



**Australian Government**  
**Department of Social Services**



Ref: MS21-000739

Ms Pothida Youhorn  
Senate Community Affairs Legislation Committee  
PO Box 6100  
Parliamentary House  
CANBERRA ACT 2600

Dear Ms Youhorn

**SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE  
INQUIRY INTO THE NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT  
(PARTICIPANT SERVICE GUARANTEE AND OTHER MEASURES) BILL 2021**

Thank you for the opportunity to make a submission to the Community Affairs Legislation Committee about the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill), referred for inquiry on 21 October 2021.

The Department of Social Services (the department) and the National Disability Insurance Agency (NDIA, Agency) welcome the opportunity to provide additional assistance or information that is required by the Committee to support their deliberations.

**Overview of the Bill**

The National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill) will implement significant improvements for participants and their families and carers, increasing flexibility and clarifying timeframes for decision-making and providing for the Participant Service Guarantee. The Bill centres on recommendations from the 2019 Review of the *National Disability Insurance Scheme Act 2013* ('the Act') conducted by Mr David Tune AO PSM ('the Tune Review') and is focused on improving the experience and outcomes for people with disability engaging with the National Disability Insurance Scheme (NDIS).

The proposed changes will mean that people with disability are better off because the amendments to the Act made by the Bill and to be provided for in new and updated NDIS Rules will:

- provide for the Participant Service Guarantee ('the Guarantee') that will legislate timeframes and engagement principles for how the NDIA undertakes key administrative processes;
- consistent with the recommendations of the Tune Review:
  - simplify administrative processes in relation to making changes to a participant's plan;
  - reduce other administrative burdens for participants and their families and carers;
  - clarify eligibility criteria for people with psychosocial disability; and
- allow the NDIA to make direct payments on behalf of participants.

These changes will improve the participant experience by giving participants more choice and flexibility, clarify parts of the legislation that are not clear or are out of date, and give better support to people with more complex or unique needs, such as people with psychosocial disability, and children and families.

### **The Tune Review**

The Australian Government committed to delivering the Guarantee to support positive participant experiences in the NDIS in 2019. To develop the Guarantee, the Government commissioned a review of the NDIS Act to identify opportunities to make NDIS processes simpler and more straightforward, and remove legislative barriers to positive participant and provider experiences with the NDIS.

Extensive consultation was undertaken as part of the Tune Review. This consultation is outlined as follows:

- the Tune Review received 201 written submissions from a range of stakeholders, including participants, their families and carers, service providers, advocates and peak bodies;
- an online survey was published to understand how participants and the people who support them experience the NDIS. In total, 1,273 usable responses were received to the long-form survey and 467 to the short-form survey;
- 15 face-to-face community workshops were held in every capital city and a regional location in each state and territory;
- targeted consultations were also conducted with Aboriginal and Torres Strait Islander people so they could have their say in culturally appropriate and safe spaces;
- seven focus groups for people with intellectual disability, people from culturally and linguistically diverse backgrounds and people with psychosocial disability were also undertaken; and
- the NDIA Board, senior officials from the NDIA, state and territory disability ministers, senior officials from the state and territory governments and key disability agencies including advocacy organisations, peak bodies and national providers met with Mr Tune or a member of the secretariat.

Mr Tune found that the Act was broadly fit for purpose but several improvements could be made to remove barriers that made processes difficult or frustrating for participants and the NDIA, which delivers the scheme.

The Tune Review made 29 recommendations to improve the participant experience, including new standards and processes to support the delivery of the Participant Service Guarantee. The Government supports or supports-in-principle all 29 recommendations.

The Bill will make amendments to the Act, which supported by changes to the NDIS Rules, give effect to 14 of Mr Tune's recommendations, in whole or in part. The remaining recommendations that require legislative changes will be considered in future legislative amendments, following the co-design with people with disability of a new person-centred assessment model to support access and planning decisions.

## Key elements of the Bill

### The Participant Service Guarantee

The Guarantee is the key measure being implemented by the Bill and new NDIS Rules. The Tune Review made three recommendations relating to the new Guarantee.

**Recommendation 11:** The NDIS Act is amended to reflect that a plan must be facilitated and approved in accordance with the timeframes outlined in the Participant Service Guarantee.

**Recommendation 25:** That the NDIS Act is amended to legislate a Participant Service Guarantee as a Category C rule, to be updated from time to time, with:

- a. new timeframes for decision-making, engagement principles and performance metrics, as set out in Chapter 10 of this report;
- b. relevant existing timeframes for decision-making moved from the NDIS Act to the new rule;
- c. prospective participants and participants being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. participants being empowered to receive a full draft plan before it is approved by the NDIA; and
- e. a review within two years of the rule being enacted.

**Recommendation 26:** The NDIS Act is amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Participant Service Guarantee.

The Guarantee will be given effect through new provisions in Schedule 1 of the Bill and new Participant Service Guarantee Rules. These will be Category C NDIS Rules. This means these Rules must be agreed by the majority of states and territories before they can be made by the Minister. This will ensure the states and territories are involved in developing these important new NDIS Rules, recognising the NDIS as a shared Commonwealth, state and territory scheme.

The Guarantee contains three parts.

First, the Guarantee will provide certainty for current and prospective participants by setting timeframes within which key decisions in the NDIS process must be made, including decisions about a person's access to the NDIS and changes to participants' plans (these are contained within the Bill but may also be amended through the NDIS Rules).

Second, the Guarantee will allow for the NDIS Rules to prescribe specific service standards for the NDIA and its workforce when working with people with disability and their families and carers.

Third, the Guarantee will also provide for the Ombudsman to use its existing powers to monitor and report on aspects of the NDIS (this is contained in Items 1 and 55 of Schedule 1, with the NDIS Rules made under subsection 204A(1) to prescribe the matters for the Ombudsman's report).

Overall, the aim of the Guarantee is to continue to improve participant experience in the NDIS by making processes more certain.

The new NDIS Participant Service Guarantee Rules that will contain the service standards and supplement the proposed provisions in the Bill.

The Government is committed to making the Guarantee law at the soonest possible opportunity. The provisions in the Bill giving effect to the Guarantee are proposed to come into effect seven days after the Bill receives Royal Assent. The Government intends the new Participant Service Guarantee Rules to commence at the same time.

The remainder of the Bill and related NDIS Rules will commence the later of three months following Royal Assent or 1 April 2022, to give the NDIA some time to implement required system changes.

#### Improved flexibility measures

In addition to the Guarantee, the Bill also makes a number of other changes to the NDIS to increase flexibility and improve the participant experience.

#### *Reasons for decisions*

The Bill introduces the legislative requirement to give reasons for decisions. As a result of consultations, the Bill now requires the NDIA to automatically provide reasons for reviewable decisions, rather than a participant having to request these. All persons directly affected by a reviewable decision will be given written notice, and the reasons for, any reviewable decision. This will also demonstrate transparency, accountability and improve the quality and consistency of decision-making within the NDIA.

#### *Psychosocial disability*

Changes in the Bill contain a set of measures that address the eligibility and access criteria for people with a psychosocial disability. These are significant amendments based on recommendations 8a and 8b of the Tune Review. These changes were developed in consultation with the mental health sector.

The Bill amends the Act to update the language of the Act in respect of psychosocial disability. These amendments are in keeping with best practice approaches and recognise that psychosocial disability may be broader than the classification of psychiatric conditions. The Bill clarifies that impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent and that the person is likely to require support under the Scheme for their lifetime.

As there are a number of existing NDIS participants with a disability that is either episodic or fluctuating, the Explanatory Memorandum clarifies that while the Bill recognises that a prospective participant's psychosocial disability which is episodic or fluctuating in nature can be assessed as permanent for the purposes of NDIS access. These amendments will not limit existing provisions that allow for disabilities other than a psychosocial disability to vary in intensity and to be considered permanent.

Feedback from consultations indicated that the disability sector wished to be involved in changes to the Act and development of NDIS Rules. The changes in the Bill and NDIS Rules will necessitate updates to operational guidelines. The NDIA will engage with stakeholders on the implementation of these changes.

### *Plan management*

The Tune Review considered that there are potential risks for participants engaging unregistered providers through a registered plan manager without the same risk assessment that is currently required for self-managing participants. To protect participants, the Bill revises the treatment of plan management under the Act, enabling the NDIA to undertake risk assessments for those who request supports be managed by a registered plan manager.

Following consultations, the Bill now clarifies the intent of these changes is to support self-management and management by a registered plan manager where unreasonable risk can be mitigated by other actions, such as choice of a different registered plan manager. Even where unreasonable risk cannot be mitigated, the Bill clarifies that self-managing participants can still manage the parts of their plan with less risk, such as purchasing consumables.

### *Plan variations and reassessment*

The inability to amend a plan without requiring a whole new plan or a full reassessment was identified in the Tune Review as a major frustration for participants. The Bill addresses this concern by creating a means to vary a participant's plan (excluding the participant's statements of goals and aspirations), without requiring the full reassessment and a whole new plan. The CEO will be given the power to vary a participant's plan, either at the participant's request or at the CEO's initiative under certain limited circumstances. This new arrangement follows the same format as the current arrangements for plan reviews, which have been in place since the Scheme commenced, but with additional protections for participants. The amendments will only allow for a participant's plan to be varied to include a revised statement of goals and aspirations where a participant gives the CEO a changed version of these.

There was significant feedback provided during consultation in relation to the CEO's powers to vary a plan on the CEO's initiative. The Department and the Agency consider that these powers are essential to enable the Agency to respond in a timely and appropriate manner in situations where a participant may not, or may not be able to, make the request for a variation. The proposed provision for the CEO to vary a plan is consistent with the CEO's existing ability under the Act to conduct a full reassessment of a plan, with the significant difference being that it offers a simpler and faster process for smaller changes to be made.

The powers provide the Agency with the ability to provide a timely and proportionate response where continuity of a participant's plan or risk mitigation is required as assessed by the Agency on the basis of information received. For example, the CEO's powers to vary a plan may be required for the Agency to be responsive at short notice during an emergency, such as urgent equipment repair or crisis accommodation in a family and domestic violence situation or a discharge out of hospital which requires additional transition support.

The CEO's powers to vary a plan will also provide for administrative continuity to ensure participants have uninterrupted access to supports, such as:

- adding assistive technology cost detail following a quote process; and
- changing the end date of an existing plan where a scheduled review has been unable to take place (including where a participant may not have been able to participate fully in a review process due to hospitalisation or other participant priorities).

In response to feedback provided during consultation, a number of changes have been made to the proposed powers to vary a plan. The Bill now ensures that a participant is involved in a variation, so it cannot happen without their knowledge. This involvement is consistent with the existing requirement in section 33 of the Act that a plan must be prepared with the participant and approved by the CEO. The Bill now also includes that if the variation is not made in time, it lapses, rather than the previous default, which was a full reassessment.

The proposed variation powers have also been reworked so the circumstances in which a variation would be undertaken rather than a reassessment are clearer. It remains the case the CEO's powers can only be actioned, whether for a variation or a reassessment, in accordance with the decision making requirements of the Act. For example, when varying a plan the CEO must have regard to the participant's statement of goals and aspirations, and apply the requirements of section 34 of the Act to determine whether a support or supports are considered reasonable and necessary. Similarly, the CEO must have regard to the principle that a participant should manage the participant's plan to the extent that the participant wishes to do so. It is proposed that the new NDIS Plan Administration Rules will also be redrafted to more closely align with the Tune Review recommendations and prescribe limits for variations. As outlined at paragraph 8.33 of the Tune Review, this may include:

- if a participant changes their statement of goals and aspirations;
- if a participant requires crisis/emergency funding as a result of a significant change to their support needs and the CEO is satisfied that the support is reasonable and necessary;
- if a participant has obtained information, such as assessments and quotes, requested by the NDIA to make a decision on a particular support, and upon receipt of the information the NDIA is satisfied that the funding of the support is reasonable and necessary (for example, for assistive technology and home modifications);
- if the plan contains a drafting error (e.g. a typographical error);
- if, after the completion of appropriate risk assessments, plan management type is changed;
- for the purposes of applying or adjusting a compensation reduction amount;
- to add reasonable and necessary supports if the relevant statement of participant supports is under review by the AAT; and
- upon reconciliation of an appeal made to the AAT to implement an AAT decision that was not appealed by the parties.

Commentary on the proposed plan variation powers has raised the issue of "consent". While the goal will always be to work collaboratively with the participant to meet their needs, there may be occasions where a final funding decision or change is made where the participant does not agree. In such situations, the participant can be assisted with reasons for the decision and also has rights of internal and external merits review. This is also consistent with the sound administration of Government social services programs and schemes, and is consistent with fair administrative decision making practice.

The Act currently provides that a full plan review may be conducted by the CEO without the "consent" of the participant. The new variation power is a more limited power, only to be used by the CEO for prescribed purposes.

The existing protections in the Act continue in respect of a CEO-initiated plan variation. This means the variation decision is subject to s100 internal review and AAT appeal.

As a matter of operational practice, the Agency is increasingly moving away from automatic annual CEO-initiated full plan reviews, in favour of longer initial plan durations, check-in discussions with varying frequency based on a risk-assessment, and roll-over plan renewals with the agreement of the participant. Full plan reviews are increasingly being initiated more by the participant's request, than the Agency's automatic process. This provides participants more certainty, without the need to undergo annual plan reviews where there are not significant changes in their support needs.

The Bill also addresses concern over the multiple meanings of the word 'review' in the Act which has created confusion for participants, their families and carers, as well as NDIA delegates as to what kind of review is being sought at any point in time. Currently, participants can seek two types of review under the Act: a review of their plan (in accordance with section 48) and an internal review of a reviewable decision (in accordance with section 100). A third type of review is created when the participant appeals an internal review decision to the AAT. The Bill renames the section 48 process to be a reassessment.

Following consultation, the Bill also now ensures that a participant can request either a reassessment or a variation of their plan at any time. The Agency retains the ability to decide whether to vary a plan or undertake a full reassessment in response to either of those requests. This ensures that there is a 'no wrong door' approach and a more streamlined service offering for participants. For example, should a participant request a variation to their plan to add an additional support but this support interacts with other existing supports in the plan, rather than deny the request to vary a plan and ask a participant to request a plan reassessment, the Agency will be able to undertake a reassessment and create a new plan, noting that any variation or reassessment must be undertaken with the involvement of the participant. This situation might arise if a participant requests a complex piece of assistive technology or home modifications, that may result in a reduced need for personal care supports, for example a ceiling hoist.

#### *AAT jurisdiction*

The Bill includes amendments to the NDIS Act to implement recommendation 23 of the Tune Review, which found that 'the NDIS Act should be amended to clarify the Administrative Appeals Tribunal's (AAT) jurisdiction, including the power for a plan to be amended while a matter is before the AAT'.

To do this, the Bill provides that if a matter is before the AAT regarding a statement of participant supports, and before a decision is reached by the AAT, the Agency varies or creates a new plan, then the application to the AAT is taken to include the terms of the variation or new plan. This gives the AAT a broader jurisdiction to help reduce unnecessary appeals.

#### *Direct payments*

The Bill includes an amendment to the Act to enable the Agency to pay service providers directly on behalf of participants, including self-managing and plan-manager managed participants. This amendment is designed to reduce the administrative burden felt by participants in organising and making payments, including record keeping, by enabling the Agency to implement a new payments platform. It does not affect the ability of participants to manage their own plans, nor their choice about whom they receive supports from, including from unregistered providers.

The Agency will be able to pay service providers directly or use its existing ability to pay NDIS funds into a self-managed participant's nominated bank account.

The use of the direct payment mechanism also enables the collection of more detailed and structured information on the types and amounts of funded supports being used by participants. This information is important and necessary for the Agency to fulfil its responsibilities for research and analysis on the effectiveness of specific supports and the Scheme overall in achieving outcomes.

#### *Market intervention*

The Bill contains measures to help address service gaps in available services, particularly in rural and remote areas. To address Tune Review Recommendation 17 (market intervention), the Bill and associated Plan Management Rules will provide more defined powers to the NDIA to engage in market intervention to act quickly to fill service gaps and encourage positive market behaviour.

#### *Early intervention changes*

To address Tune Review Recommendation 13 (flexibility for the NDIA to fund early intervention), the Bill and associated Plan Management Rules will also provide the NDIA with more flexibility to fund early intervention support for children under the age of seven years outside an NDIS plan, where the time required for the planning process would delay necessary supports.

#### *Carers and families*

The Bill recognises the importance of carers and family to participants. The Bill amends the general principles guiding actions under the Act to specifically recognise and respect the relationship between people with a disability and their families and carers.

#### *People with disability being at the centre of the NDIS*

The Bill also amends the general principles guiding actions under the Act to recognise people with disability are central to the NDIS and should be included in a co-design capacity. As a result of consultations, the proposed criteria for Agency Board appointments have been further expanded by adding new eligibility criteria that ‘a person with disability or a person that has lived experience with disability’.

The Principal Member of the Independent Advisory Committee now must also be a NDIA Board member, keeping the two bodies connected.

#### Removing outdated references

Changes in the Bill also implement recommendation 27 of the Tune Review to remove redundant provisions.

**Recommendation 27:** The NDIS Act and Rules are amended to:

- a. remove trial and transition provisions
- b. reflect agreed recommendations arising from the 2015 review of the NDIS Act
- c. reflect current best practice drafting standards, and other amendments as proposed in this report.

The Bill replaces references to the ‘National Disability Insurance Scheme Launch Transition Agency’ with ‘National Disability Insurance Agency’, and the ‘National Disability Insurance Scheme Launch’ with the ‘National Disability Insurance Scheme’.



It removes references to ‘participating jurisdiction’ and provides a definition of the term ‘host jurisdiction’, which is the term used in the NDIS Act in relation to all states and territories – excluding external territories such as Christmas, Norfolk and Cocos (Keeling) Islands. For the purpose of governance in the NDIS Act, ‘host jurisdiction’ is used to narrow the concept of territories to the Australian Capital Territory and Northern Territory.

Recognising that from 1 December 2020, the NDIS Quality and Safeguards Commission now operates nationally; the Bill will remove the Agency’s responsibilities in relation to the registration of providers of supports.

The Bill will also remove provisions for things that have already happened, such as the legislative provisions associated with the appointment of the first Agency CEO, the initial reviewing actuary and the first review of the NDIS Act undertaken in 2015.

### Consultation since the Tune Review

The Government Response to the Tune Review was released on 29 August 2020. Further consultations on proposed reforms to the NDIS were undertaken from November 2020 through to 23 February 2021, supported by the release by the Department of an information paper setting out the then proposed changes. It provided an overview, with more detail available in additional papers released by the NDIA including:

1. NDIA consultation paper: access and eligibility policy with independent assessments;
2. NDIA consultation paper: planning policy for personalised budgets and plan flexibility; and
3. NDIA consultation paper: supporting young children early, to reach their full potential.

Aspects of the proposed changes, and in particular the proposed introduction of independent assessments, were strongly opposed by organisations representing people with disability. Minister Reynolds responded by calling a pause to the proposed changes while she undertook further consultations with representatives of people with disability and state and territory ministers for disability. As a result, at a 9 July 2021 meeting of Disability Reform Ministers, it was agreed that independent assessments would not proceed as proposed, and instead Ministers agreed to work in partnership with those with lived experience of disability through the Independent Advisory Council to the NDIA Board and disability representatives, on the co-design of a new person-centred model that delivers consistency and equity in access and planning outcomes.

An exposure draft of a Bill and complementary changes to the NDIS Rules were released for public consultation from 9 September 2021 to 7 October 2021. The Bill and NDIS Rules give effect to recommendations of the Tune Review and take into account responses to the consultations undertaken from November 2020 to February 2021 and by the Minister in April through June 2021.

The Bill reflected the extensive consultation undertaken as part of the Tune Review in 2019, and the subsequent consultations on proposed changes to the Act undertaken after the release of the Government response to the Tune Review in August 2020. A public consultation process was

undertaken by making the Bill and NDIS Rules available on the DSS Engage website ([engage.dss.gov.au](https://engage.dss.gov.au)) with a range of explanatory material, including an Easy-read explanation of the changes and Auslan video explaining the changes to ensure the material was accessible.

To support the consultation on the draft Bill, the department conducted a number of information sessions to explain the proposed changes to a broad range of stakeholders including disability representatives, advocates and members of the public. A total of 16 information sessions were held, including 4 open public information sessions. In total, 864 people attended these sessions.

In addition to the feedback received through information sessions, 313 written submissions were received.

Generally, feedback on the proposed amendments in the draft Bill was positive. Overall, submissions agreed that amendments would improve the participant experience and the NDIS overall. It was also generally agreed the reforms would create greater certainty for participants and reduce red-tape, and go some way to improving the operation of the NDIA.

There were a number of concerns raised throughout the information sessions and submissions about how the changes would be operationalised. These are highlighted in a summary of the feedback received during the consultation which has been published on the department's Engage website along with those submissions for which there was explicit consent for publication. A copy of the report which includes how the Government is addressing the key concerns raised as part of the consultation is attached.

### Recent Engagement

Following the decision by disability ministers in July 2021 not to proceed with the proposal for independent assessments, the NDIA has shifted its focus to a different improvement agenda. This includes focusing on specific cohorts, supports and service improvements to be progressed through a different approach to engagement with participants, the Independent Advisory Council (the Council) and the disability community.

The Agency and key disability community stakeholders participated in two virtual co-design workshops in September 2021. The workshops brought together 27 disability and carer representative organisations (DCROs), the Council, the department, NDIA board members and senior executives. The workshops were an opportunity to develop a constructive working relationship between the NDIA, the Council and DCROs and to begin co-design and priority issue discussions. A joint statement by the NDIA, the Council and DCROs outlining the purpose and outcomes of the workshops was published on the NDIS website on 14 October.

The Agency is making progress on developing enriched and expanded ways to engage the sector on all aspects of Scheme development and reform. The current focus is a combined Agency and department engagement to building disability community understanding of cost drivers and underpinning assumptions in the Annual Financial Sustainability Report, as well as priorities for co-design, some of which will stem from the Bill and associated NDIS Rules. The 2021 Annual Financial Sustainability Report was released in full in early October, and is also available on the NDIS website.

## NDIS Rules changes

In addition to changes to the Act, a number of complementary changes are required to the NDIS Rules. As outlined earlier, two new NDIS Rules will be introduced:

- *National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021*
- *National Disability Insurance Scheme (Plan Administration) Rules 2021*

The *National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021* give effect to recommendation 25 of the Tune Review by setting timeframes for key NDIS processes, as well as engagement principles and service standards. These Rules will also set details for the reporting and monitoring of the Participant Service Guarantee.

The *National Disability Insurance Scheme (Plan Administration) Rules 2021* will give effect to recommendations 17, 20 and 21 by outlining when the NDIA can vary a plan without requiring a full plan reassessment and the creation of a new plan. These Rules also outline when the NDIA will complete a plan reassessment, and when the NDIA can enter into alternative funding arrangements under section 14 to help participants access their supports in instances when the market does not respond or to assist early intervention for children under seven. The Plan Administration Rules will also set out how and when NDIS funding is paid and the record keeping requirements for funding. The Rules will be re-drafted in response to feedback received during the exposure draft period, including to be more prescriptive about what changes to a plan may be made through a variation.

Five existing sets of NDIS Rules are also proposed to be changed as a result of the proposed changes to the Act. These Rules are:

- *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*
- *National Disability Insurance Scheme (Plan Management) Rules 2013*
- *National Disability Insurance Scheme (Children) Rules 2013*
- *National Disability Insurance Scheme (Nominees) Rules 2013*
- *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*

The *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* will be amended to reflect the provisions in the Bill and recommendation 8 of the Tune Review by setting out when a psychosocial disability may be regarded as permanent when someone is applying for the NDIS. The Rules also remove information relating solely to the trial and transition period, including arrangements for each state and territory.

Amendments to the *National Disability Insurance Scheme (Plan Management) Rules 2013* will allow the Agency to determine that a particular provider must not provide supports. This will protect participants from risks to their wellbeing and poor outcomes, and provide additional protections from providers with conflicts of interest, providers exercising undue influence over participants, and providers engaging in unethical or ‘sharp’ practices. The Plan Management Rules will also outline factors giving rise to unreasonable risks for a participant to manage their own NDIS plan or use a plan-manager. Following consultations, this part of the Rules will be redrafted to better outline the risks being assessed.

The *National Disability Insurance Scheme (Children) Rules 2013* and *National Disability Insurance Scheme (Nominees) Rules 2013* will be updated to give effect to recommendation 27c of the Tune Review, by reflecting best-practice drafting standards, removing unnecessary repetition and correcting drafting errors.

An existing definition will be moved into the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*, but there is no change to existing policy relating to eligibility to receive support or funding for specialist disability accommodation.

The department received a range of feedback on the NDIS Rules as part of the consultation process and changes to the various NDIS Rules are currently being made to reflect the issues raised. The department will engage with the Agency and states and territories to complete the NDIS Rules prior to the Minister writing to state and territory ministers to seek their formal agreement to, or consultation on, the NDIS Rules, as is required by the Act.

As the provisions that implement the Guarantee will commence seven days after the Bill receives Royal Assent, the NDIS Participant Service Guarantee Rules are currently being refined. The other NDIS Rules are expected to be progressed in early 2022 to ensure they are in place when the remaining provisions commence.

## **Conclusion**

The department and the Agency consider this Bill will greatly improve the participant experience in the NDIS. The introduction of the Guarantee and other flexibility measures that address key recommendations made by the Tune Review will improve the flexibility and service standards of the NDIS. This Bill makes important changes that have a positive impact on participants, their families and carers. To the extent that concerns have been raised, the Government has addressed the key issues through changes to the Bill and will continue to consult on changes to the Rules in the coming months.

Thank you for your time in considering the proposed amendments outlined in the Bill and the information contained in this submission.

Yours sincerely

**Ray Griggs AO CSC**  
**Secretary**  
Department of Social Services

8 November 2021

**Martin Hoffman**  
**CEO**  
National Disability Insurance Agency

8 November 2021