

26 August 2019

Senator the Hon. Wendy Askew
Chair, Senate Community Affairs Legislation Committee
Australian Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator

Re: *National Disability Insurance Scheme (Streamlined Governance) Bill 2019*

We welcome the opportunity to provide comment on the *National Disability Insurance Scheme (Streamlined Governance) Bill 2019* (the Bill). We also thank you for inviting People with Disability Australia (PWDA) to speak to the Senate Community Affairs Legislation Committee on 30 August 2019.

PWDA is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

PWDA has been a strong advocate for the individualisation of disability support services, in line with the United Nations Convention on the Rights of Persons with Disabilities (CRPD). We recognise that the National Disability Insurance Scheme (NDIS) is helping us to realise these goals.

We also recognise that the development and implementation of the NDIS is a major and transformational reform for people with

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disability who are eligible for the scheme. And, as such, the NDIS requires continuous improvement at all levels of the Scheme to ensure that we are able to realise our goals of “choice and control” as defined within the National Disability Insurance Act 2013 (the Act).

The stated aims of the Bill currently before the Committee are:

- to “help enhance delivery of the NDIS for the Commonwealth and host jurisdictions” and aim to “ensure governance at full Scheme is robust, agile and sustainable”.

We recognise that there may be some benefits to the streamlining the governance arrangements for the NDIS. However, we are concerned about the timing of this Bill as the Australian Government has announced a wide-ranging, comprehensive and independent review of the NDIS Act, including the development of a new Participant Service Guarantee.¹ This review is to be led by David Tune AO PSM (the Tune Review).

It is possible the proposed changes contained within the Bill may be premature, particularly when the Terms of Reference for the Tune Review include consideration of “opportunities to amend the NDIS Act” to:

- a. remove process impediments and increase the efficiency of the Scheme’s administration; and
- b. implement a new NDIS Participant Service Guarantee.

We also note that the Tune Review will have regard to “the roles and responsibilities of the Commonwealth and state and territory governments” to support people with disability in their interaction with the NDIS.

Furthermore, the Australian Government in association with States and Territories is in the process of reviewing the overarching National Disability Strategy (NDS). This review will include the redevelopment of the inter-governmental agreement between the Commonwealth and States and Territories: the National Disability Agreement (NDA). Recently, the Productivity Commission’s inquiry into the National Disability Agreement in 2018-2019² highlighted the need for clarification of the roles and responsibilities of the Commonwealth and States and Territories. This included the inter-governmental arrangements for roles and responsibilities for policies and programs for people with disability, both within and outside the framework of the NDIS.

For these reasons, we recommend that the proposed changes in this Bill are postponed and considered within the context of the Tune Review and the redevelopment of the National Disability Strategy and the National Disability Agreement. We suggest that the provisions of this Bill would be better considered in the context of these wider reviews.

¹ <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-insurance-scheme/ndis-act-review-and-participant-service-guarantee-tune-review-terms-of-reference>

² <https://www.pc.gov.au/inquiries/completed/disability-agreement/report>



Taking this approach will provide the added benefit of giving people with disability more time to consider the implications of key changes in the Bill, such as the proposals to lower the thresholds for key decision-making powers of the Disability Reform Council (DRC) that affect the governance of the NDIS.

These proposed changes in the Bill include:

- a change from unanimous agreement of all parties on the DRC (namely the Commonwealth and State and Territory Governments) to majority agreement in relation to:
 - appoint a board member other than the Chair of the NDIA Board
 - terminate a board member other than the Chair of the NDIA Board
 - appoint a member of the Independent Advisory Council
 - terminate a member of the Independent Advisory Council
- a change from requirements for majority agreement to the terms and conditions of appointment of a member of the Advisory Council to a lower threshold of consultation with members of the DRC, noting that there appears to be no clear process to address disagreement with the Commonwealth Minister's decision.

We understand that some aspects of the legislation are being updated to reflect current practice on the DRC namely the need for States and Territories to respond within 28 days to proposed rule changes. However, we are unsure how this proposed change may impact on the bi-lateral agreements for the NDIS. We note that there is significant investment in the NDIS from States and Territories as well as significant diversity between different jurisdictions across Australia.

One of the key principles underpinning the implementation of the NDIS is the partnership between States and Territories and the Commonwealth. The bilateral agreements make it clear that State and Territory Governments are equal partners and this is integral to the success of the scheme.

Not only do State and Territory Governments contribute financially, they are also equal partners in setting the policy and market stewardship direction that are key to ensuring the diversity of providers exist in the market as well as dealing with emerging issues of gaps in access to supports and interface issues with mainstream services such as health, education, housing and transport.

We are concerned that the proposed changes in the Bill have the potential to erode the equal partnership principle that defines the relationship between the Commonwealth and the States and Territories in the NDIS, especially in circumstances that are complex and require collaboration between Governments to ultimately solve issues. The proposed changes to the governance arrangements may undermine these fundamental partnerships over time. States and Territories must continue to play a central role in the governance and operation of the scheme.



We note that there is also limited available information for people with disability and the wider community on the discussions held within the Disability Reform Council (DRC). Recent DRC Communiqués do not appear to reference these proposed changes and the agreement of all States and Territories for them.

Further, we believe the disability sector would benefit from more time to consider any the Bill and any unintended consequences. We note that the Explanatory Memorandum or the Second Reading Speech provide limited analysis of the possible impacts that we have referred to above.

In summary, we recommend that the proposed changes in this Bill are deferred and considered within the upcoming Tune Review of the NDIS Act.

We thank the committee for the opportunity to comment on this Bill.

If you require further information, please contact me on 0431 998 273 or by email at romolah@pwd.org.au.

Yours sincerely

A handwritten signature in blue ink that reads "Romola Hollywood".

Romola Hollywood
Director, Policy and Advocacy