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5 November 2021

Senator Wendy Askew
Chair
Senate Community Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator Askew

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

I welcome the opportunity to make a submission to the Committee's inquiry on this Bill.

As part of my Office's broad oversight role of public administration and Australian Government agencies, we oversee the administrative actions of the National Disability Insurance Agency (NDIA).

In 2019, the Australian Government committed \$2 million across 4 years, to enable my Office to monitor and report on the NDIA's performance against the Participant Service Guarantee (PSG). In August 2020 the NDIA committed to operationalising the PSG requirements in its Participant Service Charter ahead of legislating the PSG. My Office has therefore commenced monitoring the NDIA's progress in implementing the PSG through the Participant Service Charter.

My Office recently made a submission to the Department of Social Services' (DSS) public consultation on proposed NDIS legislative amendments, including the PSG. A copy of our submission is **attached** for the Committee's reference. Our submission noted we are comfortable with our PSG oversight role and reporting requirements. I am pleased to confirm we also reviewed the amendments made to the Bill following the conclusion of DSS's public consultation and remain comfortable with our PSG oversight function in the Bill.

We acknowledge the importance of our PSG oversight role and look forward to continuing to work with the NDIA and the disability sector to help improve the participant experience.

Yours sincerely



Penny McKay
Acting Commonwealth Ombudsman
Influencing systemic improvement in public administration

Submission by the
Commonwealth Ombudsman

**Department of Social Services' public
consultation on the proposed NDIS
legislative improvements and the
Participant Service Guarantee (PSG)**

Submission by the Acting Commonwealth Ombudsman, Penny McKay

8 October 2021

Introduction and summary

The Office of the Commonwealth Ombudsman (the Office) welcomes the opportunity to make a submission to the Department of Social Services' (DSS) public consultation on the proposed NDIS legislative improvements and the Participant Service Guarantee (PSG).

This submission outlines the role of the Office, provides information on the Office's existing role as it relates to the National Disability Insurance Agency (NDIA), and comments on the Office's expanded oversight of the NDIA in relation to the PSG, as contemplated by the draft National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the draft Bill) and the draft National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021 (the draft Rules).

We had constructive engagement with DSS on our role and are broadly comfortable with how it has been set out in the draft Bill and Rules. We look forward to continuing to engage productively with DSS, the NDIA, and the disability community to monitor and report on the NDIA's performance against the PSG, including following passage of the proposed legislative amendments.

The role of the Office

The purpose of the Office is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly
- influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- providing assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to certain covert, intrusive and coercive powers.

As part of its broad oversight role of Commonwealth Government administration, the Office has oversight responsibility for the administrative actions of the NDIA. The Office handles complaints about the NDIA's administrative actions and decisions. We can also consider complaints about contracted organisations with responsibility for delivering services on behalf of the NDIA, including Local Area Coordinators who conduct information gathering and pre-planning interviews, and Early Childhood Early Intervention partners.

Response to consultation

Background

In 2019, the Australian Government committed \$2 million across 4 years to enable the Office to monitor and report on the NDIA's performance against the PSG.

In June 2020, the Government commissioned report, Review of the National Disability Insurance Act 2013, was published by Mr David Tune AO PSM. The review contained 29 recommendations, including the introduction of a legislated PSG. Mr Tune recommended that the PSG include timeframes for decision-making and engagement principles. He also recommended that the Commonwealth Ombudsman have formal responsibility for monitoring and reporting on the NDIA's performance in delivering against the PSG.

We are pleased the NDIA agreed to operationalise the PSG as soon as possible, including commencing public reporting against the PSG timeframes and service standards as set out in the NDIA's Participant Service Charter, from 1 July 2020.

Our expanded role in relation to the PSG

In 2020 we commenced monitoring the NDIA's performance against the PSG, as contained in the Participant Service Charter and have been building on our already strong and well-established relationship with the NDIA.

We will continue to work with the NDIA to monitor its performance as it prepares for the PSG to be legislated and continue to identify opportunities to improve the NDIA's approach to administering the PSG.

Comments on draft Bill and Rules

Our engagement with DSS on the draft legislation as it relates to our role has been constructive with our suggestions being incorporated into the current version of the draft Bill and Rules.

The draft Bill sets out a requirement for the Office to prepare and give the relevant Minister a report each financial year. That report will be prepared using the existing power we have in the *Ombudsman Act 1976*. The draft PSG Rules set out the matters our report may consider.

Following our engagement with DSS, we are comfortable with the role the Office will undertake under the proposed Bill and Rules. The Office is well placed to perform this ongoing role given the similarities to other oversight functions we already perform, and the visibility we have of the issues raised about the NDIA in the complaints we receive.

The Bill has been drafted with sufficient flexibility to allow us to direct our focus towards the most pressing issues concerning the administration of the PSG. The Office's ability to influence systemic improvement in public administration is enhanced by our ability to conduct investigations in a manner the Ombudsman sees fit. The draft Bill does not dictate *how* the Ombudsman must go about monitoring the PSG, but rather sets out the matters that the Office may report on. We also note the draft Rule sets out additional PSG performance reporting requirements for the NDIA in its quarterly report to the Ministerial Council. We would not seek to duplicate this proposed work.

Following constructive consultation with DSS, we are satisfied that the current version of the Bill clearly establishes a valuable external assurance mechanism to be performed by the Ombudsman

over the PSG which is separate to the assurance provided by requiring the NDIA to provide a report to the Ministerial Council. We note the Ombudsman will be able to deal with any report prepared as though it is prepared as a report under the *Ombudsman Act 1976* (proposed new ss 204A (4) and (5) of the NDIS Act). This means we will have access to the full range of powers under the *Ombudsman Act 1976*, including, should we consider it appropriate to do so, the power to release any such report publicly.

We acknowledge the importance of the expanded role the Office will have in its oversight of the NDIA and look forward to working with the NDIA and the disability community on an ongoing basis, to contribute to improving the experience of participants and others.