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Senator Wendy Askew

Chair

Senate Standing Committee on Community Affairs Legislation

PO Box 6100

Parliament House

Canberra ACT 2600

Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Our ref: CSI-21/745

Dear Senator Askew and Committee Members

The ACT Government appreciates the opportunity to provide a submission to your inquiry into the *NDIS Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill)*.

The ACT has been broadly supportive of the proposed measures to legislate the Participant Service Guarantee (PSG) and I would like to acknowledge the efforts of the Commonwealth in progressing this important reform.

The Commonwealth met with the ACT Disability Reference Group (DRG) to discuss the proposed amendments in September 2021 and DRG members felt this session was informative. To support the Commonwealth's consultations, I additionally hosted a public session on 21 September 2021 to provide further input to the development and refinement of the Bill. It was well attended with around 150 participants contributing to the discussion.

While there was acknowledgement of numerous positive changes, key concerns raised by constituents included:

- the ambiguity and interpretation of some the language contained within the drafts regarding CEO powers, particularly regarding plan variations and reassessments;
- demotion of some of the shared decision-making powers and the need to maintain strong joint governance arrangements thereby preventing unfettered powers of the CEO or the Agency; and finally,

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- how the PSG and rule changes will be operationalised through a co-design process, and how NDIS participants and providers will be supported once the changes have been introduced.

Despite the Commonwealth's commitment to receiving feedback, the highly ambitious timeframe of four weeks consultation set by the Commonwealth, impacted meaningfully review and opportunity to provide in depth input into the proposed changes.

This is particularly concerning given that the Bill proposes important and wide-ranging changes to fundamental components of the Scheme. My concerns around the time allowed by the Commonwealth for consideration of the Bill are compounded, noting significant changes were made to the Bill, even after the inquiry by this committee was announced, further reducing the time available for people in my community to adequately review and understand the changes. Finally, adding to these concerns is the Commonwealth will now only consider further input to the Bill provided through this committee.

The ACT Government strongly advocates an approach of co-design, as answers cannot be found solely in either government or the community but rather a collaboration of creativity from all sectors of society: service users, interested individuals, service providers, business, media, academia and government. The ACT Government notes outcomes achieved through co-design best serve the community into the future.

Positive and well considered enhancements to the Bill cannot be achieved without allocating suitable time. While I commend the Commonwealth for being as receptive as it has been to feedback on the Bill, the level of engagement and co-design required for further refinements to the infrastructure of the scheme, particularly as it relates to an individual's plan and decisions which impact on how a person lives their life, has been lacking.

The PSG is a fundamental component of the scheme into the future, ensuring participants are at the centre of all decisions and their agency, their right to choose and have control within their own spheres is not only protected, but guaranteed. That sufficient time is not taken to verify the engineering of scheme infrastructure casts doubt on the efficacy of the rules which will come after.

**Recommendation: The Commonwealth, in its development of the Participant Service Guarantee rules, commits to undertaking a comprehensive co-design approach to the drafting of the rules and to the development of an accompanying Transition Engagement Plan for implementation.**

The proposed changes to the amendments, provided to me by Senator Reynolds on 28 October 2021, have addressed some concerns in terms of the language referring to the powers of the CEO in relation to plans. The changes provide certainty and assurance to participants about how, and under what, circumstances their plans may be varied or reassessed. I am particularly reassured by the new section on the matters the CEO must have regard to when considering a variation or a reassessment.

However, noting the change in the status of these rules, there is an overwhelming caution and anxiety within the sector, community and academia about the slow shift in governance arrangements. Changes to Category A Rules and new Category D Rules, without enhancing other protections or safeguards, may further erode the current national governance arrangements and effectively transfer total control of the NDIS to the Commonwealth Minister, and unfettered powers to the NDIA CEO.

For example, s48, in its entirety, is a Category A rule. This requires the agreement of all jurisdictions and the Commonwealth to agree on rules about the review of a person's plan. Having this function as a Category A rule gives jurisdictions an equal voice in how the scheme (namely the Agency) will treat an individual's plan review, incorporating the different values and positions of the jurisdictions in the decision: ie shared governance.

The amendments, as they currently stand, remove the decision from Category A and replace it, instead, with a majority of jurisdictions agreeing (Category C) on the timeframe in which a decision must be made. Not the substance of the decision itself, just the timeframe in which it is made. While new s50J has been included, which will determine the parameters under which a plan will be developed in the first instance, this is only included as a Category C, thereby placing the onus on States and Territories to caucus rather than relying on the Commonwealth to engage in full, and genuine multilateral negotiation and consensus building. Regardless of how the plan is developed in the first instance, once it is open to review, the CEO and the Agency must be relied upon to act within the same intent of the original plan development, however, will not be required to do so. An effective governing arrangement means that important components of operation are not left to hope and good will. Rather, by agreement of the governing body, checks and balances are introduced to ensure appropriate operations. On occasions when this is not followed, the governing body has sufficient power to change it.

In my view, this gradual reduction in the authority vested in the combined governance of the Commonwealth and the jurisdictions does not align with the intent of the original establishment of the Scheme. I note that the NDIS website states *"The national scheme has funding and governance shared among all governments. All Australian governments are involved in decisions relating to the scheme's policy, funding and governance."* My concern is that this will become increasingly less true.

**Recommendation: That the Senate Committee refer its report on the Bill to the Joint Standing Committee on the National Disability Insurance Scheme for consideration in its inquiry into issues around the implementation and performance of the NDIS with a recommendation for further scrutiny of the diminution of governance arrangements of the scheme.**

The operation of the scheme is increasingly under scrutiny. I note the work of the Joint Standing Committee on the Current Scheme Implementation and Forecasting for the NDIS which is occurring alongside a number of pieces of work around financial sustainability which Disability Reform representatives and I are seeking to progress. I also note that a review of the quality and safeguarding framework has been recommenced by the Commonwealth. These are all important pieces of work which I will remain an active participant in. I am committed to ensuring the very best scheme supports people with a disability in a way which guarantees their right to agency and to choice and control.

Yours sincerely

Emma Davidson MLA

ACT Minister for Disability  
3 November 2021