# NDIS (Participant Service Guarantee and Other Measures) Bill 2021: Opening Statement

**Presented by: Senior Manager of Policy, Giancarlo de Vera**

**Public Hearing on 12 November 2021 of the Senate Standing Committees on Community Affairs Legislation Committee**

Thank you for this opportunity to speak before the [Senate Community Affairs Legislation Committee](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs).

I’m Giancarlo de Vera and I am the Senior Manager of Policy at People with Disability Australia and I use they/he pronouns. I am joined by our Senior Policy and Research Officer, Frances Quan Farrant, and Theodore Jensen, Senior Manager of Individual Advocacy in QLD. I’d like to join previous speakers in acknowledging that we are appearing today from unceded lands, and collectively we are appearing from the lands of the Gadigal, Jugera and Gubbi Gubbi peoples.

I would also like to acknowledge the traditional custodians of the various lands on which the inquiry is meeting today, and any Aboriginal and Torres Strait Islander people participating in this inquiry today, particularly our colleagues at First Peoples Disability Network.

I am pleased to have this opportunity to speak to you today about the [National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill](https://engage.dss.gov.au/proposed-ndis-legislative-improvements-and-the-participant-service-guarantee/national-disability-insurance-scheme-amendment-participant-service-guarantee-and-other-amendments-bill-2021/) on behalf of PWDA.

PWDA’s board, staff and members are concerned there will be some unintended consequences of passing this Bill.

We previously shared our concerns with the exposure draft of this Bill with NDIS Minister Linda Reynolds. While some of our concerns were addressed, many highly concerning aspects of the Bill remain.

Like our disability sector colleagues at Melbourne Disability Institute, we are very concerned that the Bill plans to use Rules to give the NDIS Minister ‘almost complete control of the NDIS.’ This control would massively federalise the scheme and ‘completely undermine the shared governance of the NDIS.’

**Let me outline our concerns for you.**

At present, the Bill proposes a CEO plan variation power, that has no guidance as to when and how the power will be exercised. If the power is being exercises for minor changes, as suggested by the Government, then we see no reason why the exercise of the power cannot be exercised without both the consultation, and more importantly the consent of a participant.

In addition, we are concerned that the exercise of CEO powers will be defined in a yet to be published rule. Therefore, without knowing how the power will be exercised, we will be concerned the ability to vary a plan will lead to poorer outcomes for people with disability.

While the exercise of the proposed power will be subject to internal and external merits review, our experience with review processes through our NDIS appeals individual advocates, suggest this is not an adequate check and balance. In fact, engaging with NDIS internal reviewers has gotten worse.

Our advocates report facing a brick wall when we go to internal reviewers for help. They used to engage with our advocates, but now they don’t, and they are failing us.

Because they are failing us, it pushes many of us into the very traumatic experience of appeals at the AAT – where we eventually win at settlement – but it’s breaking some of us.

It is the experience of our individual advocates that right now, the NDIS is engaging in a massive reduction in the size of people’s plans when they come up for review. This is what we were worried about with independent assessments. This is a very distressing situation right now for people with disability experiencing plan and budget reviews.

If the Government passes this Bill, which we are starting to view it as Independent Assessments Mark II, then everyone on the NDIS could potentially be forced into these horrible appeals, or face plan reductions because we can’t face the stress, time and trauma of an appeals process.

In Queensland alone, we have seen a 629% increase in NDIS appeal work among our advocates this financial year compared to the last. There is so much unmet need, and we worry this will be worse with this Bill

This is why people with disability must involved and consent to all decisions related to our plans.

Category D rules shouldn’t be used to make changes that should be consultative and co-designed with people with disability.

Rules should instead be about ensuring an adequate and appropriate level of scrutiny of changes to the NDIS Act.

The Act is about realising our rights; therefore, changes based the Act should be afforded an appropriate level of scrutiny.

As we all know, the NDIS and the NDIS Act are a key way Australia can ensure our international human rights under the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html).

As a result, we should be working to improve access to the scheme as opposed to restricting access to it.

With psychosocial disability, we need clarity on the definition of substantial improvement so that people with psychosocial disability aren’t unencumbered in accessing the scheme, as they have episodic impairment.

As the Federal Court of Australia has acknowledged in its recent determination on the [QDKH case](https://teamdsc.com.au/resources/federal-court-a-win-for-participants), people need information on the NDIA’s decision-making. As a result, we believe people should be provided reasons for internal review decisions automatically, so we can decide what to do with an NDIA decision, especially if the Agency – incorrectly – decides to reduce our plans.

This Bill doesn’t automatically require that, but if it passes in any form, it must ensure procedural fairness and follow the principles of natural justice. We can’t ensure this if we don’t know whether we should appeal a bad decision because we have no information, and even when we ask we don’t get the info sometimes until we engage in an AAT process.

We are also concerned that at the moment, the agency is potentially engaging in a robodeclining process for needed supports at the plan review stage. Our advocates have reported this, and we are **very concerned** that if this Bill passes, there will be the **potential** for everyone to be robodeclined for the support they need.

We fear that the agency may start using the 400 participant profiles it built for independent assessments, instead of treating us all as individuals with choice and control. We are very concerned this Bill will take away our choice and control.

Right now, robodeclining at the agency is putting massive numbers of people through the AAT appeals process unnecessarily. Not only have we seen a 629% increase in NDIS appeals matters this financial year, 95% of our AAT appeals are settled in conciliation. This suggests to us that they should have gotten the support in the first place!

Unnecessarily appeals means more and more people are having their supports delayed or declined when they shouldn’t be. People with disability are not achieving their goals as a result. We don’t want this problem to get bigger!

As we said earlier, this Bill introduces an over-reliance on rules.

We need proper scrutiny so we can ensure things don’t have unintended consequences. These changes risk everyone going through a robodecline process, and ending up at the AAT, or just with no supports, saving the NDIS bucket loads of cash.

Another key problem with this bill, is it plans to use Rules to keep more people off the NDIS than are blocked by the existing NDIS Act.

But senators, the NDIS is a scheme that is meant to stimulate the economy with every dollar spent, while meeting our goals and ensuring our human rights.

Every last bit that NDIS penny-pinchers save on people’s plans, or keeping people off the NDIS, is a loss to the economy. But even more concerning, is it’s a loss to society, as the human rights of people with disability are once again ignored.

We need to ensure the shared governance of the NDIS is to benefit people with disability and, but at the moment, this Bill is suggesting a governance structure that won’t achieve this.

The Bill has the potential to make more people with disability more vulnerable, instead of empowered. We should be empowering people with disability as primary stakeholders to ensure the scheme benefits them.

The traumatic changes we are already seeing through our members and advocates could become more widespread with this bill. It would besmirch our society, and will disable people further, not empower them, to live the lives they want in a truly free society.