In our experience, many agency managed participants, particularly those outside of metro areas, already have difficulty in finding registered service providers to offer supports such as cleaning, garden maintenance and installation of basic home modifications. It is often the case that there are simply insufficient numbers of registered providers in some areas to consistently offer services across all support categories within the participant’s plan. For this reason, many Participants will currently choose to plan manage funding in order to ensure access to these services through non-registered providers. If fewer participants now have this option as a result of broader application of the risk assessment, this may prevent them from receiving crucial supports.

Schedule 2 also references the introduction of a new payment platform that would allow the Agency to pay providers directly on behalf of participants, including those that are self-managed. Vision Australia acknowledges that this may be beneficial, given that participants would no longer be required to pay for supports up front and then seek reimbursement. We note that some progress has already been made toward a new payment platform, with the recent release of the “MY NDIS” app. We are pleased to note that some vision impaired participants were invited to test the app prior to launch. It is vital that this type of engagement should continue as developments to the new platform progress. The efficacy of any payment platform will depend upon its usability to all disability groups. For participants who are blind or have low vision, consideration must always be given to accessibility through factors such as screen reading and magnification technology, as well as tactile and audio feedback.

Vision Australia is also of the view that participants should continue to have choice in how payments for products and services are made. This may particularly be necessary either where some supports are accessed through unregistered providers, or where consumables items are purchased through mainstream suppliers. If all payments are channelled through the new platform and it either does not meet accessibility requirements for participants, or cannot be readily used by all relevant parties, this may have the unforeseen consequence of reducing access to supports. Self-managed participants should continue to have the option to seek reimbursement for supports where this is the most appropriate option to meet their needs.

Moreover, it is crucial that service providers and participants alike should be involved in the co-design of any new payment model, to ensure that it will operate effectively once introduced. It is also vital that service providers have adequate time to integrate the new platform with their existing systems and processes. Inadequate consultation as well as insufficient lead time would undoubtedly lead to considerable development and implementation costs for providers, and potential interruption or reduction of services.

## Improved use of language and consultation of People with Disability

Vision Australia is pleased to see that the moderating language which previously referred to capability and capacity of people with disability has been removed from the draft bill. Similarly, it is encouraging to observe that the legislation now recognises that people with disability are central to the NDIS and should be included in a co-design capacity. We look forward to the additional opportunities for consultation of people who are blind or have low vision that are expected to result from this change. Relatedly, the inclusion of lived experience of disability in the eligibility criteria for NDIA Board membership is a welcome addition to the legislation.

Inclusion of the requirement under Section 9A for approved forms to be published on the Agency’s website is also a positive change. We consider that this has the potential to greatly improve accessibility of information for both prospective and existing participants.

## Conclusion

Vision Australia thanks the senate Community Affairs Legislation Committee for its consideration of this submission. We would be happy to provide further information about any of the issues discussed in this paper.