



**NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT
(GETTING THE NDIS BACK ON TRACK NO. 1) BILL 2024
Inclusion tree submission – July 2024**



M: PO Box 126 PLUMPTON NSW 2761
E: hello@inclusiontree.com.au
W: www.inclusiontree.com.au
P: 1300 126 123

ABN: 586 234 17336

We commit to reconciliation and acknowledge Aboriginal and Torres Strait Islander peoples', their histories, cultures and communities. We acknowledge the lands of Australia were never ceded and we respect the Aboriginal and Torres Strait Islander peoples as the traditional custodians of the land



NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT
(GETTING THE NDIS BACK ON TRACK NO. 1) BILL 2024 – Inclusion Tree Submission

Our organisation 'Inclusion Tree' and our supporters welcome the opportunity to provide a submission in response to the Proposed National Disability Insurance Scheme (NDIS) Amendments (Getting the NDIS Back on Track No. 1) Bill 2024 (the Bill).

Who we are and who we support

Inclusion Tree provides human-centred support services, in most all States and Territories of Australia. Our services are individually tailored, strengths-focused, trauma-informed, and inspired by leading edge practices and social innovations.

We enjoy compassionately inquiring together to co-create solutions that make a difference to the people experiencing disability and mental health.

We know that investing in our people and acknowledging their gifts is what makes our business grow. We are committed to nurturing the personal and professional development of all our staff through an intentional culture of growth and learning, based on 'We-Flow' principles and practices.

We do this through providing Support Coordination, Capacity building and allied health services to NDIS participants. We support 560 participants of which 63% manage their own supports through independent workers and 'service for one' models.

We actively participate in industry working groups, events, roadshows, as well as policy and consultation sessions, advocating tirelessly for the rights of individuals to maintain control of their lives.

Our position relating to the proposed amendments

The NDIS is crucial for people with disabilities, and while the latest amendments are a small step forward, they fall significantly short and the changes still pose significant risks to the rights, autonomy, and well-being of individuals with disabilities, as well as the operational integrity of service providers.

1. Reasonable and Necessary Budgets

The bill introduces a change and focus shift from 'reasonable and necessary supports' to 'reasonable and necessary budgets.' This change risks imposing strict budgetary limits on participants, which could restrict or lose their access to the necessary supports and services tailored to their unique needs.

The term 'reasonable and necessary supports' is central to the NDIS's goal of providing tailored assistance based on individual needs. Changing this to 'reasonable and necessary budgets' implies a financial cap that might not reflect the true cost of essential supports. Participants' needs vary greatly, and a rigid budget system cannot accommodate the diversity of requirements that enable people with disabilities to live ordinary lives.

Participants might find themselves unable to access all the supports they need within the confines of a predetermined budget. This can lead to gaps in care, decreased independence, and a lower quality of life. For instance, someone requiring both physical therapy and mental health support might have to choose between the two if their budget doesn't cover both services. This choice can exacerbate health issues and reduce overall well-being.



Service providers may struggle to deliver comprehensive, flexible and highly personalised support under tightened financial constraints. These financial constraints could lead to a reduction in service diversity, hindering providers' ability to innovate and deliver high-quality, tailored care.

2. Narrower Definition of Supports

The bill introduces a narrower definition of what constitutes 'supports,' potentially excluding vital services that help participants integrate into their communities and achieve personal goals. A broad definition of 'supports' is essential for the NDIS to cater to the varied and complex needs of participants. Narrowing this definition could mean that services such as social integration programs, certain therapies, and assistive technologies might not be covered. This exclusion would prevent participants from accessing a holistic range of personalised supports necessary for a fulfilling life.

Participants could lose access to critical supports that facilitate community involvement and personal development. This exclusion can lead to social isolation, reduced independence, and hindered progress toward personal goals. For example, a participant might not receive funding for a necessary communication device, significantly impacting their ability to interact and engage with others.

This change could limit providers' ability to offer comprehensive care, as they might have to adjust their service offerings to align with the new, narrower definition, undermining their capacity to meet individualised needs.

3. Increased Powers for the NDIA

The bill grants the NDIA more power to mandate assessments and demand information, with the threat of suspending or revoking plans for non-compliance.

Increasing the NDIA's power to enforce assessments and information requests can place undue pressure on participants, particularly those already experiencing significant challenges. This change can lead to a more bureaucratic and less empathetic system, where the focus shifts from participant well-being to regulatory compliance.

Participants, especially those in crisis or with complex needs, may struggle to comply with these demands. The threat of plan suspension or revocation can create a constant state of anxiety and insecurity. For example, a participant undergoing a health crisis might be unable to provide the required information in time, risking the loss of essential supports precisely when they are most needed.

Providers might need to allocate additional resources to help participants navigate these new requirements, diverting attention from direct care. This increased administrative burden can strain provider capacities and affect the quality of support they can offer.

4. Restrictions on Self-Managing, Plan-Managing Funding, and Transition to Agency Management

The bill allows the NDIA to prevent participants from self-managing or plan-managing their funding if they have previously made mistakes. Participants can also be switched to agency management if there is a disagreement over funding use, limiting their access to self-managed or plan-managed supports.

Self-management and plan management are cornerstones of the NDIS's principle of choice and control, allowing participants to tailor their supports according to their preferences and needs.



Restricting these options based on past mistakes or disagreements undermines this principle and can discourage participants from taking an active role in managing their supports. Forcing participants into agency management further erodes autonomy and disrupts existing support arrangements, potentially reducing the quality of care received.

These restrictions and transitions limit participants' autonomy and control over their supports, leading to decreased satisfaction and effectiveness of care. Participants who prefer self-management may feel disempowered and less engaged in their care plans, resulting in a one-size-fits-all approach that may not meet their unique needs. Being forced into agency management can also result in less personalised care, as agency-managed plans might not fully reflect individual preferences and needs.

5. Section 48 (S48) 'Change of circumstance' Review Limitations

The NDIA can refuse S48 'change of circumstances' requests for plan changes outright, without the possibility of appeal.

Section 48 reviews are vital for participants to request changes to their plans when their circumstances change, such as a deterioration in health or changes in personal circumstances. Limiting the ability to request these reviews, and removing the right to appeal, leaves participants vulnerable to inadequate support.

Participants needing additional support due to changing circumstances may be left without necessary adjustments, leading to severe health and quality-of-life consequences. For instance, a participant whose condition worsens might not receive the increased support they need, resulting in a rapid decline in their health and independence.

Providers might struggle to address participants' evolving needs if they cannot secure necessary plan adjustments. This can hinder their ability to deliver consistent and effective support, affecting both participant outcomes and provider sustainability.

6. Backlog in S48 'Change of Circumstance' Requests

Shifting the responsibility for S48 reviews from Local Area Coordinators (LACs) to NDIA delegates has caused an increased backlog, further delaying plan adjustments and leaving participants without necessary supports.

The backlog in S48 requests means participants face even longer wait times for plan adjustments, leaving them without essential supports for extended periods. This delay can exacerbate participants' health issues and reduce their independence.

Participants experiencing delays in plan adjustments may suffer from worsened conditions and decreased quality of life. For example, a participant requiring new assistive technology might wait months for approval, during which their ability to function and participate in daily activities could significantly decline.

Providers may experience increased pressure as they try to support participants waiting for plan adjustments. This can impact their capacity to deliver timely and effective services, leading to frustration and potential burnout among staff.

7. 90-Day Information Rule



The bill introduces a 90-day rule, allowing the NDIA to request **any** information they deem necessary within this timeframe. Failure to provide this information can lead to participants being removed from the NDIS.

The 90-day rule places an unreasonable burden on participants to gather complex medical or personal information quickly. This timeframe may not allow for adequate gathering and submission of necessary documentation, especially for individuals with significant health challenges or limited support networks. Such a strict deadline risks participants losing essential supports due to administrative delays or difficulties in obtaining required information.

Participants experiencing crises like hospitalisation, homelessness, or domestic violence can lead to being removed from the NDIS if participants miss information requests from the NDIA. Participants may struggle to meet the tight deadline, risking the loss of crucial support and services. The inability to gather and submit the required information within 90 days could lead to abrupt disruptions in their care, affecting their health, well-being, and overall stability. For example, participants facing health crises or those requiring specialised assessments may find it challenging to comply with the timeframe, jeopardising their continued access to necessary supports. The wait times for specialist reports range anywhere from 6 -18 months.

Providers may need to assist participants in compiling and submitting the required information, adding to their administrative burden. The stringent 90-day rule could strain provider resources and capacity, potentially affecting their ability to deliver timely and effective services. Moreover, the administrative focus on meeting this deadline may divert attention from direct care, impacting the quality and continuity of support provided to participants.

8. Primary Disability Decision

The bill allows the NDIA to unilaterally decide a participant's primary disability without informing them or providing an opportunity for challenge.

Granting the NDIA the authority to determine a participant's primary disability without transparency or participant input raises significant concerns about fairness and accuracy in support planning. Participants have the right to understand and contribute to decisions that profoundly impact their care and support needs. Without adequate communication and a process for challenge, there is a risk of misidentification or incomplete assessment of a participant's disabilities, potentially leading to inadequate or inappropriate support plans.

Participants may experience a lack of control over decisions that directly affect their lives and well-being. Misidentification or incomplete assessment of a primary disability could result in support plans that do not adequately address their comprehensive needs. For instance, a participant with multiple disabilities might receive support tailored only to one aspect of their condition, neglecting other critical areas crucial to their daily functioning and quality of life.

Providers may face challenges in delivering appropriate services if decisions on primary disabilities are made without comprehensive input or review. Inaccurate assessments could lead to mismatches between provided supports and participants' actual needs, affecting the effectiveness and quality of care. Providers may also need to navigate participant dissatisfaction or confusion stemming from decisions made without their involvement, potentially straining provider-participant relationships and service delivery.



9. Funding Decisions Based on Primary Disability

The amendments allow the NDIA to determine funding based on their assessment and determination of a participant's 'primary disability' type, with no option for participants to contest. The NDIA may also restrict funding to specific providers or items. The NDIA will also maintain lists of approved and disapproved supports for each 'disability type'.

Basing funding decisions solely on the NDIA's assessment of a primary disability overlooks the multifaceted nature of participants' needs. Restricting funding to certain providers or items limits participants' choices and can prevent them from accessing the most suitable supports. Maintaining and enforcing rigid lists of supports based on 'primary disability' type will lead to arbitrary exclusions and limit participants' ability to access diverse and necessary supports.

Participants could be denied essential supports they know are necessary for their well-being, leading to a lack of appropriate care and diminished independence. Restrictions to specific providers or items can prevent access to necessary supports, reducing the effectiveness of their care. For instance, a participant may not be able to continue with a trusted therapist if they are not on the NDIA-approved list for that 'type' of disability.

Providers might face limitations in offering their services if funding is restricted to specific categories. This can impact their operational viability and ability to cater to diverse needs, leading to a potential reduction in service quality and availability.

10. Financial Penalties and Third-Party Liability

This bill introduces powers for the NDIA to demand repayment if they disagree with how funding was spent, potentially holding participants financially responsible for errors made by mentors, intermediaries, or NDIA staff themselves. Additionally, it lacks clarity on attributing liability for NDIS amounts to third parties versus participants, particularly under situations of duress or exploitation. We are in favour of reducing Fraud in the NDIS, however, imposing full liability to participants for all payments is not appropriate.

Financial scrutiny and the risk of penalties create a punitive environment that discourages participants from fully utilising their funding. Holding participants accountable for often innocent mistakes made by them or others, whether it be mentors, intermediaries, or NDIA staff, is inherently unfair and can lead to significant financial stress and anxiety. Clear guidelines are crucial to protect participants from unjust financial and emotional burdens arising from manipulation or exploitation by third parties.

Participants may face financial hardship or debt due to differing interpretations of appropriate spending, deterring them from fully utilizing their funding out of fear of penalties. Being penalised for mistakes made by mentors or intermediaries can cause stress and undermine trust in the NDIS system. This environment can lead participants to become overly cautious, potentially depriving themselves of necessary supports.

Providers may need to navigate complex funding rules and assist participants in understanding and complying with them to avoid penalties. The ambiguity in liability can lead to disputes and challenges in managing participant plans effectively, diverting resources from direct care



provision. Additionally, providers may need to support participants in dealing with the emotional and administrative burdens resulting from unclear liability rules, impacting their ability to deliver effective and timely services.

11. Provider Restrictions Based on Identity

The NDIA may require participants to use specific providers, ignoring important aspects of their identity such as race, culture, religion, or sexuality.

Ignoring participants' identity in provider selection can lead to discriminatory practices and a lack of culturally appropriate supports. The NDIS aims to provide personalised care tailored to individual needs, which includes considerations of cultural background, religious beliefs, sexual orientation, and other aspects of identity. By mandating specific providers without regard to these factors, there is a risk of participants receiving care that does not align with their cultural or personal values, potentially leading to alienation and reduced effectiveness of support services.

Participants may face discrimination when required to use providers that do not respect or accommodate their identity-related needs. This situation forces participants into a difficult choice: either accept inadequate support that disregards their identity or forego necessary services altogether. Such experiences can undermine participants' sense of dignity and inclusion, significantly impacting their overall quality of life and mental well-being. For example, a participant from a culturally or linguistically diverse background may struggle to communicate effectively with a provider who does not understand their language or cultural context, leading to suboptimal care outcomes.

Impact on Providers: Providers may find it challenging to deliver culturally appropriate and sensitive services when constrained by NDIA restrictions that overlook participant identity factors. This limitation can hinder their ability to establish trust and rapport with participants from diverse backgrounds, ultimately affecting the effectiveness of care delivery. Additionally, providers may face ethical dilemmas when they cannot fully respect participants' identities and preferences, potentially compromising the quality of support provided.

12. Broad Medical Information Requests

The NDIA can request and or all medical information about a participant without explaining its relevance or providing a way to challenge the request.

Broad and unexplained requests for medical information can compromise participants' privacy and lead to mistrust in the system. The lack of transparency can create anxiety about how personal information is used and managed, potentially undermining the participant's confidence in the NDIA's handling of their sensitive data.

Participants' privacy is compromised when extensive medical information is requested without clear justification. The lack of transparency can foster mistrust and anxiety about the confidentiality of their personal details. This environment may make participants hesitant to share necessary information, fearing potential misuse, breaches of privacy and the likelihood of reduced funding. As a result, there could be barriers to receiving appropriate support due to withheld information or delayed disclosures. The fear of privacy breaches can cause significant



stress and hinder open communication with the NDIA, impacting the overall quality of participant-NDIA interactions.

Providers may find themselves assisting participants in navigating and managing these broad information requests, which can increase their administrative workload significantly. Ensuring compliance with such requests might divert resources away from direct care, potentially affecting service quality and timeliness. Additionally, the uncertainty and potential delays caused by managing these requests could disrupt the continuity of care and strain the provider-participant relationship.

13. Right to Replacement Assessments

The current bill and subsequent amendments STILL do not adequately secure the right to replacement assessments, leaving participants without a clear pathway to request reassessments based on inaccurate assessments or determination, changes in their condition or circumstances.

Participants require the ability to request reassessments to ensure that their support plans accurately reflect their current health and support needs. Without a guaranteed right to replacement assessments, participants may be locked into outdated or inaccurate support plans that do not meet their evolving requirements. This reliance on discretionary decisions without transparent standards can result in inconsistencies and unfair outcomes for participants.

Importance of Requesting Reassessment:

1. **Accuracy of Support Plans:** Participants' health conditions can change over time, necessitating adjustments to their support plans. For instance, a participant's condition may improve or worsen, requiring corresponding changes in the types and levels of support they receive.
2. **Personalisation of Support:** Reassessment allows participants to tailor their supports according to their current needs, ensuring that they receive the most appropriate care and services available under the NDIS.
3. **Quality of Life:** Inaccurate assessments that do not reflect current conditions can lead to inadequate support, hindering participants' ability to maintain their independence and overall quality of life.
4. **Fairness and Transparency:** A clear process for requesting reassessment promotes fairness by allowing participants to challenge assessments that they believe do not accurately reflect their circumstances. It also enhances transparency in decision-making within the NDIS, fostering trust between participants, providers, and the NDIA.

Participants face the risk of receiving supports that does not meet their current needs if they cannot request reassessments. This situation can lead to frustration, diminished quality of life, and potentially worsened health outcomes if supports are not appropriately adjusted to match their evolving conditions.

Providers may struggle to deliver effective care if they cannot advocate for reassessments based on their clients' changing needs. Clear standards for requesting reassessments would enable providers to better align supports with participants' current health statuses, improving the overall quality and effectiveness of care delivery under the NDIS.



14. Debt Recovery Issues

The proposed debt recovery provisions are harsh, needing direct reviewability for non-compliance decisions and fair waiver conditions. We do not want to legislate Robodebt 2.0.

Harsh debt recovery provisions can place undue financial strain on participants, especially if they are penalised for non-compliance without fair review or waiver options. This can create a punitive environment that discourages full participation in the NDIS.

Participants are likely to face rigid and severe debt recovery processes, potentially leading to significant financial hardship and stress. This can reduce their ability to effectively manage their disability and lead to anxiety about utilizing their funding. Participants might avoid necessary supports for fear of incurring debt.

Providers might need to support participants through these challenging processes, which can divert resources from direct service provision. The financial strain on participants can also impact their engagement with providers and the sustainability of services.

15. Co-Design and Consultation

The provisions in the bill and subsequent amendments related to codesign and consultation fall horribly short, and are merely superficial and lacking enforceability, which raises concerns about future policy changes without any adequate parliamentary oversight.

Codesign and genuine consultation with participants and their representative organisations are crucial elements in shaping policies that effectively meet the diverse and evolving needs of people with disabilities. Superficial provisions undermine this process by potentially excluding meaningful input from those directly affected. This risks the development of policies that do not accurately reflect the realities and priorities of participants.

Importance of Codesign and Consultation:

- **Inclusivity and Representation:** Legislating Codesign will ensure that policies are developed with the direct input of participants and their representatives. This inclusivity is essential for understanding diverse needs, perspectives, and challenges faced by individuals within the disability community.
- **Tailored Policy Solutions:** Genuine consultation allows policymakers to craft policies that are responsive to real-world experiences and requirements. It helps in identifying gaps in services, barriers to access, and areas where improvements are most urgently needed.
- **Trust and Confidence:** When participants are actively involved in codesigning policies, it enhances trust in the system. It demonstrates a commitment to listening to and valuing their insights, thereby increasing confidence that policies will effectively support their needs.
- **Policy Effectiveness:** Policies developed through codesign and consultation are more likely to be practical and effective. They are grounded in the lived experiences of participants and are better aligned with their actual needs, enhancing the overall effectiveness of the NDIS in improving quality of life.

Participants whose voices are not adequately considered in policy development may face inadequate supports that do not address their specific needs. This can lead to frustration, a sense of marginalisation, and reduced trust in the NDIS's ability to deliver meaningful outcomes.



Providers may encounter challenges in delivering services that align with policies developed without meaningful consultation. This can create a disconnect between policy intent and practical implementation, potentially compromising service quality and effectiveness. Meaningful consultation ensures that providers are well-informed about policy changes and can adapt their services accordingly, maintaining high standards of care.

Legislating Co-design: Legislating codesign and consultation ensures that these processes are not merely optional or tokenistic but are integral parts of policy development within the NDIS framework. It establishes clear expectations for how participant input should be sought, considered, and integrated into decision-making processes, thereby fostering a more responsive and inclusive disability support system. It also demonstrates that the government is being truthful about the intent of these and future changes, reinstilling trust within the community knowing that changes cannot simply be made to solely suit the political agenda of the day.

16. Market Power of CEOs

The bill grants excessive market control to future NDIS CEOs, with rejected amendments to limit participant burden.

Granting excessive control to NDIS CEOs can lead to arbitrary and burdensome requirements for participants. Without effective checks and balances, these powers can be exercised in ways that may not prioritize the needs and well-being of participants. Centralising too much power in the hands of a single individual or office risks decisions being made without adequate oversight, potentially leading to inconsistent and unfair outcomes.

Risks of Unregulated Power:

- **Arbitrary Decision-Making:** Without clear limitations, accountability and legislative oversight the CEO may implement requirements and policies that are not necessarily in the best interest of participants. This can result in arbitrary rules that participants must follow, creating unnecessary barriers to accessing and managing their supports.
- **Lack of Participant-Centric Focus:** Excessive control can shift the focus away from participant needs and towards administrative convenience or cost-cutting measures. This can undermine the core principles of the NDIS, which are centered on empowering participants and providing tailored, needs-based support.
- **Inconsistent Policies:** Without regulatory checks, the decisions made by the CEO may lack consistency and transparency, leading to confusion and uncertainty for both participants and providers. This can create an unpredictable environment where rules and requirements may change frequently without sufficient justification.

Participants may face arbitrary and burdensome requirements that reduce their ability to access and manage supports effectively. This can lead to increased stress and frustration, as participants might struggle to navigate the complex and potentially restrictive system imposed by the CEO. For example, a participant might find that previously approved supports are suddenly revoked or that new, onerous conditions are attached to their funding, significantly impacting their quality of life.

Providers might be subject to unpredictable changes and requirements, affecting their operational stability and ability to plan long-term support strategies. This can lead to



inefficiencies and reduced service quality, as providers may have to constantly adjust their services to comply with new directives. The lack of stability and predictability can also hinder providers' ability to deliver consistent and high-quality care, ultimately affecting the well-being of participants.

Importance of Checks and Balances:

- **Ensuring Accountability:** Implementing checks and balances ensures that the CEO's decisions are subject to oversight and accountability. This helps in maintaining transparency and fairness in how the NDIS is administered, ensuring that participant needs remain the central focus.
- **Protecting Participant Rights:** By limiting the CEO's power, participants are better protected from arbitrary and potentially harmful decisions. Clear guidelines and accountability mechanisms can help ensure that decisions are made with participants' best interests in mind, upholding their rights and dignity.
- **Promoting Stability and Consistency:** Regulatory checks and balances provide a framework for consistent and stable policy implementation. This benefits both participants and providers by creating a predictable and reliable system, allowing for better planning and delivery of supports.

Granting excessive and unregulated power to the NDIS CEO poses significant risks to participants and providers alike. It is crucial to implement effective checks and balances to ensure that the NDIS remains participant-centric, transparent, and fair. By safeguarding against arbitrary and burdensome requirements, we can protect the rights and well-being of participants while promoting stability and quality in service provision.

20: Information Powers and Revocation Threats

The Bill proposes expansive information powers for the NDIA, allowing them to request broad medical information without transparent justification or avenues for challenge. Additionally, the threat of plan revocation for non-compliance creates a coercive environment for participants.

These information powers lack transparency and accountability, potentially compromising participants' privacy and autonomy. Participants may feel pressured to disclose sensitive medical information without understanding how it will be used or protected. The threat of plan revocation adds further stress, creating a punitive atmosphere that undermines trust in the NDIS.

Participants may experience undue stress and anxiety over information requests and the constant threat of losing their support plans. This environment can lead to reduced quality of life and stability, as participants may feel constantly monitored and judged by the NDIA.

Providers may need to advocate more intensely for participants facing information requests and plan revocation threats, diverting resources from direct care. The coercive environment created by these measures can strain provider-participant relationships and compromise the effectiveness of support delivery.



Conclusion

In conclusion, the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 poses significant risks to the rights and well-being of participants. The concerns outlined above highlight the potential consequences of the proposed changes. It is crucial that any amendments to the NDIS prioritise the principles of choice, control, and inclusion, ensuring that people with disabilities can access the supports they need to lead fulfilling lives.

I urge the enquiry to consider these concerns and advocate for amendments that protect and promote the rights and dignity of all NDIS participants, not jeopardise the rights of People with Disability.

Thank you for considering our submission. I am hopeful that together, we can ensure the NDIS continues to be a vital and supportive framework for people with disabilities across Australia. It is imperative that legislative changes uphold the principles of equity, dignity, and empowerment for all participants.

We welcome the opportunity to work collaboratively with you to co-design and continue to improve the NDIS.

Kind regards,

The Inclusion Tree team

