

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



Australian Community Industry Alliance  
2021

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## Introduction

Australian Community Industry Alliance (ACIA) welcomes the opportunity to provide this submission to the consultation on Aged Care and Other Legislation Amendment (Royal Commission Response No.2) Bill 2021.

## Background on ACIA

ACIA is the national peak body representing community care and support providers, including private, not-for-profit, and charitable organisations. Nationally ACIA represents over 100 provider organisations, which collectively employ more than 150,000 FTE workers. ACIA also supports the disability and aged care sectors and works with government departments and authorities, including:

- State Disability Agencies such as Department of Family and Community Services, Ageing Disability and Home Care NSW, Department of Health Human Services Victoria and Disability Services QLD
- iCare NSW includes: Lifetime Care and Support Authority, Workers Insurance, Dust Diseases Care, Self-Insurance, and Builders Warranty.
- Lifetime Support Authority South Australia
- Motor Industry Accidents Board, Tasmania
- Transport Accident Commission Victoria
- Workers Compensations Schemes in multiple states
- Representation at the National Aged Care Alliance
- Department of Health
- Department of Social Services

ACIA's vision is for a community care and support industry known and respected as a provider of quality services. To achieve this vision, ACIA provides education, resources, and support to the industry and develops and administers its own quality standard and scheme (endorsed by the Joint Accreditation System for Australia and New Zealand JAS-ANZ).

ACIA seeks to be involved in the future development of policy and service reform, by bringing to the discussion our experience and expertise, including:

- Membership of over 100 provider organisations and individuals nationally, representing around 150,000 FTE workers
- Membership across the disability and aged care sectors
- Specific expertise in the delivery of support to people living at home or in supported and shared accommodation arrangements
- Lengthy provider experience of delivering individualised support according to the wishes of the individual in line with their funding
- Experience in compensable and business markets
- Experience in the development, implementation, and administration of quality certification systems that meets the national standards for disability services and home and community care standards (for example, the ACIMSS 2008 and the ACIS 2013)
- We have a proven track record of engaging positively with reform processes and working collaboratively with governments, providers, consumers, and interested stakeholders.

Thank you for the opportunity to consider our response to the Amendment Bill. It is critical that we get this right to progress critical aspects of the legislation and ensure adequate safeguarding for persons with a disability in the community.

ACIA supports the intention of the Bill to reduce red tape and increase flexibility for increased decision making. Furthermore, we support the Bill and the Tune recommendations for ensuring and acknowledging the right of participants to be actively engaged in the co-design aspect of such.

As presented on page 8 of the explanatory memorandum, the NDIS Act intends to simplify and provide more straightforward processes, along with removing legislative barriers to ensure participants are provided a positive experience with the NDIS. Unfortunately, while it remains a relatively new piece of legislation, it is apparent for user feedback and indeed this piece of bill review that this has not been achieved. There is a long way to go to ensure that this is achieved, and an overall commitment from key stakeholders that this inherent intent is conducted in a meaningful and timely manner. The Tune report, while significant and impactful, made some strong and very valid recommendations; it is notably unfortunate that despite these being accepted a year later, we are still far from a review that sees these recommendations being enacted and implemented. This, similarly to the Aged Care Act that had evolved into systemic failures and adverse outcomes to the community despite an elongated series of reviews and feedback both formally and informally, has taken 20 years to respond finally and yet only when it got to a crisis point of view. Disability appears to be on a similar pathway for noncompliance and neglect, and it is apparent that a less than proactive approach exists.

## Participant Service Guarantee

ACIA acknowledges and concurs with the Tune report that identifies opportunities to simplify many of the NDIS procedures and reduce the numerous barriers present for both the community and participants themselves.

### Category C

ACIA in this response provides support for the Tune recommendations as specified in Category C to provide consistent, effective, and high-quality experiences for participants.

### Schedule 1

ACIA supports the extension of the 28-day requirement to be extended to 90 days for participants to comply with requests. It is both an overwhelming and complicated process that is somewhat unwieldy for many participants as represented in our correspondence and feedback with participants' key stakeholders. We further support the approach that the reassessment of participant plans will include the totality of needs and goals.

It is both fair and reasonable that the Tune review recommendations in Chapter 8 be amended in legislation to ensure a timely review of support plans. To that regard having a review of only a required section of the plan as laid out changes that are both reasonable and necessary will support timely intervention. However, there is a lack of legislative framework to outline the timeframe in which this review will occur, the essential loopholes that participants will need to go through to activate this review, and the appeals process that may be needed if a review is not considered appropriate by the NDIS. The 21 days as described in section 20 appears to be limited to accessing requests rather than the processing and decision-making timeframes. Overall, the concern and feedback from our members and their participants, are largely that the timeframes for review and appeals processes of support plans is both challenging and disconcerting. It is the feedback that we regularly receive that the initial support plans are developed with all the information and collaborating evidence in a time consuming and stressful ordeal, of which we acknowledge this is not conducive or supportive of the needs of



the participant and their key stakeholders. Then almost every plan requires a review because items are removed despite them being supported by qualified professionals and being inclusive of that which is required rather than that which is nice to have. Whilst I am positive there are exceptions to that rule, primarily, this is the reality. The reviews are of serious and significant concern to us, as often whilst the review is being undertaken, which can be up to 18 months, often services are on hold completely during this period making it often a fear of the carer and participant that they can't afford and are highly discouraged from embarking on a review process. This is far from alignment to the intent of the scheme and that of its innate requirements of the NDIS. Finally, appeal process again can put plans on hold during a long and stressful process that again uses fear and bullying approaches based on participant feedback that means participants can't engage in a fair and reasonable process. ACIA would like to ask that this review kindly re-examines the requirements of the review and appeals processes to be more timely, reasonable, fair, and in alignment with the intent of the scheme itself.

ACIA supports the review of language as described in Recommendation 22 however, we refer to the information contained in this section that should ensure all plan requirements remain in place and funded whilst a review or reassessment is being undertaken. Furthermore, we request a consideration for emergency provision to enable emergency and urgent interim requirements as supported by relevant professionals for a period of three months to accommodate for changes in the plans whilst a review or reassessment occurs. We further support Item 23 and recommendations 20 and 21 response to provide changes to parts of the plan rather than the whole plan to facilitate ongoing support provision as required.

The wording in subsection 26(1) requires a further level of interpretation. It would appear that where the CEO fails to meet the timeframe of decision making required, the default position is that the participant is negated the level of service provision requested. It is very rarely that a decision is not requested without health professional and key stakeholder engagement and advice, therefore one can only assume that the service is required and the gaps of the CEO is not the business of the participant and in fact the default position should be ongoing or at least short term approval of such services until a time that the CEO does have the time to dedicate to a review. This is additionally relevant to Item 49.

Item 40, subsection 1, whilst clear in the requirements of the scheme to provide feedback on the decision, this needs to be undertaken within a maximum of 21 days. The feedback needs to be specific and person centred in alignment with the principles of the scheme and the goals of the participant.

Performance metrics as identified on page 17 requires the oversight from an independent quality assurance committee rather than a ministerial committee that doesn't have representation from the sector. If it does, ACIA would like to humbly ask that it be considered for representation on such a committee.

Item 50, Paragraph 174, as highlighting this performance report. ACIA notes that this report should be made available to the public to support transparency in alignment with the intent of the scheme. We support the guidelines as set out in Item 55, regarding the Ombudsman's role and scope.

From a security and information management point of view we note that until recently with telehealth technology to facilitate online reviews and assessments, carers and participants need to have now verified legal documents to support identity checks when undertaking online engagement with the NDIS. However, prior to online technology, participants and carers, based on feedback from such, did not have to provide such information when they attended plan meetings face to face or consulted with government officials to engage in discussions regarding their plan. ACIA would support this new criteria to ensure that carers and participants should have a manner to which they can verify who they are for ongoing face to face meetings to support identity requirements.

## Schedule 2

We inherently support improvements in the governance processes and the engagement of escalation requirements as set out in the roles and responsibilities of the CEO. The Tune Review provided a few insightful recommendations to this Schedule which we are glad NDIS is responding to including:

- The critical role that participants have in co-design and their right to exercising choice and control;
- Recognising the relationship that participants have with their families and carers;
- Updating language from psychiatric condition to psychosocial disability;
- Only requiring the participant to provide information once rather than on numerous and repetitive occasions;
- Extending the risk assessment processes for self managed funds to those using unregistered plan management providers;
- A new platform to enable payments to service providers directly, to support increased efficiency and reduce payment problems for participants to pay upfront.

ACIA supports the removal of the gender classification, as to accommodate gender identity.

Item 26, ACIA would like NDIS to consider putting a maximum time period for the development, review and replacement of participant plans. The maximum should be 21 days and whilst acknowledging the complexity of the system and administrative processes, there are a reduction the amount of new participants as it has already been rolled out and reviews should be vastly different in their degree of complexity as there are already a basis on which to start now.

On page 34 there is a reflection on the Tune Review findings that many of the forms that are available online should additionally be able to be downloaded and printed, however ACIA notes there is no action or outcome on this comment. ACIA would support this Tune Review recommendation and finds that the participant feedback is in line with feedback we have received.

Support is given to early intervention recommendations 13 and 27b, however we would further ask consideration to be given to improving the timelines for application and reviews to 21 days and an ability to provide emergency provision with or without an NDIS plan whilst processes are undertaken. This would streamline outcomes and facilitate more appropriate service provision within a reasonable period.

While the movement to psychosocial disability is in recognition of more contemporary language, ACIA would support more definitions to guide diagnosis and labelling for health or other relevant professionals. It would hope that this broadening of criteria is not inhibiting to accessing services. NDIS needs to develop supporting material to facilitate increased engagement with the new terminology. The terminology for reduced psychosocial functioning should in fact be highlighted in a more positive term to reflect the positive functioning where able in order to contribute to a more meaningful life. The acknowledgement of episodic reduced functioning is important to consider not only in the diagnosis but more importantly in the assessment and review periods where the impact may be not as obvious in a supported and routine or familiar home environment but exacerbated in COVID or other environments and situations where this safe milieu can not be replicated as such.

The concept highlighted to consider plan management to be in alignment with similar risks as self managed plans is reasonable. It is worth considering the element of risk in that there is a comment that to the extent that a significant risk cannot be mitigated in another way, otherwise allowing a participant to use a plan manager.... This should be an individual based decision as this monies may be by choice perceived not necessary by the participant providing there is

insight into the risks they are taking. A facilitated risk and control approach is needed on an individual basis in a co-design approach to support the participant.

The only caution ACIA would present on changing the approach of payment management is the need to consider ongoing financial sustainability and appropriate use of funds by the provider. This is not an area laid out clearly in the provider requirements. By paying upfront, which we support in order to minimise administrative burdens on participants, however there would be opportunity for the Provider to misuse funds, or not deliver on the services as per the plan or to the agreed level of satisfaction that is required. We would support this issue, however not the latter issues for further consideration. Item 44, should possibly consider not just guardian or power of attorney in the way it is represented. Both have clearly different rights and Item 44 may be considered to blur who has which responsibility depending on the issue at hand. Furthermore, there is the substitute decision maker responsibilities which may come into decision making processes. ACIA would support and expansion of this area to deliver against specific roles and responsibilities as dependent on the situation and specifics at hand.

### Schedule 3

Due to the overall role out of NDIS across the country it makes sense and is reasonable that these improvements are acknowledged in the legislation and implemented.