



Government of **Western Australia**
Department of **Communities**

Our ref: 2021/31277

Ms Pothida Youhorn
Committee Secretary
Community Affairs Legislation Committee

community.affairs.sen@aph.gov.au

Dear Ms Youhorn

Inquiry into the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

Thank you for your email dated 21 October 2021 regarding the Community Affairs Legislation Committee's (Committee) Inquiry into the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill).

On 7 October 2021, the Department of Communities (Communities) provided the Department of Social Services with a whole-of-WA Government submission on the Bill and suite of relevant draft rules (WA Submission) as part of the public consultation process. As expressed in the WA Submission, Communities supports the Bill's general intent of streamlining the processes and improving the experiences of participants in the National Disability Insurance Scheme (NDIS).

Communities notes that amendments to the Bill prior to its introduction to Parliament addressed most of the main concerns in the WA Submission. However, Communities would like to bring to the attention of the Committee the remaining areas of concern not addressed in the Bill.

The most significant issue that was not addressed in the Bill is regarding the provisions in the Bill relating to rules made under sections 14(3), 47A(1)(a) and (c), 47A(6) and 48(5), which have been set as Category D rules under section 209(8) of the *National Disability Insurance Scheme Act 2013*. These rules would provide the matters that the Chief Executive Officer must consider when varying or reassessing NDIS plans, and when providing financial assistance from the National Disability Insurance Agency. As Category D rules, there would only be a requirement for consultation with States and Territories when making or amending these rules. As NDIS plans and access to funding are central to the NDIS participant experience, Communities contends that making and amending these rules should instead be Category A rules requiring the unanimous agreement of the States and Territories.

Communities has further concerns with the Bill related to:

- a need for confirmation that Schedule 3 of the Bill will make the legislation more contemporary, without restricting or adversely affecting access to the NDIS, or imposing additional obligations on the Commonwealth or States and Territories
- the absence of more immediate decision-making timeframes for at risk, urgent or crisis situations

- a need for clarity on how the Bill will be implemented and operationalised in a manner most beneficial for NDIS participants, families and carers.

Communities also notes the change in section 2 of the Bill regarding the Commencement Date of the Act. At the time of drafting the WA Submission, the Exposure Draft prescribed that the whole of the Act would commence on the seventh day after Royal Assent. The Bill as introduced in Parliament kept this Commencement Date for some sections and provides that other sections are to commence on 'the later of: (a) the day after the end of the period of 3 months beginning on the day of Royal Assent and (b) 1 April 2022'. The reasons for, and implications of, the differing Commencement Dates are unclear.

Communities urges the Committee to give due consideration to the issues and concerns outlined in this letter as part of the Inquiry on the Bill.

If you have any further queries, please contact Ms _____,
Assistant Director General, at Communities by telephone on _____ or by
email at _____

Yours sincerely

Mike Rowe
Director General

8 November 2021