



Office of the Public Advocate

Safeguarding the rights and interests of people with disability

8 November 2021

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Sent by email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Inquiry into the National Disability Insurance Scheme (Participant Service Guarantee and Other Measures) Bill 2021

The Office of the Public Advocate (OPA) is pleased to be given the opportunity to comment further on the *National Disability Insurance Scheme (Participant Service Guarantee and Other Measures) Bill 2021* (the Bill) following its introduction to Parliament. In October this year, OPA provided comment on the proposed legislative amendments to the NDIS as well as the Participant Service Guarantee.

OPA notes that the one change we recommended be made to the Act, which was to enshrine the right of the participant to see a copy of their draft plan and provide feedback prior to plan finalisation, has not been included. OPA again puts forward this recommendation.

OPA, and other stakeholders, were concerned that planned changes to the Act may result in a plan review process happening without the knowledge or involvement of the participant. In response to this, the tabled Bill has added to s 47A that 'each variation must be prepared with the participant'. OPA notes that it is unclear what exactly that would involve, with the Department of Social Services stating at Senate Estimates that in some cases this condition would be satisfied by simply informing the participant of the variation.

While more detail on this process would be included in the relevant rules, at this stage the rules have not been released. This is problematic on a number of levels. First, that Parliament is being asked to pass this legislation without being aware of, or being able to debate the proposed changes to the rules that will operationalise the Act. Second, the rules are such that they do not require the agreement of states or territories to come into force.

Now, this would not be such a concern if central decisions like the definition of new participant access 'requirements' had been clearly defined in the Act itself. Instead, the Act gives the Minister power to make rules specifying new entry hurdles to access to the scheme. For the Minister to have the power to change entry requirements to the NDIS without the changes being debated in parliament is highly problematic.

OPA's previous submission on this matter, which made multiple recommendations in relation to the supporting rules, highlights just what an enormous role these as yet unveiled rules will have on participant power, control and engagement under the NDIS.

I would be pleased to speak with you about this correspondence and OPA's submission.

Yours sincerely,

Dr Colleen Pearce AM
Public Advocate