Allied Health Professions Australia

Supplementary Submission to Senate Community Affairs Legislation Committee on Inquiry into the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

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This submission has been developed in consultation with AHPA's allied health association members.

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About AHPA and the allied health sector

AHPA is the recognised national peak association representing Australia's allied health professions. AHPA's membership collectively represents some 140,000 allied health professionals and AHPA works on behalf of all Australian allied health practitioners, including the largest rural and remote allied health workforce numbering some 14,000 professionals. AHPA is the only organisation with representation across all disciplines and settings.

With over 200,000 allied health professionals, allied health is Australia's second largest health workforce. Allied health professionals work across a diverse range of settings and sectors, providing services including diagnostic and first-contact services, preventive and maintenance-focused interventions for people with chronic and complex physical and mental illnesses, supporting pre- and post-surgical rehabilitation, and enabling participation and independence for people experiencing temporary or long-term functional limitations. Allied health also provides an essential bridge between the medical sector and social support systems such as aged care and disability, where it can represent the key formal health support in a person's life.

AHPA provides representation for the allied health sector and supports all Australian governments in the development of policies and programs relating to allied health. AHPA works with a wide range of working groups and experts across the individual allied health professions to consult, gather knowledge and expertise, and to support the implementation of key government initiatives.

Item 23

We noted in our primary submission to the Committee under Item 23 (CEO's power to vary a participant's plan) that our concerns about the Exposure Draft have largely not been addressed by the Bill's approach, and that we would elaborate if invited to appear before the Committee.

Our main concern is with proposed new section 47A which would empower the CEO to vary a participant's plan (excluding the participant's statements of goals and aspirations), without requiring a plan reassessment to be undertaken, or a new plan to be created.

We support the rationale of the amendment in circumstances where the participant requests a variation, as this change was requested by participants.

However, we oppose empowering the CEO to vary the plan on their own initiative. In the Exposure Draft, this aspect of the proposed change did not require the participant's consent or even consultation. The Bill at least now provides that regardless of whether the plan variation is on the CEO's own initiative or at the participant's request, each variation must be 'prepared with the participant'. The Explanatory Memorandum also uses the language 'must be involved in the variation' and states that these new provisions should be read in conjunction with new requirements for transparency under the Guarantee.

Nevertheless, we are not convinced that there are adequate safeguards for participant choice and control regarding how the plan is varied. The Explanatory Memorandum states that the intention is that any variation will be for the benefit of the participant and that the purpose of a plan variation is to make minor or technical changes to a participant's plan or in circumstances prescribed in the relevant NDIS Rules. It further states: 'Typically, this would occur where the variation does not require a reduction or significant increase to the level of NDIS funding' and then gives examples such as correcting a technical mistake by the Agency found after the plan had been

agreed, a participant requiring crisis/emergency funding as a result of a significant change to their supports, a participant requesting a change to the type of plan management and after an appropriate risk assessment, or in order to implement an AAT decision.

However, the circumstances in which the CEO may vary a plan (subsection 47A(1)) rely heavily on the Rules, and we do not know their proposed content.

Proposed subsection 47A(3) improves on the Exposure Draft as it adds 'Requirements of CEO in varying the plan' in relation to the statement of participant supports. However, the requirements are quite general, with broad scope for interpretation, or rely on the Rules (here we refer back to our comments on Item 16 in our primary submission).

The other qualification on the power of the CEO to vary a plan is 'Matters to which the CEO must have regard', found in subsection 47A(6). This is essentially the same as the Exposure Draft and relies on what is in the Rules. Again, we do not know what Rules are proposed to accompany the Bill, but the Bill proposes that these Rules will treat matters to which the CEO must have regard as the same whether the variation originates from the CEO's initiative or from the participant's request. In contrast, the Exposure Draft reforms included sections 10 and 11 of the *NDIS (Plan Administration) Rules 2021* ('PA Rules'), with section 10 applying to where the CEO is varying the plan on their own initiative and a more expansive list of matters being provided in section 11 for participant-requested variation.

AHPA previously submitted to the Department of Social Services that if the CEO's power to vary on their own initiative is enabled, at the least section 10 should include the same range of matters as section 11, as was proposed to be the case in the Rules for reassessment of a participant's plan (section 12).

Regardless of who initiates the process, the Rules should also provide more obvious guidance on how the various matters should be weighed, and what factors support a favorable or negative decision to vary a plan.

AHPA is also concerned that the relevant Rules are proposed to be category D rules, which only require the Commonwealth to consult with all states and territories prior to making or amending the rules. We contend that it is more appropriate to legislate these rules as Category A or at least Category C.