



NDIS Bill and Rules Consultation 2021

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Background: WA's Individualised Services (WAiS)

Western Australia's Individualised Services (WAiS) is a member-based community organisation working in partnership with people, families, service providers and government agencies to promote and advance individualised, self-directed supports and services for people living with disability, including psychosocial disability.

Since our inception in 2010, we have evolved to become thought leaders in this space, providing comprehensive, intentional support with integrity, passion and authenticity at our core. By leveraging our extensive local, state, and international network, we seek to lead, influence, innovate and inform to create meaningful and lasting change, supporting people to build capacity and live their lives on their own terms.

Unlike any other organisation, we partner and work with all sector stakeholders, as well as providing vital links, ensuring that disability services respond to the unique needs of people. We work to ensure that people can access and navigate the services and the sector to achieve their goals.

WAiS is the only organisation that has a specific focus and purview of supporting and developing the capacity of people, families, service providers, Local Co-ordinators and government, specifically in the area of individualised, self-directed supports and services.

WAiS membership has a focused group of people and their families and service providers who are committed to individualised supports, and people having choice and control in their life. The WAiS team also come from diverse backgrounds including people with disability, family members and people who have worked in the disability sector.

General Comments

Fundamental to the National Disability Insurance Scheme Act are the Objects of the Act. The very first object is to "give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities". In doing so, the Scheme is to "support the independence and social and economic participation of people with disability" and "enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports". To achieve all this requires then the establishment of the NDIS in Australia to "provide reasonable and necessary supports".

The NDIS Act itself, has a strong foundation embedded with Human Rights, however, there are significant issues with how well the legislative framework is working with implementation.

The amendment Bill and associated Rules bring a number of proposed changes that WAI S supports. However, there are also a number of identified issues and concerns with some of the proposals that will be outlined below.

National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Amendments) Bill 2021
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Schedule 1, The Participant Service Guarantee

WAI S broadly supports the intention of the formal introduction of the Participant Service Guarantee and associated timeframes for processes. However, WAI S is mindful that when timeframes are imposed as a KPI to be met, there is a risk of a negative impact on the quality of outcomes from these processes in an attempt to meet the timeframes. Therefore, evaluating the quality of the outcome of the process is as, if not more, critical than meeting timeframes. This must be part of the consideration moving forward.

Schedule 2, Flexibility Measures

Item 32 - Payments made under the NDIS

WAI S understands that the intent of Item 32 is to clarify how payments can be made and enable the Agency to pay service providers directly including self managers, through a new payment platform. Generally, WAI S supports this intent if it offers self managers the reduced administrative burden of having to make payments themselves by offering payment “at point of sale”. However, WAI S is cautious to ensure that:

- Choice is not taken away from self managers who may wish to continue to make payments themselves; and
- This does not inadvertently enable the NDIA to have increased scrutiny over and control over who and what gets paid

Furthermore, it is not clear, how this would be of benefit to nor be workable for people who may be directly hiring their own workers.

Lastly, in terms of legislative drafting, WAI S is concerned that section 45, as drafted, does not reflect the NDIA’s intent and written with too broad and unclear a remit.

Amended Rule: National Disability Insurance Scheme (Plan Management) Rules 2013
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Section 6 – Funding and provision of supports included in participant’s plan & Section 7 - Reasons for market intervention to be included

WAI S is concerned that there is significant power being afforded to the CEO, therefore, we reinforce the need for the person with a disability to be an equal partner in this process, where market intervention is needed. WAI S strongly agrees that the reasons for the intervention must be clear, transparent and only of benefit (not detriment) to the person, as determined by the person themselves, their family or community. This is especially important in regions and with remote

Aboriginal communities.

Section 8 – Supports not to be provided by particular providers

The significant power afforded to the CEO to specify if a person can utilise a provider or not, is again of concern to WAIIS. Whilst understanding the issue of conflict, specific vulnerability of some people and people accessing the right services for them, the CEO should not be able to ultimately veto a person's choice of service provider. Instead, this should be an opportunity to build the capacity of people, their family and community to make these decisions themselves. This is where supported decision making would be of great benefit.

WAIIS is concerned that the example provided in the consultation paper does not provide an adequate explanation nor justification. Shaylea is aware of the possible limitation of Ultra Care, therefore, is unlikely to choose them. In this case, on what basis, would the NDIA see the need to intervene, and explicitly state supports cannot be obtained from them.

Section 9 – Unreasonable risk—registered plan management provider, plan nominee or child's representative managing funding

WAIIS, in principle, agrees with the extension of risk assessment to registered plan management providers, that already exists with plan nominees and child representatives.

WAIIS is concerned, however, with some of the matters listed for the CEO to have regard to.

Possibility that supports can be from a person or entity that is not a registered provider – this is an option for people both under self and plan management which is of significant benefit and extends choice and control. Unregistered providers cannot be presumed to provide lesser quality or less safe supports and services.

Whether plan nominee has "misapplied" funds – WAIIS is extremely concerned about how it is to be determined that funds have been "misapplied" and to what extent before it becomes problematic from an NDIS management perspective. Will this extend, for example, to a plan nominee who may have made an innocent mistake, or who used funds believing it justified but their position may be different to the NDIA's as opposed to fraud? The lack of specificity and qualifications about this consideration is of significant concern.

Section 10 – Unreasonable risk—adult participant managing funding

WAIIS echoes our concerns here, as for section 9, in relation to "misapplied" funding.

WAIIS also has the following additional concerns in relation to what is considered when determining unreasonable risk and the ability of the person to "make decisions" and to "manage finances". WAIIS is concerned about who determines this capability, on what basis this determination is made, in what point of time this is determined and how long before this is reviewed.

WAIIS recommends that where a person with disability and/or their nominee expresses a preference for self-managing, the NDIA's default position should be to support their choice and incorporate flexibility and funding into a person's plan to build their understanding of and capacity

to as well as be supported to self-manage. This includes support with decision making in order to be able to “make decisions” and support to build capacity to “manage finances”.

New Rule: National Disability Insurance Scheme (Plan Administration) Rules 2021
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Section 9 – Acquittal of NDIS amounts

WAI S is concerned about the unintended consequence and unnecessary narrowing of scope of payments to suppliers with an ABN (section 9(3)(a)). There are many circumstances where an ABN is not relevant nor legally required and these must be retained in scope for payments. For example, volunteers paid non-taxable payments, contractors using statement by supplier, employees on payroll with an employer who has a withholding payer number (WPN). If these are not retained within scope, then people’s choice and control will diminish, and they will be forced to choose something different to what has been working for them.

Section 11 – Variation of participant’s plan & Section 12 – Reassessment of participant’s plan

WAI S supports the intent behind the inclusion of the ability to vary a plan without requiring a full “reassessment” to enable more flexibility and responsiveness to when people’s circumstances require a quick and immediate response. However, WAI S is keen to ensure that in implementation, the NDIA ensures it is easy for people to understand how to request either a variation or a reassessment and what the distinction is between the two.

WAI S is also concerned that the draft clauses afford the CEO significant power to vary plans at the CEO’s own initiative. WAI S recommends that people need to be consulted and engaged with, even in the case of the CEO seeking to vary a plan at the CEO’s initiative. The CEO need to ensure a transparent and clear process of ‘re- assessment’.