



**SENATOR THE HON LINDA REYNOLDS CSC  
MINISTER FOR THE NATIONAL DISABILITY INSURANCE SCHEME  
MINISTER FOR GOVERNMENT SERVICES  
SENATOR FOR WESTERN AUSTRALIA**

Dear Disability Representative Organisations

It has been a big few years for the disability sector and the National Disability Insurance Scheme (NDIS) with the NDIS growing from 30,000 trial participants in 2016 to 484,000 in September 2021. People with disability, their families and carers, NDIS providers and yourselves, as representatives of people with disability, have stepped up to ensure our most vulnerable citizens are safe during the COVID-19 pandemic. My thanks to you all for your significant engagement and contributions to this end.

When I became Minister for the NDIS 7 months ago it was also clear there was noteworthy concern with the proposed approach to Independent Assessments. At this time I commissioned a review by the Independent Advisory Council (IAC). As committed, the outcomes of that review were considered by all State and Territory Ministers – unanimous agreement was reached, and Independent Assessments did not proceed. A commitment was made to work with people with disability and the disability sector to co-design an assessment process that meets the needs of NDIS participants and is consistent with the NDIS Act. This co-design process is well underway.

Since this decision I have been focused on what can be achieved this year for the benefit of participants, their families and carers. I have been consistent in this intention with my state and territory colleagues, with the National Disability Insurance Agency (NDIA), with yourselves as disability representative organisations, but most importantly I have been clear in my intentions with NDIS participants.

As a Scheme of the federation I have also been working closely with Disability Ministers. On these reforms, I was pleased that at our last meeting Ministers indicated their support for the proposed legislation, particularly for the introduction of the Participant Service Guarantee.

The 2019 Review of the National Disability Insurance Scheme Act 2013 ('the Act') conducted by Mr David Tune AO PSM ('the Tune Review') saw extensive consultation, receiving over 201 written submissions and over 1700 survey responses, alongside face-to-face workshops and focus groups. Key disability agencies including advocacy organisations, peak bodies and national providers met with Mr Tune or a member of the secretariat. At the conclusion of this process there was clear public support for the recommendations of the Tune Review.

The outcomes of the Tune Review, and the support it received, has been the basis for my commitment, and that of the Morrison Government. The NDIS Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill) is the product of this commitment. The Bill is focused on improvements for participants, their families and carers by reducing red tape, increasing flexibility and clarifying timeframes for decision-making and providing for the Participant Service Guarantee.

The consultation period on the exposure draft of the Bill saw 313 written submissions received, with 553 people involved in consultation forums. I sincerely thank you for your engagement in the process and for the insight and feedback you shared. This feedback has undoubtedly strengthened this Bill.

One of the most important changes I have heard from participants is the need to be able to simply and quickly vary their plans without triggering a full review. The main area of feedback related to the CEO's powers to do this variation on their own initiative. More specifically, this feedback centred on the knowledge of the participant, or their nominee, in the use of this power – whether or not they are informed prior to a variation taking place.

In response to this feedback, a number of changes have been made to the proposed powers to vary a plan to ensure the process more clearly aligns with the Tune recommendations and follows the existing format for reviews. The Bill now requires that a variation be prepared with the participant, which not only ensures that it cannot happen without the participant's knowledge, but requires work with the participant before deciding to vary a participant's plan. This approach of working with the participant is consistent with the existing requirement in Section 33 of the NDIS 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 draft default, which was progressing to a full reassessment.

I understand from some public commentary that there may be some misunderstanding around how this process operates under the Bill as amended. Consequently I want to provide reassurance that the variation process as proposed under the amended Bill not only has the existing checks and balances of the current review power, but will be limited to specific circumstances by operation of the Rules. The Rules are currently being re-drafted to reflect the feedback received to ensure they clearly align with the recommendations of the Tune Review. I have asked that the Department of Social Services write to the Senate Community Affairs Legislation Committee to provide the detail of this drafting as soon as possible to provide further transparency and reassurance around the operation of this power. I note that the Rules will be subject to both consultation with States and Territories and also Parliamentary scrutiny, including disallowance.

The variation process as introduced follows the same construction as the review process in the NDIS Act established in 2013, agreed with bipartisan support, with state and territory governments and with the support of the disability sector. The new variation power follows the exact same format, with the key difference being that it is limited in scope and does not require the creation of a new plan as a result of making a small change to the plan.

There is also some public commentary that participant consent should be introduced into the legislation. The NDIS Act does not allow for a recipient to prevent a decision by withholding “consent” to either the review process or the new proposed variation process. This is entirely consistent with the sound administration of all Government social services programs and schemes, and is consistent with fair administrative decision making practice more widely.

While the goal is always 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 has reservations, this is where the participant can be assisted with reasons for the decision and also has rights of internal and external merits review.

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.

I have also heard very clearly from participants and DRO’s that automatic annual reviews, in most cases, are not necessary. I have also heard how disruptive and difficult they can be for participants and their families. Pleasingly, 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.

Your engagement with the design of this Bill and for your support for its intention is deeply appreciated. I hope that the additional information provided assists in clarifying the operation of section 47A and 48 under the proposed amendments.

I look forward to the Community Affairs Legislation Committee’s report on the Bill and also the passage of a Bill which will deliver important outcomes for NDIS participants.

In addition to your submissions to the Community Affairs Legislation Committee inquiry, please don’t hesitate to contact my office directly if there are any other matters in relation to the Bill you would like to raise or clarify.

Yours sincerely



**Linda Reynolds**