



BETTER ACCESS
— AUSTRALIA —

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BETTER ACCESS AUSTRALIA'S SUBMISSION ON PROPOSED CHANGES TO THE NATIONAL DISABILITY INSURANCE SCHEME ACT AND RULES

Thank you for the opportunity to comment on the draft Amendment Bill and proposed Rule changes in regard to the National Disability Insurance Scheme (NDIS).

Better Access Australia is a not-for-profit organisation aimed at improving health, social and disability services for all Australians by 2030. We advocate for the gaps in the Australian health and social services system with a focus on high quality, evidence-based solutions.

GENERAL COMMENTS

Better Access Australia generally supports the proposed NDIS legislative improvements, which give effect to some recommendation from the 2019 Tune Review of the NDIS. We particularly support the introduction of the Participant Service Guarantee, as the need to improve the participant experience is well documented, and an important step in improving the experience for the participants, their families and carers who are reliant upon the NDIS to be able to care and access support services.

We note the decision to more fully consult and work with people with disability, their families and carers on the issue of independent assessments separately to this legislative process. *The principle of co-design in this process is fundamental and Better Access Australia strongly supports people with disability being centrally involved in this reform process. It is critical to make the changes with people with disability, not for them.*

Better Access Australia also notes the continuing complexity of the system, where the burden is on the person with disability, parents, family and carers to navigate the rules and requirements (sometimes, but not always, with the support of a provider). Many of the submissions to this consultation process are from parents and family members who find the NDIS complex, time consuming and difficult to navigate. Legislative reforms alone will not

and cannot address this. The importance of the accompanying rules, service charters and cultural approach to service delivery are all critical change areas that must be part of the continuous improvement of this important program.

PARTICIPANT SERVICE GUARANTEE

Better Access Australia supports the new Participant Service Guarantee. Providing participants with timeliness expectations regarding decision making and making decisions subject to review by the Commonwealth Ombudsman are important checks and balances and mutual commitments between the system and the people it is there to serve. It represents good governance and the processes for review of decisions are important. It appears the legislation will suitably strike the balance between timeliness and quality of decision making through the regular Commonwealth Ombudsman reviews of the operation of the Participant Service Guarantee, not just limiting it to individuals to raise complaints.

Measures to increase the flexibility of a plan are supported; a plan should be able to be adjusted to account for new goals or minor circumstantial changes without triggering a full review. However, *Better Access Australia questions the inclusion of proposed s 47A which allows plans to be varied on the CEO's own initiative, without request, consultation, or consent from the participant* (the example given is to correct a technical error). This power would need to be cautiously and judiciously used in a small number of cases. Better Access Australia remains unconvinced as to whether this power is necessary. Further, with the powers of the CEO likely to be delegated after their first use, the safeguards around its use must be more specific if these powers are genuinely required and technical matters cannot be resolved through other means. If this power is to proceed, the circumstances when the CEO can exercise the power should be defined in legislation and limitations placed on its ability to be delegated. The power should also be legislatively subject to regular scrutiny by the Commonwealth Ombudsman.

CHANGES TO THE BECOMING A PARTICIPANT RULES

These changes provide clarification regarding whether a person has 'permanent impairment' or 'substantially reduced functional capacity' in terms of their eligibility for the NDIS. Better Access Australia welcomes measures to provide more certainty to claimants and participants. However, we note that there is still significant room for different interpretations to be made regarding what is considered by the CEO or delegate to be 'appropriate treatment' and what is considered to be a 'substantial improvement' to the person's condition. *There is still a risk that people with like conditions will be treated differently depending on the decision maker on the day. This needs to be carefully monitored in implementation.* How this will be captured in the accompanying Rules should be carefully and rigorously consulted upon to reduce the prevalence of rulings causing considerable harm and denial of access to funding unnecessarily.

REASONS FOR DECISIONS

The changes that allow participants to request 'reasons for decision' made by the National Disability Insurance Agency are welcome. *Better Access Australia encourages the*

Government to go further and implement a positive requirement for all ‘reasons for decision’ to be available and provided to participants, whether they request them or not. If the NDIS is indeed serious about providing choice and co-design to participants, then they should also be fully aware of the reasons for any decisions that are taken in regard to their plan and supports. Best practice would be that every decision is accompanied by transparent and readily accessible reasons for that decision.

Better Access Australia notes that many of the NDIA’s powers are set out in the Rules. While this provides for flexibility and responsiveness, it also adds to complexity for people with disability and their families to navigate what is often a large and unwieldy system. We encourage all efforts to simplify the NDIS and make it more transparent and accessible for those it is meant to support. Once again, it is imperative to *#mindthegap* created between legal frameworks, administrative rules and the participant’s experience and needs. These Rules are the devil in the detail should be comprehensively and transparently consulted upon consistent with the principles of co-design.

Thank you for the opportunity to provide this submission.

Yours sincerely,

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