



**The Hon Alister Henskens SC MP**  
Minister for Families, Communities and Disability Services

EAP21/15506

Senator Wendy Askew  
Committee Chair  
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Dear Senator Askew

**Inquiry into NDIS (Participant Service Guarantee and Other Measures) Bill 2021**

Thank you for your letter to the Premier of NSW inviting a written submission to the inquiry into the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021* (the Bill).

As the NSW Minister for Disability Services I represent NSW at the Disability Reform Ministers' Meeting (DRMM), the ministerial council legislated to consider policy matters that relate to the National Disability Insurance Scheme (NDIS) or arise under the Act.

At the October 2021 DRMM, Ministers were briefed on the changes to the previous version of this bill to address public feedback and ensure the primary objective of improving participant experience is achieved.

While NSW has been supportive of the proposed changes to the Act to implement the Participant Service Guarantee, we have raised concerns about some aspects of the Bill. Not all of these concerns have been addressed and I would like to draw the Committee's attention to the most pressing matters for NSW.

Variation and Reassessment of participant plans

Changes to Section 47 and Section 48 of the Act empower the NDIA to vary or reassess a participant's plan by the CEO's own initiative and, although the Plan Administration Rules will set out matters the CEO must consider, the power to vary plans is unconstrained.

It is proposed in the Bill that these rules be categorised as Category D Rules that only require consultation with state and territory jurisdictions, not agreement (see Schedule 1 - 62). NSW view criteria for making such decisions to be policy not administrative and more appropriately included in Category A Rules. This will ensure that any rules that direct NDIS decision-making about varying and reassessing participants' plans are multilaterally agreed providing an appropriate check and balance to this power.

Provide funding to persons or entities – market intervention

Section 14 of the Act regarding the provision of funding to persons or entities has been changed to include more detail about when the Agency should intervene in the market to assist people with disability. Amounts paid under Section 14 are not 'NDIS amounts' for

the purposes of the Act, and are not intended to be paid directly to participants (or their representatives).

Section 14 is not currently included in Categories of National Disability Insurance Scheme rules at Section 209(8). The Bill will empower the Commonwealth Minister to create Category D rules for matters the Agency must have regard in deciding whether to provide this funding (see Schedule 2 - 53).

NSW view is that such rules relate to policy matters and should be included in the table at Section 209(8) as Category A rules.

#### Urgent preparation of a participant's plan

Considerable detail in Section 32 and Section 32A around timeframes for commencing the preparation of a participant's plan including urgent preparation of plans in prescribed programs or prescribed rules is being repealed (see Schedule 1 – 14). Subsection 32A(4) references matters the CEO is to have regard in deciding to commence facilitating the preparation of a participant's plan because of the urgency of the circumstances have consequently been removed from Category C rules.

The explanation of these changes is that the arrangements were for the transition of people with disability from state and territory disability systems and are now redundant. However, circumstances still exist where urgent preparation of a participant's plan is required such as when a person is exiting a state service and requires community supports in place.

It is NSW view that a clause and associated rule making power is retained to empower the NDIA to commence facilitating the preparation of a participant's plan because of the urgency of the circumstances.

#### Circumstances to not pay

Section 45 of the Act is being repealed and substituted. The rules that relate to the manner in which payments are made and circumstances when an amount is not payable will be moved from Category C rules that require the agreement of the majority of jurisdictions to Category D rules that only require consultation with state and territory jurisdictions. While the manner in which payments are made may be administrative, NSW considers the circumstances when an amount is not payable to be a policy issue and should remain in the table at Section 209(8) as Category C rules.

It is NSW view that the Bill includes many positive changes that will enhance the experience of people with disability on their journey with the NDIS. The matters raised in this letter are critically important in ensuring that powers created by the NDIS Act remain appropriately balanced and continue to work effectively into the future.

If you require further information on any of these matters please contact Mr  
DCJ Director Disability Policy at \_\_\_\_\_ or call \_\_\_\_\_

Yours sincerely,

**THE HON ALISTER HENSKENS SC MP** 8/11/21  
Minister for Families, Communities and Disability Services