

Supplementary Submission to the Community Affairs Legislation Committee Inquiry in the 'Getting the NDIS Back on Track No. 1 Bill



Acknowledgements

SWAN acknowledge the traditional owners of the land on which this submission was produced, the Wardandi Noongar people. We acknowledge the deep spiritual connection to this land and extend our respects to community members and Elders past and present.

About SWAN

The South West Autism Network (SWAN) is grateful to Community Affairs Legislation Committee for making available this opportunity to provide supplementary feedback on the ‘Getting the NDIS Back on Track’ No. 1 Bill after the recent amendments to the Bill.

SWAN is a not for profit, charitable organisation supporting autistic individuals and their families living in the south west region of Western Australia for the past 15 years. We are a Disabled Persons and Families Organisation (DPFO) who are currently delivering two Commonwealth funded Information Linkages and Capacity Building (ILC) projects. We have almost 2000 registered members, with hundreds more people with disability and their families accessing free support from SWAN. All staff, volunteers and Board members either have a disability, or are the family member of someone with disability.

Our primary role in the community is to provide information, peer support, advocacy, and connection to mainstream and disability services. We build the capacity of people with disability and their families to navigate Government and non-government systems in order to meet their needs and participate in their local communities. We support people seeking diagnosis, post-diagnosis, and across the lifespan, and provide autistic safe space group programs for autistic children, teens and young adults through our AutStars and YES Program, in addition to delivering Youth Mental Health First Aid training to the wider community.



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Executive Summary

South West Autism Network (SWAN) appreciates the opportunity to provide a supplementary submission to the Senate Inquiry into the "Getting the NDIS Back on Track No. 1" Bill 2024. Please refer to our first submission on the Bill [here](#). While we acknowledge the amendments made following the initial inquiry, significant concerns remain unaddressed. This submission outlines the critical issues that must be resolved to ensure the Bill protects the human rights of people with disability and supports the principles of choice, control, and individualised support that the NDIS was designed to provide.

Co-Design and Consultation

The bill now requires the Minister to 'have regard to' co-design principles but lacks a legal mandate for genuine co-design. We emphasise the necessity for a legislated requirement for meaningful co-design involving people with disabilities and our representative organisations from all regions of Australia.

Whole-of-Person Approach

The proposed planning framework inadequately considers the cumulative impact of multiple and interrelated disabilities, risking insufficient support budgets for complex needs. Amendments should ensure a holistic assessment and budget calculation that accurately reflects the full extent of participants' requirements.

Review and Appeal Rights

Participants' rights to review needs assessments and several new procedures remain critically limited. The Bill must provide clear, accessible, and fair appeal processes, including making needs assessments reviewable decisions and ensuring participants have the right to request a replacement needs assessment when necessary.

Limits on Supports, Spending and Powers to Change Funding Management

The NDIA's extensive control over funding utilisation and the power to override plan management preferences threaten participants' rights, autonomy, choice and control. Amendments should preserve the flexibility and individualised nature of NDIS supports, and choice over how funding is managed. This is essential for all participants, especially those in regional and remote areas where there are often no NDIS registered providers.

Section 48 Change of Circumstances Requests

The Bill's current provisions could allow the NDIA to reject all pending Section 48 requests without appeal rights, affecting up to 50,000 participants. Amendments must ensure that decisions to reject Section 48 requests remain reviewable and that participants can appeal these decisions.

Debt Raising Powers

The Bill grants the NDIA extensive financial powers, including retroactive debt-raising capabilities, without sufficient protections for participants. This risks participants who may not have had adequate guidance or support being issued debts when they are not at fault. Amendments should focus on prevention measures and education rather than raising debts against participants.

Funding Periods

The Bill allows for the imposition of shorter funding periods, risking participants being left without support. Amendments should ensure funding periods are not shorter than 12

months unless preferred by the participant, and there must be assurances that participant budgets are accurate before introducing shorter funding periods.

Classes of Supports and Participants

Defining classes of supports and participants could lead to inequitable funding allocations, disproportionately impacting those in regional and remote areas. Amendments should ensure funding considers geographic and factors such as environmental, informal supports, decision-making capacity etc to prevent inequities.

Lists of Approved and Denied 'NDIS Supports'

The shift from 'Reasonable and Necessary' supports to lists of approved and denied supports may limit flexibility, individualised support and value for money. The Bill should maintain 'Reasonable and Necessary' supports as the core principle of the NDIS.

Powers to Revoke Participant Eligibility

The NDIA's broad authority to revoke participant eligibility lacks detailed criteria and sufficient safeguards, risking arbitrary or inconsistent decisions. Amendments should provide clear guidelines and robust appeal processes to protect participants.

Addressing Fraud

The Bill does not address fraud, which can be managed under current legislation. The focus of the Bill should be on improving participant support and rights and internal NDIS processes, rather than diverting attention to fraud prevention.

SWAN urges the Senate to consider these recommendations to maintain the integrity and effectiveness of the NDIS. Ensuring the Bill aligns with the principles of choice, control, and individualised support is crucial for empowering participants and providing comprehensive support reflective of their needs.

Introduction

South West Autism Network (SWAN) welcomes the extension of the Senate Inquiry to thoroughly investigate the "Getting the NDIS Back on Track No. 1" Bill 2024, and the opportunity to make another submission. Please refer to our first submission on the Bill [here](#). While we acknowledge the amendments made following the initial inquiry, significant concerns remain unaddressed. This submission highlights the serious issues that must be resolved to ensure the Bill upholds the human rights of people with disability and supports the principles of choice, control, and individualised support that the NDIS was designed to provide.

Key Issues Still Unresolved

Co-design and Consultation

The amended Bill now requires the Minister to 'have regard to' co-design principles, but there remains no legal mandate for genuine co-design. Without a legal requirement for co-design, there remains unacceptable risk that people with disability and families and our representative organisations may be excluded from the design of reforms and processes which significantly impact our lives. Whilst the current Minister for the National Disability Insurance Scheme (NDIS) has voiced his commitment to co-design, as have the current NDIA senior executive, a legal mandate is crucial to ensure that future Ministers and the NDIA engage in meaningful co-design with people with disability and our representative organisations.

Consultation with Disability Representative Organisations (DROs) alone is insufficient. All ten DROs are located in capital cities on the east coast of Australia. People with disability living in regional Western Australia and the Northern Territory particularly experience geographic isolation which is unknown on the east coast. Perth is the most isolated capital city in the world, and regional WA cities and towns are significantly isolated and under-resourced. Meaningful co-design requires full involvement of people with disability, families and our representative organisations from all states and territories of Australia. What works in Sydney and Melbourne does not work in WA, and most certainly does not work in regional and remote areas.

Whole of Person Approach

Section 32L of the 'Getting the NDIS Back on Track No. 1' Bill proposes a new planning framework based on a needs assessment of Section 24 or Section 25 eligible conditions, to determine a total funding budget for participants. While the latest amendment would allow the needs assessment to also assess the impact of non-qualifying impairments on the qualifying impairment(s) to be assessed, the overall impact of the participants various disabilities will not be considered in determining the funding budget. This is not in line with the recommendations in the [NDIS Review final report](#), and does not adequately accommodate the needs of people with multiple and interrelated disabilities. Disabilities are not segregated within people. The impact of our disabilities are cumulative and interrelated.

The amendment to the Bill did not adequately address this issue, as it continues to dissect support needs based on specific impairments; rather than considering the cumulative impact of all impairments on the individual's daily life and support requirements. While the amendment stated that other issues which may have an impact, such as environmental

factors are to be considered by the needs assessment, it does not require that budget calculations consider these factors. This methodology risks people with disability being allocated budgets which are insufficient to meet complex needs. For example, needs assessments resulting in a capped 'Reasonable and Necessary budget' for a class of participant could lead to equal funding amounts for participants with the same disability type regardless of their geographic location. Equality of funding leads to inequality of support for people with disability in regional and remote areas, in comparison to metropolitan based individuals.

Needs Assessment Review and Appeal Rights

While participants retain the right to review the 'statement of supports' (including the reasonable and necessary budget), the right to review several new procedures, either through internal NDIA processes or externally through the Administrative Appeals Tribunal remains critically limited.

Concerningly, the 'needs assessment' itself is not considered a 'reviewable decision' under section 99 of the NDIS Act, which means internal or external review is not available to participants. While amendments have been made to the Bill to allow for replacement needs assessments, the Bill lacks clarity on the how and in what circumstances a participant could request a replacement needs assessment. If the bill is passed without further amendment, there is significant risk of participants being unable to dispute a poor quality or inaccurate needs assessment which would likely lead to an inadequate funding budget.

As the needs assessment will be used to determine the participants' total budget, participants must have the legislated right to:

- **Be provided and make correction to the draft needs assessment before it is submitted to the NDIA,**
- **Appeal a poor quality needs assessment,**
- **Request a replacement needs assessment, and**
- **Appeal a refusal by the NDIA to allow a replacement needs assessment.**

Being required to submit a Freedom of Information (FOI) application in order for participants to see our needs assessment is unreasonable, unfair, and inappropriate. It is not in line with the recommendations in the NDIS Review's final report. Participants must be provided a draft of the needs assessment before it is provided to the NDIA, in order to discuss any errors and make corrections as appropriate.

Limits on Supports, Spending and How Plan Funding is Managed

The Bill grants the NDIA extensive control over how participants can utilise our funding, significantly limiting choice and control over our supports. Additionally, the NDIA gains greater authority to override a participant's plan management preferences, with no requirement to consider whether the participant is at fault. NDIA already have this power, which is too often wielded unfairly by NDIA delegates. For example:

A child representative submitted an S48 Change of Circumstances plan change request in late 2023, joining the extensive backlog. Both the NDIA website and the recorded message for the National Contact Centre advise participants to use our plans flexibly while waiting for the S48 plan change request to be processed. In July 2024 the child representative was contacted by a NDIA delegate to process the S48 plan change request, and punished the child representative and the participant for

following the NDIA's instructions to spend the plan flexibly by drastically reducing the funding in the plan and changing the plan from self-managed to plan managed.

An adult participant with complex, high support needs had a self-managed plan, direct employing their support workers (managing payroll, tax, superannuation and insurance for the workers). The participant also has a microenterprise, operating under an Australian Business Number (ABN) in their name. Self-managed participants and nominees direct employing support workers who don't have an ABN can apply for a Withholding Payer Number (WPN) with the ATO. Most people self-managing and direct employing support workers do so via a WPN. If you already have an ABN, however, you are not eligible for a WPN and must use your existing ABN to direct employ support workers. Unfortunately, NDIA delegates rarely understand this, and as a result when the participant was audited by a NDIA delegate they were inappropriately accused of fraud because their support workers were direct employed via an ABN in their own name. The participant's funding was dramatically reduced by the delegate and their funding was changed to Agency (NDIA) managed, resulting in the loss of access to supports they had established, safe relationships, and left without support for months while waiting for access to support through a registered provider. Further, their support workers lost a fortnight of income due to the unexpected change and lack of transition period.

These restrictions threaten the flexibility and individualised nature of the NDIS, which is meant to empower participants to tailor their supports to their unique needs and goals. For participants living in regional and remote areas, most towns have no NDIS registered providers. In such circumstances, having funding changed to Agency (NDIA) managed is catastrophic. Ensuring participants maintain choice and control over their funding is essential for the integrity and effectiveness of the NDIS. It enables flexibility, innovation, value for money, and for people living in regional and remote areas, is crucial to being able to access any support.

There remains insufficient protections for participants regarding the use of these powers or the circumstances under which participant's plan management preference may be overridden. This lack of safeguards could result in these powers being used in situations where the participant is not at fault, such as lack of delegate expertise, provider overcharging or inadequate explanation and support from the NDIA about plan implementation. Along with the disability community, SWAN, have repeatedly expressed deep concern about the broad nature of these new powers. Amendments must be made to the Bill to provide clearer guidance on their use and to safeguard participant rights.

Lists of Approved and Denied 'NDIS Supports'

SWAN remain deeply concerned about the impact of the proposed change from 'Reasonable and Necessary supports' to a 'Reasonable and Necessary budget' with defined lists of permitted and prohibited supports. In our original submission, SWAN raised significant concerns regarding the move from 'Reasonable and Necessary' supports to lists of approved and denied 'NDIS Supports'. The current NDIS framework allows for flexibility in determining supports based on the unique needs of each participant. This individualised approach is crucial for tailoring supports that align with participants' goals and circumstances, while ensuring value for money. The experience of disability is highly individualised, and what works for one person does not necessarily work for another with the same disability. The disability community campaigned for an individualised NDIS which would fund 'Reasonable and Necessary support' aligned to the participant's goals. People

with disability have the same human rights to determine our own supports, and when enabled to do so, we innovate and achieve significant value for money.

Limiting the supports available to NDIS participants to those claimable from a list of permitted items only is a return to the old state-based systems of disability supports selected from unsuitable lists which rarely met people's needs, often causing more harm than support (eg. pressure sores from ill-fitting wheelchairs). Implementing restrictive lists could undermine the ability of participants to access supports that are specifically suited to their unique needs, particularly for those with complex or less common disabilities. Establishing and maintaining these lists could introduce additional bureaucratic hurdles, making it more difficult for participants to obtain timely and appropriate supports. Participants in regional and remote areas, or those with specialised needs, may find it harder to access the supports they require if these are not included on the approved lists.

Permitted and prohibited lists are rigid, inflexible, and unable to adapt to changing technologies which provide greater value for money and higher quality support. There is additional risk of the list of permitted supports being narrowed further over time, leading to increasingly inadequate and unsuitable supports for NDIS participants.

Classes of Supports and Participants

The Bill enables the NDIA to define classes of supports and participants, potentially leading to inequitable funding allocations. This could disproportionately impact participants in regional and remote areas, who may receive less practical support compared to their metropolitan counterparts. It lacks consideration of the complexity of disability, and the interplay of multiple conditions and the combined impact on the individual. People with the same diagnosis can have dramatically different support needs, and other factors must be taken into consideration in determining the total funding budget, including (but not limited to):

- **Goals:** A young adult participant who wants to move out of the parental home requires more funded support than one who does not.
- **Co-occurring Conditions:** Participants often have one or more co-occurring conditions which increase support needs compared to others who may have only one diagnosis in common.
- **Capacity of Informal Supports:** While many participants have supportive friends and family, many do not. Others have aging informal supports, or their informal supports may be battling chronic illness, medical conditions, disability, mental illness, financial issues necessitating employment, homelessness or risk of homelessness, unexpected (or planned) hospitalisation, or carer burnout.
- **Geographic Location:** Participants in regional and remote areas may need larger funding budgets in order to access the same quantity of supports available in metropolitan areas. There are many towns with no NDIS registered or non-registered providers, and participants may live two or more hours away from the nearest support. In such circumstances, providers charge travel costs to the participant's plan. Currently this is a significant issue for participants in regional and remote areas, with NDIA rarely including funding for travel costs in participant plans, leading to participants with no providers in their town receiving significantly less support and poorer outcomes than participants with providers available in their local community. Pre-NDIS, people in regional WA were often left with no option but to move to Perth to access disability supports. This is no longer an option in an ongoing, nationwide housing crisis.

- **Other Needs:** NDIS participants may have various backgrounds, needs and other complexities in our lives which should be considered in determining the total funding in our budgets. Other issues may include:
 - First Nations
 - Culturally and Linguistically Diverse (CaLD)
 - LGBTQIA+
 - Trauma
 - Multiple family members with disability
 - Homelessness or at risk of becoming homeless
 - Experiencing domestic violence / domestic violence survivor
 - Illness or injury complicated by existing disability (eg. broken bones requiring 2 support workers to transfer person with physical disability, instead of the usual 1 support worker required)
 - Unexpected or planned hospitalisation
 - Denial of access to mainstream supports due to disability (eg. childcare)

Powers to Require Assessments

The Bill grants the National Disability Insurance Agency (NDIA) significant authority to demand medical assessments, which may be extremely challenging for participants to source. There are extensive waitlists to access such assessments, with many clinicians who perform such assessments having wait times of between 12 months and more than four years. The Bill does not specify who would be responsible for paying for such assessments. It is unreasonable to require participants to pay out of pocket for medical assessments which a NDIA delegate may arbitrarily mandate.

Although some limitations are proposed, they do not adequately restrict the range of information that can be requested, nor do they fully account for the potential distress, financial cost, long wait times, or invasiveness of these required assessments. Restricting the scope of mandatory assessments and ensuring they are only used when absolutely necessary would help reduce the burden on participants. Additionally, the Bill imposes penalties on participants who fail to comply, including suspension of the participant's plan or removal from the Scheme. Despite recent amendments requiring the NDIA to consider various factors in determining if non-compliance was reasonable, there remains an unacceptable risk of adverse consequences for participants.

Section 48 Change of Circumstances Appeal Rights

The current provisions in the NDIS Bill may allow the NDIA to reject all pending Section 48 Change of Circumstances requests without the right of appeal to the Administrative Appeals Tribunal (AAT). Were this to occur, the nearly 50,000 participants currently waiting for a S48 change of plan request to be processed could be impacted. Only 6% of S48 plan change requests have been assigned to a NDIA delegate, and the current wait time is 8-12 months.

Under the current legislation, the NDIA can and do reject S48 requests where there is a lack of evidence or the NDIA delegate decides that the participant's plan does not need to change. Further, NDIA delegates can and do reduce total plan funding when creating a new plan as a result of a S48 request. **Under the current legislation, if the NDIA decide not to change the participant's plan when a S48 request has been submitted, the participant has the right to appeal that decision.**

There are many contributing factors to the large backlog of pending S48 plan change requests. In 2021, the NDIA discovered that more than 80,000 end of plan reassessments were due to be processed in the space of a couple of months. As NDIA did not (and still do not) have sufficient staff to manage such a high volume of end of plan reassessments, the senior executive made the decision to automatically extend most of the plans so that participants were not left without support. An 'auto-extension' occurs the day after the plan was due to end, with the plan being automatically extended unchanged for 12 months. This feature has been removed in the PACE operating system, replaced with a 'plan continuation' – where the participant is notified that our NDIS plan will be continued unchanged. In an auto-extension or plan continuation, any unspent funding from the previous NDIS plan remains available for claiming.

An extremely high volume of NDIS plans were auto-extended or 'rolled over' (new plan exactly the same as the previous plan, but without access to unspent funds from the previous plan) since 2020 or earlier. Over the past 4 years or more, the circumstances, goals, support needs and 'About Me' section of the plan for a large number of participants have changed, and no longer match what is written in the NDIS plan, necessitating a S48 plan change request. This has been exacerbated by the introduction of the PACE operating system and associated issues, major changes to the role of NDIS Partners In The Community (PITC) who no longer draft plans, and changes to access and the way the first NDIS plan is created. With the introduction of PACE, the participant's first NDIS plan is typically created without any collection of information about what supports the participant requires. A draft budget is created prior to the 'planning meeting', which typically consists of a phone call from a NDIA delegate to advise the participant or nominee 'You have \$X in your plan. If you're not happy with it, get a report from an Occupational Therapist (Functional Capacity Assessment) and put in a S48 plan change request'.

'Automatic top ups' of NDIS plans do not exist. If a participant has insufficient funding in our NDIS plan, we have three months from receipt of the plan to submit a S100 Internal Review of Decision request. However, the NDIA and PITC rarely explain to participants what supports have been funded in the plan and what requested supports were denied by the NDIA delegate. Participants are seldom provided implementation support to understand our NDIS plans, how they can be used and how far the funding will stretch. It's extremely common for participants to learn that there is insufficient funding in the plan 6 months or even 12 months into the plan duration. In such circumstances, the only option is to apply for a S48 Change of Circumstances plan reassessment.

When applying for a S48 Change of Circumstances request, participants are required to submit 'evidence' that our circumstances have changed. However, participants are often not advised by NDIA or PITC of this requirement. As at July 2024, 46% of the backlog of almost 50,000 S48 requests have no information in the request. It's important to note that this is typically not the fault of the participant, due to issues such as:

- Failure of NDIS Contact Centre (NCC), PITC or NDIA staff to record information about why the participant is requesting a change of plan.
- Failure of NCC, PITC or NDIA staff to advise participants that evidence is required to submit a S48 request.
- Failure of NCC, PITC or NDIA staff to advise participants what evidence should be submitted, and who the evidence should be sourced from.
- NCC, PITC or NDIA staff submitting S48 requests before participants have the opportunity to source the required evidence.

SWAN are extremely concerned that without amendments to improve protections and ensure appeal rights for participants, tens of thousands of NDIS participants may be denied a desperately needed change to their plan through no fault of their own, and then denied the right to appeal that decision to the Administrative Appeals Tribunal (AAT).

Debt Raising Powers

The Bill grants extensive financial powers to the NDIA, including debt-raising capabilities, without sufficient oversight or limitations, posing risks of misuse of the power by NDIA delegates and harm to participants.

Via the debt-raising powers in the Bill, participants may have debts raised against them through no fault of their own. It's extremely rare for NDIA delegates to properly explain what supports have been funded in the plan, and what requested supports have been denied. Likewise, participants are not informed which of our disabilities have been deemed eligible for NDIS, and which diagnoses have not. It's common for participants to use their plans for supports addressing the needs of all of the disabilities for which we applied to NDIS, as no one has advised otherwise. Further, participants are very rarely given plan implementation support to understand the plan, how it can be used, what NDIS is responsible for and what are the responsibility of other systems. NDIS is exceedingly complex to navigate, as are the arrangements for what NDIS is responsible for funding and what other systems are responsible for. The NDIA currently hosts 3 separate websites, with thousands of webpages which are frequently changed or added. It's unreasonable to hold participants responsible for errors made due to a lack of information and ongoing support from the NDIA and PITC, and the Bill does not require the NDIA to proactively address these issues, and act from a prevention perspective.

SWAN are concerned that the Bill may enable the NDIA to raise debts from years ago, prior to the establishment of various operational guidelines. This retroactive application of debt-raising powers places an undue burden on participants who, in most cases, have not had adequate guidance and support at any time through their NDIS journey. SWAN are frequently contacted by participants and nominees who have been a part of the Scheme since rollout to the south west region in 2018; who have never been provided an implementation meeting to explain the plan and how it can be used; do not know which of their disabilities were approved; and almost universally, do not know that the operational guidelines they are expected to comply with exist.

The Bill places all responsibility and blame on the participant, without requiring the NDIA to provide appropriate support to ensure that participants understand the plan and how it should be spent. Additionally, it assumes that the plan budget is correct, which is often not the case, leading to unfair debt assignments. Amendments must be made to focus on prevention measures and education, rather than the raising of debts against people with disability – the majority of whom do not have the financial capacity to repay such debts.

Funding Periods

The Bill allows the NDIA to impose shorter funding periods, which risk participants being left without support. The longest funding period anticipated is 12 months, however the NDIA are proposing significantly shorter funding periods, as short as monthly or quarterly. Theoretically shorter funding periods sound like good practice, however there are very significant risks to participants with this approach.

The introduction of shorter funding periods assumes that the budget in participants' plans is correct in the first place. Since the introduction of PACE, SWAN have seen an extremely high volume of grossly underfunded first NDIS plans. Typically the planning meeting is being skipped entirely, with participants receiving a plan with a budget developed without any information about what supports the participant requires, our life circumstances (eg. lack of informal supports, homelessness etc), and in several cases, even the participant's goals are missing. SWAN are seeing first NDIS plans with as little as \$2,300 per year over 3 years, with the delegates instructing participants to get a report from an Occupational Therapist (Functional Capacity Assessment) and apply for a S48 Change of Circumstances request. With the introduction of annualised (or shorter) funding periods, participants with such grossly inadequate plans may have insufficient funding to even source the required Functional Capacity Assessment, and if they are able to, would be left languishing without any support while waiting for their S48 plan change request to be processed (current wait time is 8-12 months). If funding periods are even shorter, then participants with such grossly underfunded plans will simply be without any support.

When the NDIA attempted to introduce Independent Assessments, monthly or quarterly funding periods were to be introduced simultaneously. PACE has been built with the capacity for turning on monthly funding periods. The disability community have strongly objected to the introduction of such short funding periods for participants, for numerous reasons, including:

- **Inappropriate for people with complex or episodic disability.** Disability is not static, and there are times when participants may require more support and times when participants may require less support. These fluctuations in the level of support required cannot be predicted. Monthly or quarterly funding periods lack the flexibility to increase supports in times of higher needs.
- **Inappropriate for people with degenerative disability.** People with degenerative disability are unable to predict how rapidly their support needs may increase, and there may be fluctuations in the speed at which their support needs increase.
- **Lack flexibility to adapt to changes in circumstances.** Wait times for a S48 plan change request are currently 8-12 months, and NDIA require significant evidence to approve a plan change request. Short funding periods prevent participants from sourcing the necessary reports to prove that needs have increased.
- **Lack flexibility to adapt to crises.** Unexpected things happen. Participants may have an injury requiring increased support for a period of time (eg. a broken bone requiring 2:1 support to transfer instead of the usual 1:1), the participant's informal carer may be hospitalised, requiring the participant to go into emergency Short Term Accommodation or have 1:1 in-home support. NDIA has never been able to respond to such crises in a timely manner. Processing times for S48 Change of Circumstances requests typically exceed 2-3 months, even when there is no backlog.
- **Lack flexibility to purchase planned or unplanned larger expenses.** This includes costs like repair or replacement of equipment, purchase of assistive technology, vehicle or home modifications, or purchase discounted items such as continence aids in bulk. Further, participants may not be able to use Short Term Accommodation when needed, especially in the early stages of the plan.

Funding periods must not be introduced until the disability community can be assured that the plan budget is actually correct. Funding periods must not be shorter than 12 monthly, except where the participant would prefer shorter funding periods. Shorter funding periods must not be imposed on participants by the NDIA.

Powers to Revoke Participant Eligibility

The Bill provides the NDIA with extensive authority to revoke a participant's eligibility based on certain criteria. However, these criteria are not sufficiently detailed, leading to the potential for arbitrary or inconsistent decisions.

There are inadequate safeguards to ensure that participants are treated fairly and equitably. Without clear guidelines and protections, participants are at risk of losing essential supports, without proper justification or recourse.

The broad powers could be misused, leading to unnecessary revocations of eligibility that adversely affect participants' lives. This is especially concerning for participants with complex needs who rely heavily on NDIS supports.

Although there is an appeal process, it may not be robust enough to protect participants from unjust revocations. The process should be transparent, accessible, and fair, ensuring that participants have a meaningful opportunity to contest decisions.

Addressing Fraud

The Bill does not address fraud. The issue of fraud within the NDIS can be effectively managed under the current legislation without any changes. Focusing on fraud in discussions of the new Bill diverts attention from more pressing issues that impact participant support and rights, and the systemic issues within NDIS impacting the participant experience, which the Bill does not address. The NDIA are currently rolling out changes to address fraud at the point of claiming.

Legislative change is unnecessary to address the issue of NDIS fraud.

Recommendations

In order for SWAN to support the passage of the 'Getting the NDIS Back on Track No. 1' Bill through Parliament, the following amendments are required to ensure that the human rights of participants are protected and people with disability are not adversely impacted under the new legislation.

1. Further amend Section 4 to legislate a requirement for meaningful codesign and consultation with people with disabilities and their representative organisations in designing and implementing NDIS reforms. This must include:
 - Leadership by people with disabilities and their representative organisations.
 - Publicly available and promoted engagement plans and timelines.
 - Prioritising codesign with those most impacted by any changes, including individuals living in regional, rural, and remote areas (specifically including geographically isolated people), First Nations people, Culturally and Linguistically Diverse (CaLD) communities, LGBTQIA+ individuals, and people with diverse disability types.
2. Amend Sections 24 and 25 to include comprehensive criteria that do not disadvantage people with episodic, fluctuating or 'invisible' disabilities, such as psychosocial disabilities and autism. This amendment should reflect the understanding that disability impacts can vary greatly and that recovery is not achievable or linear for everyone. Ensure assessments and budgets account for all impairments impacting a participant's needs, providing comprehensive support reflective of the true extent of requirements. Include a mechanism for listing additional impairments and make decisions to deny or remove conditions reviewable internally and through the Administrative Appeals Tribunal (AAT). There must be no changes to eligibility and access until foundational supports are established nationally and functioning fully.
3. Amend subclause 32L to require that the Needs Assessor be a qualified allied health professional or social worker with experience in conducting assessments and expertise in the participant's specific disability type(s).
4. Amend subclause 32L(5) to require that the Needs Assessor provide a draft needs assessment report to the participant for review and corrections before it is given to the CEO. As recommended in the NDIS Review final report, the Needs Assessment must take a 'whole of person' approach.
5. Introduce a new provision or amend Section 99 to ensure a clear, accessible, and fair appeal and review processes, including making needs assessments a reviewable decision. Ensure that participants have the right to request a replacement needs assessment, and that denial of this request is a reviewable decision.
6. Amend the Bill to include a requirement for the needs assessment tool(s) to be:
 - Fully codesigned with and extensively tested by people with disabilities from diverse backgrounds, families and carers, disability representative organisations, academics and health professionals, advocates, and service providers.
 - Developed using evidence from Australian and international peer-reviewed research on assessing the support needs of people with disabilities and in consideration of the impact of such assessments on them.
7. Amend sections 26 and 36 to require the NDIA to fully fund the cost of any assessments and reassessments of participants requested by the NDIA.

8. Amend Sections 10 and 34 to ensure that 'Reasonable and Necessary Supports' remain the fundamental core principle of the NDIS, replacing the introduction of narrowly defined 'NDIS Supports' and restrictive lists of permitted and prohibited supports.
9. Remove Section 32H to ensure that a flexible budget is indeed truly flexible. Stated Supports must only be used where strictly necessary.
10. Include in the Bill the requirement that NDIA provide draft budgets to participants before they are finalised, with adequate time allowed for participants to review and provide feedback.
11. Amend the relevant sections to address the extensive use of delegated legislation, such as those giving rule-making powers to the Minister (e.g., Sections 27, 32J, and 43(2C)(c)). These amendments should require more substantial public scrutiny and ensure key decisions about NDIS support and access criteria are included in the primary legislation rather than being determined solely by Ministerial rules or determinations.
12. Revise Section 43 to establish precise guidelines on when and how the NDIA can overrule a participant's preferred plan management type.
13. Amend the bill to incorporate the entire framework of the UNCRPD.
14. Improve protections for participants undergoing eligibility reassessment. There must be specific, protective criteria detailing in what circumstances eligibility may be reassessed, and limits on how often a participant's eligibility is reassessed.
15. Improve protection for participants where NDIA have been unable to contact them. This should consider reasons like fear of answering private numbers (due to scammers, lacking access to MyGov, not having a fixed address, unexpected hospitalisation or incarceration, or lacking capacity to engage with NDIS representatives).
16. As per recommendations from the Disability Royal Commission, increase quality and safeguarding measures.

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