# Vision Australia submission – NDIS Legislation Review, 2021

Prepared by Caitlin McMorrow, NDIS and Aged Care Funding Specialist Lead

## Introduction

Vision Australia is pleased to provide this submission concerning the review of the National disability Insurance (Participant Service Guarantee and other Measures) Amendment Bill 2021, and associated rules. 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.

## NDIS Act

### Schedule 1: participant Service Guarantee

#### Question 1: Does the particular Schedule clearly set out the key changes being made to improve participant experiences with the NDIS?

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.

#### Question 2: Could the proposed amendments in this particular Schedule lead to any misinterpretation or unintended consequences?

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. Section 47 also allows the CEO to vary a plan at any time, with no requirement to obtain the participant’s consent to this process. These sections 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. 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. Additionally, Section 47A(10) 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 person may request the CEO to give the reasons for the decision. It is our firm view that this provision should be amended, such that all reasons for reviewable decisions are provided to the participant by default, without the need for the participant themselves to initiate the request. This would significantly reduce administrative burden upon participants and families and would facilitate greater transparency of the Scheme overall. It is also noted that there is no 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.

#### Question 3: Are there any other changes which could improve the participant experience in the NDIS?

#### Question 4: Any other general comments.

### Schedule 2: Flexibility Measures

#### Question 1: Does the particular Schedule clearly set out the key changes being made to improve participant experiences with the NDIS?

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.

#### Question 2: Could the proposed amendments in this particular Schedule lead to any misinterpretation or unintended consequences?

It is noted that the 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. The efficacy of any payment platform will, however, depend upon its usability to all disability groups. Although details of the design of the payment platform have not yet been disclosed, for participants who are blind or have low vision, consideration must 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.

#### Question 3: Are there any other changes which could improve the participant experience in the NDIS?

#### Question 4: Any other general comments.

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.

## Participant Service Guarantee Rules

#### Question 1: Do the Rules provide clarity to participants on the timeframes that will apply to NDIA decision-making? (See Part 3 of the NDIS PSG Rules)

In general, timeframes for decision making are clearly stated in the Participant Service Guarantee Rules. Given the legislative nature of the document, however, it is suggested that participant factsheets in simpler terms should be provided as a more accessible and digestible source of this information. The design of the current NDIS framework, consisting of the Act and its various supplementary rules, alongside operational guidelines, means that principles are often spread across various document sources, which can be difficult for participants to navigate and understand.

#### Question 2: Are the timeframes within which things must be done appropriate? Are they too long or too short?

In general, the timeframes listed in the NDIS Participant Service Guarantee Rules seem reasonable and appropriate. There are two exceptions that should be reconsidered, namely:

* The timeframe of 50 days associated with plan variations under Section 10(3)(b)(I), where the variation is associated with either complex assistive technology or complex needs, is too long. Firstly, variations are intended to be used where straight-forward changes to a participants plan are needed. The timeframe for these decisions must be aligned to the aim of decreasing red tape and administrative burden. Additionally, the terms complex assistive technology and complex needs are not defined in the Act or rules, which may lead to lack of clarity for participants as to whether this timeframe will apply in their particular case or not.
* Similarly, the review period of 60 days for review of a reviewable decision under Section 14 is likely to be unreasonably long in most circumstances, and should be shortened.

#### Question 3: Are the proposed engagement principles and service standards that will underpin how the NDIA works alongside people with disability in delivering the NDIS appropriate? Are there additional particular types of consultation or engagement important to consider? (See Part 2 of the NDIS PSG Rules)

Vision Australia considers that the engagement principles of transparency, responsiveness, respect, empowerment and connectedness are appropriately represented in the NDIS Participant Service Guarantee Rules. It is particularly encouraging to see that provision of information in in accessible formats has been considered as part of the engagement principles around transparency and empowerment. The prompt acknowledgement of participant concerns and commitments to update and inform participants around decisions being made about them will, if executed well, help to build confidence in the Scheme as a whole. The empowerment principle includes reference to the Agency’s commitment to provide reasons for decisions, where it is requested to do so. As stated elsewhere in this paper, we believe that reasons for all reviewable decisions should be provided to participants by default, without any need for a request to be made.

#### Question 4: The Commonwealth Ombudsman will provide an annual report to Government on the NDIA’s performance in delivering the Guarantee. The Rules set out what will be in that report. The Rules also set out the things the NDIA must report on in its quarterly report to Governments. Do the Rules clearly explain how both of those reports will ensure the NDIS delivers on the promises of the Guarantee? (See Part 4 of the NDIS PSG Rules) NDIS processes and the Participant Service Guarantee – proposed legislative improvements

The requirements for each report are clearly stated in the NDIS Participant Service Guarantee Rules. It would be helpful for the NDIA’s quarterly reports to include information about access decisions, reassessments, variations, internal reviews and AAT applications for specific disability cohorts, as well as proportional data for all participants. This would provide more regular market insight akin to that provided in the Agency’s recent Sensory Disability Report.

We are supportive of the inclusion of qualitative participant data in the Commonwealth Ombudsman’s report to the Minister, however, we consider that this should be mandatory, rather than optional. Such qualitative data is crucial in balancing the commitment to the timeframes listed in the Participant Service Guarantee, with the practical implications of the participant experience.

#### Question 5: Any other general comments.

Given that consultants and contractors have been included in the definition of “a responsible person”, it is hoped that the NDIA will use the timeframes and metrics set out in these rules to inform and report upon not only its own performance, but also that of its partner organisations and contractors. In particular, expectations and outcomes achieved by local area coordinators appear to be highly varied across regions, with the result that participant experiences are also largely inconsistent.

## NDIS Plan Administration Rules

#### Question 1: Do the Rules clearly set out the circumstances in which a participant’s plan can be varied, and the circumstances in which the NDIA would ordinarily first conduct a reassessment? (sections 10, 11 and 12 of the Rules)

While section 10(2) and Section 11)4) set out the matters to which the CEO must have regard when determining whether to vary or reassess a plan, it is unclear from the drafting as to whether this is intended to be an exhaustive list of considerations. If the list is finite, this should be clearly stated. If it is not, the Plan Administration Rules should be clarified to state that the CEO may take into account other matters that they consider relevant, in addition to those listed.

#### Question 2: Do the Rules clearly explain the options a participant has to work with the NDIA to ensure their plan remains fit-for-purpose? (sections 10, 11 and 12 of the Rules)

The options available to the participant are not clearly set out in the Plan Administration Rules. These sections primarily set out the powers of the CEO and most participants will likely struggle to determine what their own part in the plan reassessment and variation process is intended to be, based on this information. It is likely that participants will require additional information in the form of factsheets or operational guidelines to aid their understanding of these sections.

#### Question 3: Does the proposed alternative commissioning power clearly set out the circumstances under which the NDIA could support a participant to maximise choice and control? (section 5 of the Rules)

As above, it is not clear from the current drafting as to whether the matters listed in Section 5 are intended to be exhaustive. This should be clarified in the current wording.

#### Question 4: The Rules include details on the responsibilities of persons receiving NDIS funding to keep records about how those funds were spent. Is it clear what their responsibilities are? (section 9 of the Rules)

Section 9 clearly articulates the record keeping requirements that are imposed on both participants and providers, however, it is noted that with respect to equipment purchases, records must be kept for five years from the date that the goods are delivered to the participant. Large equipment providers who are utilising external warehousing and delivery facilities on a national scale may not have the facility to readily track this information. Record keeping may be simplified if providers could commence this from day of purchase, rather than day of delivery.

#### Question 5: Any other general comments

The government has stated in its explanatory material for the Plan Administration Rules that the new record keeping requirements have been introduced to ensure that funding is spent in accordance with the NDIS plan and with the participant’s requests. It is important to recognise that participants often do not have a clear understanding of the funding provided in their plan and the ways in which it can, or cannot, be used. As a result, providers are often required to balance delivery of goods and services that meet the participant’s requests, against what is permitted by the plan and the NDIS guidelines. In effect, what is stipulated in the plan and what the participant requests, are not always well aligned. It is therefore unhelpful to draft broad legislative provisions which state that those receiving NDIS payments on behalf of participants must comply equally with both. The Plan Administration Rules and the associated provisions in section 46 of the NDIS (Participant Service Guarantee and other measures Amendment Bill), should provide greater clarity around what providers must do and the records that are expected to be kept, where there is disparity between the supports that the participant asks for and those which are stated in the NDIS plan.

## Conclusion

Vision Australia thanks the Department of Social Services for its consideration of this submission. We would be happy to provide more information about any of the issues discussed in this paper.