

A position statement on the 2021 proposed NDIS legislative changes

Introduction

The Commonwealth Government is introducing a reform package to the NDIS in the form of an amendment to the *National Disability Insurance Scheme Act 2013* (NDIS Act), introducing two new National Disability Insurance Scheme (NDIS) rules, amending two existing NDIS rules, and updating three NDIS rules.

The changes are part of the Government's response to the 2019 Tune Review of the NDIS Act.

There are some positive changes including ensuring that the National Disability Insurance Agency (NDIA) are held accountable by reporting to the Commonwealth Ombudsman's Office against a Participant Service Guarantee (PSG), inserting timeframes into the legislation and rules, and by bringing the NDIS Act towards closer alignment with the *Convention on the Rights of Persons with Disabilities* (CRPD).

Concerns with some proposed changes

However, there are points of concern in the proposed changes. These include:

- **Changes to the rule on plan administration:** These proposed rule changes appear to give the CEO large discretionary powers without clear parameters, including the ability to make a review without the participant's knowledge or consent.
- **Changes to the rule on plan management:** A new Rule is to be created that would make the criteria for being plan managed the same as the current criteria for self-management. The definitions in the criteria for this new rule are not specific enough, introduces the concept of "unreasonable risk" that is not clearly defined, and raises the potential it may limit participant's choice and control when managing supports.
- **A new power for market intervention:** This power proposes to address so called "thin markets", where there has been market failure to deliver services and supports. The agency can intervene so a support can be "most effectively delivered by a particular provider". Our concern is that participants in remote

and regional locations may be funneled into one service with no choice. Additionally, that safe and specific services be made available to LGBTQIA people with disability.

- **A new section to support access for those with psychosocial disability:** The proposed changes to access for people with psychosocial disability contains language that could prove to be limiting rather than provide equitable access to the scheme. The Rule notes that to be considered eligible for the scheme a participant with psychosocial disability must not show signs of “substantial improvement”. This could be a very slippery slope that excludes people rather than facilitating access for people with complex mental health.
- **Lived experience on the NDIS Board:** While we welcome more disability experience on the NDIS Board, the proposed “lived experience of disability” criteria is too vague. The proposed changes should ensure people with disability are on the Board. Additionally, we note that there is not commitment to gender equity in the Board.
- **The overuse of Rules to create change:** The proposed changes overly relies on rules, specifically Category D rules. Category D rules do not require as much oversight as other rule categories. By making changes via rules, the Minister and NDIS CEO can be granted extensive and undefined powers. Major changes to the NDIS ought to be laid out in the legislation where possible, so they can be subject to public parliamentary scrutiny.

PWDA wishes to emphasise that access to the NDIS for people with disability is a human right and is underpinned by Australia’s obligations under the CRPD.