

The Senate

Community Affairs Legislation
Committee

National Disability Insurance Scheme
Amendment (Getting the NDIS Back on
Track No. 1) Bill 2024

August 2024

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Abbreviations

AAT	Administrative Appeals Tribunal
APTOS	Applied Principles and Tables of Support
CAF	Council for the Australian Federation
CEO	Chief Executive Officer
DSS	Department of Social Services
EM	Explanatory Memorandum
FPDN	First Peoples Disability Network
NDIA, the Agency	National Disability Insurance Agency
NDIS, the Scheme	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>
PJCHR	Parliamentary Joint Committee on Human Rights
PWDA	People with Disability Australia
Scrutiny of Bills committee the bill	Senate Standing Committee for the Scrutiny of Bills National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024
the committee	Senate Community Affairs Legislation Committee
the Minister	Minister for the National Disability Insurance Scheme
UNCRPD	the United Nations Convention on the Rights of Persons with Disability

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List of recommendations

Recommendation 1

2.94 The committee recommends that the bill be passed as soon as practicable.

Chapter 1

Introduction

- 1.1 The National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (the bill) was introduced to the House of Representatives on 27 March 2024.¹
- 1.2 On 27 March 2024, the Senate referred the provisions of the bill to the Senate Community Affairs Legislation Committee (the committee) for inquiry and report.²
- 1.3 The committee reported on 20 June 2024 and made four recommendations, including that the bill be passed.
- 1.4 On 27 June 2024, the Senate re-referred the provisions of the bill, including examining any circulated amendments to the bill and the positions of state and territory governments, to the committee for further inquiry and report by 5 August 2024.³ The committee tabled a progress report on 5 August requesting an extension of time to report until 9 August 2024.⁴

Background

- 1.5 Following a three-month inquiry into this bill, the committee tabled a report on 20 June 2024, which is available on the committee's website. This report drew on 205 submissions and further evidence from a range of academics, legal experts, professional peak bodies, care workers, participants, advocates and government officials heard at three public hearings held on 21 May, 22 May and 14 June 2024.⁵
- 1.6 The committee's previous report made four recommendations, in line with key concerns raised by submitters and witnesses, that:
 - (1) the bill include amendments so that First Ministers are also recognised as Ministers for the purposes of Category A rule-making;

¹ *House of Representatives Votes and Proceedings*, No. 116, 27 March 2024, p. 1484.

² *Journals of the Senate*, No. 108, 27 March 2024, p. 3235.

³ *Journals of the Senate*, No. 115, 27 June 2024, p. 3540.

⁴ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024: Progress report](#), 5 August 2024 (accessed 9 August 2024).

⁵ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 36 (accessed 11 July 2024).

- (2) a consultation statement be tabled accompanying the legislative instrument that sets out consultations undertaken;
- (3) the Australian Government further clarify the circumstances under which the additional powers granted to the National Disability Insurance Agency Chief Executive Officer will be used; and
- (4) subject to the above recommendations, that the bill be passed.⁶

1.7 On 5 June 2024, the bill passed the House of Representatives with 29 government amendments and one amendment from the crossbench. Further proposed amendments have also been circulated in the Senate by the government and the crossbench. The government amendments in the Senate respond to recommendations of the committee in the previous inquiry.

1.8 In a second reading speech on 5 June 2024, the Hon Bill Shorten MP, Minister for the National Disability Insurance Scheme (NDIS, the Minister) described the intention of the bill and subsequent amendments:

Australians with disability deserve an NDIS that delivers the best outcomes for them and a scheme that is safe from exploitation. We cannot afford to wait one moment longer to get the NDIS back on track. While the scheme's doing amazing things, and changing the lives for hundreds of thousands of people, participants face confusion, uncertainty and, sadly, exploitation—in some cases, everyday—whilst on the NDIS. We do hear some of the bad news stories. The legislation before parliament will give us what we need to make the NDIS stronger, and to make it easier for participants and providers to use NDIS funding in the right way.⁷

1.9 The Minister also addressed the need to expedite the bill, to give NDIS participants and providers certainty, and to ensure the scheme's integrity by saving Australian taxpayers around \$160 million a month in government expenditure:

Any delays would continue the illusion that providers or participants can just exhaust their NDIS funds and continue to ask for more funds without good reason. It would continue to create participant uncertainty about what they and their providers can do with NDIS funds. It would continue to allow the dodgy providers—admittedly, a small minority, but they exist nonetheless—to rapidly draw down funds from plans, enabling hit-and-run frauds by such providers. Every month this legislation is delayed will cost people with disability and the taxpayers \$160 million in funds—taxpayer funding going out the door to dodgy plan managers and people ripping off the scheme, or going to providers delivering luxury holidays and even gambles. The good providers—the vast majority—are crying out for us to do something to stop bad providers taking advantage of people with

⁶ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, pp. 72–75 (accessed 11 July 2024).

⁷ The Hon Bill Shorten MP, Minister for the NDIS, *House of Representatives Hansard*, 5 June 2024, p. 34.

disability. Families and participants deserve to be protected from unscrupulous operators.⁸

1.10 The substantial cost of delaying the bill was confirmed in a letter to the Minister from the actuary for the NDIS, which stated:

A two-month delay in the passage of the Bill is estimated to result in a \$1.06 billion increase to NDIS expenditure over the forward estimates, including;

- Delays in legislation amendments addressing intra plan inflation will result in an estimated \$330 million increase to NDIS expenditure over the forward estimates
- Delays in legislation amendments that enable development of a new budget model with NDIS participants and the disability community will result in an estimated \$730 million increase to NDIS expenditure over the forward estimates.⁹

Current inquiry

1.11 The current inquiry relates to those amendments which passed the House of Representatives on 5 June 2024 and those proposed amendments circulated in the Senate over 26 and 27 June 2024, all of which are currently before the Senate.

1.12 The committee notes that this report does not seek to re-prosecute issues examined in the previous report, specifically the purpose and key provisions of the bill and background information relating to the NDIS and the broader context for these reforms.¹⁰

1.13 The committee also notes that on 30 July 2024, the Department of Social Services released the *Australian Government Response to the Disability Royal Commission*. Of the 222 recommendations made by the Royal Commission, the Australian Government has accepted, or accepted in principle, 130 recommendations.¹¹

Structure of the report

1.14 This report contains two chapters. This chapter sets out:

- the purpose of the amendments to the bill made in the House of Representatives, as well as further proposed amendments circulated in the Senate; and

⁸ The Hon Bill Shorten MP, Minister for the NDIS, *House of Representatives Hansard*, 5 June 2024, p. 34.

⁹ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20.1*, p. 1. The Scheme Actuary confirmed this evidence at a public hearing: Mr David Gifford, Scheme Actuary, *Proof Committee Hansard*, 6 August 2024, p. 6.

¹⁰ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024 (accessed 11 July 2024).

¹¹ Department of Social Services, [Australian Government Response to the Disability Royal Commission](#), 30 July 2024 (accessed 30 July 2024).

- general information outlining the conduct of the inquiry and other committees' consideration of the bill.

1.15 Chapter 2 contains:

- the key issues raised by submitters and witnesses;
- the positions of state and territory governments; and
- the committee's view and recommendations.

Financial impact

1.16 The supplementary explanatory memoranda relating to amendment sheets PA110, SK113 and PA112 each state that the amendments will not alter the financial impact of the bill.¹²

1.17 The explanatory memorandum (EM) states that the bill is 'expected to contribute to decisions made by National Cabinet to moderate cost growth of the NDIS in the medium to long-term and meet the 8 per cent sustainability target by 1 July 2026'.¹³

Commencement

1.18 If passed by the Parliament, the EM states that the whole of the Act would commence on the 28th day after the Act receives Royal Assent.¹⁴

1.19 The Minister noted that some parts of the bill would commence immediately—particularly those addressing the financial sustainability of the NDIS, whereas others were intended to support future changes to NDIS rules, which would be undertaken in consultation with participants and the disability community, and in agreement with jurisdictions 'consistent with the existing shared governance arrangements'.¹⁵

Purpose of the amendments

1.20 This section sets out the amendments to the bill currently before the Senate, specifically:

- government amendments moved by the Minister, which passed the House of Representatives on 5 June 2024 (amendment sheets PA110 and SK113);
- an amendment moved by Ms Kate Chaney MP, Member for Curtin, as circulated in the name of Dr Monique Ryan MP, Member for Kooyong, which passed the House of Representatives on 5 June 2024;

¹² Supplementary explanatory memorandum relating to sheet PA110, p. 5; Supplementary explanatory memorandum relating to sheet SK113, p. 6.

¹³ Revised Explanatory Memorandum, p. 3.

¹⁴ Revised Explanatory Memorandum, p. 2.

¹⁵ The Hon Bill Shorten MP, Minister for the NDIS, *House of Representatives Hansard*, 5 June 2024, p. 34.

- proposed amendments circulated by the government in the Senate (amendment sheet PA112); and
- proposed amendments circulated by Senator Lidia Thorpe.

1.21 Copies of these documents are available on the bill's website.¹⁶

Amendments made in the House of Representatives

1.22 On 5 June 2024, the Minister moved government amendments (1) to (8) on sheet PA110, and government amendments (1) to (21) on sheet SK113 and presented supplementary explanatory memoranda in relation to each sheet.¹⁷

1.23 These amendments seek to make changes to the bill, which amends the National Disability Insurance Scheme Act 2013 (the NDIS Act), to improve the participant experience and ensure the sustainability of the NDIS.¹⁸

1.24 In his second reading speech on 5 June 2024, the Minister explained that:

The changes in this bill recognise the government's ongoing commitment to delivering the independent review (NDIS Review) panel's vision for the future reforms of the NDIS.¹⁹

1.25 As stated by the supplementary explanatory memoranda, the amendments also seek to address some of the key concerns raised over the course of the committee's inquiry into the bill and particularly recommendations made by the committee in its previous report tabled on 20 June 2024.²⁰

Government amendments 1 to 8 on sheet PA110

1.26 The supplementary EM relating to sheet PA110 summarises the proposed amendments as:

- placing limitations on proposed new information gathering powers
- clarifying that in making new legislative instruments, the Minister must have regard to the principle that people with disability are to be included in a co-design capacity
- requiring the CEO to provide a needs assessment report to a participant
- clarifying that a decision maker upon internal and external review can arrange for a replacement needs assessment.²¹

¹⁶ Parliament of Australia, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024](#) (accessed 11 July 2024).

¹⁷ *House of Representatives Votes and Proceedings*, No. 125, 5 June 2024, pp. 1609–1610.

¹⁸ The Hon Bill Shorten MP, Minister for the NDIS, *House of Representatives Hansard*, 5 June 2024, p. 33.

¹⁹ The Hon Bill Shorten MP, Minister for the NDIS, *House of Representatives Hansard*, 5 June 2024, p. 34.

²⁰ Supplementary explanatory memorandum relating to sheet PA110, p. [2]; Supplementary explanatory memorandum relating to sheet SK113, p. [2].

²¹ Supplementary explanatory memorandum relating to sheet PA110, p. [2].

Information gathering powers

1.27 Amendments (1) through (4) amend items 30 and 31 of the bill relating to the information gathering powers of the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA), specifically their 'ability to request certain information for the purposes of considering whether to revoke a person's status as a participant in the NDIS'. The EM details that:

Currently the CEO has no ability to request information for this purpose, which means that this consideration may be based on outdated or incorrect information.²²

1.28 The amendments further provide that the CEO is limited to exercising these powers in circumstances in which they are satisfied that the information cannot be otherwise reasonably obtained.²³

Requirement for the Minister to have regard to the principle of co-design for legislative instruments

1.29 Amendments (5) and (8) amend proposed sections 32K and 32L to explicitly require the Minister to have regard to subsection 4(9A), which is one of the general principles under the NDIS Act, that 'people with disability are central to the NDIS and should be included in a co-design capacity' in the development of legislative instruments.²⁴

1.30 The proposed amendments will require the Minister to have regard to subsection 4(9A) when making legislative instruments under sections 32K and 32L.²⁵

Requirement for the timely provision of needs assessment reports to participants

1.31 Amendment (6) inserts a new, proposed subsection 32L(6A) in item 36 of the bill, requiring that the CEO must endeavour to provide participants with a copy of their needs assessment report as soon as practicable after the CEO receives the report.²⁶

1.32 The EM further provides that the needs assessment must:

...be provided to the participant before any further steps in the planning process can occur, including any planning conversations.

²² Supplementary explanatory memorandum relating to sheet PA110, pp. [2, and 5].

²³ Proposed subsection 30(3A), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024; Supplementary explanatory memorandum relating to sheet PA110, p. 5.

²⁴ Supplementary explanatory memorandum relating to sheet PA110, pp. [5–6].

²⁵ Supplementary explanatory memorandum relating to sheet PA110, p. [3].

²⁶ Supplementary explanatory memorandum relating to sheet PA110, p. [6].

This will provide the participant with an opportunity to review the report and provide input and feedback before the CEO makes any planning decisions.²⁷

Review of needs assessment

1.33 Responding to concerns about a participant's ability to seek a review of their needs assessment report, amendment (7) inserts a new legislative note under proposed subsection 32L(7) explaining how internal and external review apply to subsection 32L(7).²⁸

Government amendments 1 to 21 on sheet SK113

1.34 The supplementary EM relating to sheet SK113 states that the proposed amendments would:

- Replace the existing draft of proposed new section 10, and item 124 (which provides a transitional arrangement for that section),
- Clarify the circumstances in which a replacement assessment report can be arranged under proposed new section 32L,
- Clarify the new provisions in section 33 relating to funding component amounts and total funding amounts,
- Prescribe certain circumstances in which the CEO may pay above a total funding amount for a plan, and circumstances in which a participant's reasonable and necessary budget can be varied, rather than leaving this detail to National Disability Insurance Scheme (NDIS) rules
- Make other minor technical corrections and consequential amendments.²⁹

Definitional amendments

1.35 Amendments (1) through (5) cover definitional amendments in the bill.

1.36 Amendment (1) replaces the definition of 'funding component amount' to reflect that the amount is 'tied to a group of reasonable and necessary supports', as defined in proposed paragraph 33(2A)(c).³⁰

1.37 Proposed paragraph 33(2A)(c) provides that the statement of participant supports must:

specify that funding will be provided under the plan to or in relation to the participant, for supports in each group identified under paragraph (b) of this subsection, up to an amount (a funding component amount) specified in the statement for the group that is worked out in accordance with any

²⁷ Supplementary explanatory memorandum relating to sheet PA110, p. [6].

²⁸ Supplementary explanatory memorandum relating to sheet PA110, p. [6].

²⁹ Supplementary explanatory memorandum relating to sheet SK113, p. [2].

³⁰ Supplementary explanatory memorandum relating to sheet SK113, p. [6].

requirements determined under subsection (2E) for the purposes of this paragraph.³¹

- 1.38 Amendment (2) replaces the definition of 'funding period' as it relates to old framework plans, as defined in proposed paragraph 33(2A)(d).³²
- 1.39 The EM states that the new definition of funding period in proposed paragraph 33(2A)(d) provides that the period relates to funding provided 'for reasonable and necessary supports during specified periods (each of which is a funding period)'.³³
- 1.40 Amendment (3) amends the definition of 'NDIS support' in item 6 of Schedule 1 to clarify supports that are NDIS supports and those that are not by referencing the introduction of both an inclusive definition and an exclusive definition of NDIS support as set out by amendment (5).
- 1.41 Amendment (5) replaces proposed section 10, which inserts a new definition of 'NDIS support' into the NDIS Act:
- (1) Subject to subsection (4),³⁴ a support is an NDIS support for a person who is a participant or prospective participant if the support is declared by National Disability Insurance Scheme rules made for the purposes of this subsection to be an NDIS support for:
 - (a) participants or prospective participants generally; or
 - (b) a class of participants or prospective participants that includes the person.³⁵
- 1.42 According to the EM, this definition serves two purposes:
- It makes clear the constitutional basis for the new budget setting framework recommended by the NDIS Review, and helps to clarify and identify the constitutional basis of the NDIS as a whole.
 - It assists participants and the disability community to understand what is (and always has been) capable of being funded by the NDIS having regard to intergovernmental agreements and constitutional considerations.³⁶

³¹ Proposed paragraph 33(2A)(c), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024.

³² Supplementary explanatory memorandum relating to sheet SK113, p. [6].

³³ Proposed paragraph 33(2A)(d), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024.

³⁴ Subsection (4) enables NDIS rules to declare that a support is not an NDIS support.

³⁵ Proposed subsection 10(1), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024.

³⁶ Supplementary explanatory memorandum relating to sheet SK113, p. [7].

1.43 The EM further provides that:

The definition of NDIS support relies, in part, on the creation of Category A NDIS rules, requiring the agreement of the Commonwealth and all States and Territories. Given the critical nature of this definition, it is necessary to have a transitional approach to defining NDIS support until final NDIS rules can be agreed.³⁷

1.44 Noting the above, the definition of NDIS support set out in this bill may be subject to future changes in consultation with state and territory governments on the development of the NDIS rules. This is particularly relevant for the Category A NDIS rules, which require the unanimous agreement of states and territories.³⁸

1.45 Amendment (4) amends item 13 of Schedule 1 to the bill, which inserts a minor technical correction to the definition of 'total funding amount' into section 9 of the Act. The EM clarifies that this amendment substitutes the words 'funded under' in place of 'specified in' in paragraph (c) of the definition.³⁹

Requirement to arrange replacement assessment reports

1.46 Amendments (7) and (8) amend proposed paragraph 32L(7) to clarify the requirements on the CEO to arrange for replacement assessment reports in circumstances in which 'they are satisfied that another assessment should be undertaken' and in accordance with Category A NDIS rules.⁴⁰

1.47 Amendment (16) updates item 116 of Schedule 1 to the bill as a consequence of changes to subsection 32L(7) made by amendments (7) and (8). According to the EM, amendment (16) ensures that rules relating to replacement needs assessment reports will be Category A rules and therefore require the unanimous agreement of states and territories.⁴¹

Amendments relating to old framework plans

1.48 Amendments (1), (2), (4), (9), (10), (12), (13) and (18) through (21) all relate to old framework plans. Broadly, these amendments introduce the following in old framework plans:

- total funding amounts;⁴²

³⁷ Supplementary explanatory memorandum relating to sheet SK113, p. [3].

³⁸ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 7.

³⁹ Supplementary explanatory memorandum relating to sheet SK113, p. [7].

⁴⁰ Supplementary explanatory memorandum relating to sheet SK113, p. [10].

⁴¹ Supplementary explanatory memorandum relating to sheet SK113, p. [17].

⁴² Supplementary explanatory memorandum relating to sheet SK113, p. [4].

- funding component amounts;⁴³
- grouping 'reasonable and necessary' supports;⁴⁴ and
- transitional rules and provisions.⁴⁵

1.49 The EM states that:

The primary change made by these amendments is the introduction of the concept of a 'group' of reasonable and necessary supports, for example, core supports. The requirements and procedure for categorising supports into groups will be included in the Ministerial determination made under subsection proposed 33(2E).⁴⁶

Other amendments

1.50 Amendment (6) would insert a legislative note at the end of proposed new subsection 32E(4), which would be inserted by item 36 of Schedule 1 to the bill. The proposed note would clarify that the NDIS rules 'may declare a support for the purposes of this subsection by identifying a class of supports'.⁴⁷

1.51 Amendment (11) amends item 78 of Schedule 1 to the Bill by including new subparagraphs (ia) and (ib) in proposed paragraph 47A(1AB)(j) to allow the NDIA CEO to vary a participant's reasonable and necessary budget in circumstances in which:

the CEO is satisfied that the participant requires funding because the participant has experienced fraud or financial exploitation; or

the CEO is satisfied that the variation is necessary to prevent or lessen a threat to the participant's life, health or safety (whether current or future).⁴⁸

1.52 Amendment (14) amends item 99 of Schedule 1 to the bill, which would repeal and substitute existing subsection 74(6) and replace it with a new, consolidated version of that subsection. This amendment includes an example of the types of rules that could be made under the new subsection 74(6):

For example, National Disability Insurance Scheme rules could be made under this subsection that apply for the purposes of making a decision

⁴³ Supplementary explanatory memorandum relating to sheet SK113, p. [5].

⁴⁴ Supplementary explanatory memorandum relating to sheet SK113, pp. [14–15].

⁴⁵ Supplementary explanatory memorandum relating to sheet SK113, pp. [17–18].

⁴⁶ Supplementary explanatory memorandum relating to sheet SK113, p. [5].

⁴⁷ Proposed subsection 32E(4), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024; Supplementary explanatory memorandum relating to sheet SK113, p. 9.

⁴⁸ Proposed paragraph 47A(1AB)(j), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024; Supplementary explanatory memorandum relating to sheet SK113, p. 14.

under paragraph (5)(a) whether a child is capable of making decisions for himself or herself.⁴⁹

- 1.53 Amendment (15) amends item 115 of Schedule 1 to the bill, providing that NDIS rules made under subsections 10(1) and 10(4) will be Category A rules and therefore require the unanimous agreement of states and territories.⁵⁰
- 1.54 Amendment (17) omits and replaces item 124 of Schedule 1 to the bill to provide the Minister with the powers to make a transitional rule which only applies for the purpose of section 10, until the final NDIS rules have been made.⁵¹
- 1.55 The EM notes that existing item 124 relies on the Applies Principles and Tables of Support (APTOS) and the EM notes that this amendment responds to concerns and public commentary that APTOS, as agreed by First Ministers in 2015, is out of date and inconsistent with the most recent agreements reached by the Disability Reform Ministerial Council'.⁵²

Amendment agreed to as circulated in the name of the Member for Kooyong

- 1.56 On 5 June 2024, Ms Kate Chaney MP, Member for Curtin, moved the below amendment, as circulated in the name of Dr Monique Ryan MP, Member for Kooyong, in the House of Representatives.⁵³

4 Review

- (1) The Minister must cause an independent review of the amendments made by this Act to be conducted as soon as practicable after the end of the 5-year period starting on the day this Act receives the Royal Assent.
- (2) The persons who conduct the review must:
 - (a) consult with the public in conducting the review; and
 - (b) give the Minister a written report of the review in sufficient time to enable the Minister to comply with subsection (3).
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 9 months after the end of that 5-year period.⁵⁴

⁴⁹ Proposed subsection 74(6), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024; Supplementary explanatory memorandum relating to sheet SK113, p. 16.

⁵⁰ Supplementary explanatory memorandum relating to sheet SK113, p. [16].

⁵¹ Supplementary explanatory memorandum relating to sheet SK113, p. [17].

⁵² Supplementary explanatory memorandum relating to sheet SK113, p. [17].

⁵³ *House of Representatives Votes and Proceedings*, No. 125, 5 June 2024, pp. 1608–1610.

⁵⁴ Proposed clause 4, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024.

1.57 In moving the amendment, the Member for Curtin stated:

Given the scale of these changes and the importance of getting this right, it seems appropriate to consider the impact of these amendments and have a look at how they're actually working. This is a huge piece of legislation regarding a very expensive scheme. On that basis, I think it would be reasonable to have a review of how the changes to the scheme are working after that period.⁵⁵

1.58 The amendment was supported by the government, with the Minister commending it as 'a very good amendment'. It passed the House of Representatives on 5 June 2024.⁵⁶

Proposed amendments circulated in the Senate

Government amendments 1 to 18 on sheet PA112

1.59 On 27 June 2024, the government circulated a further 18 proposed amendments to the bill in the Senate. The revised supplementary EM relating to sheet PA112 states that the proposed amendments would:

- Allow First Ministers (in addition to Disability Ministers) to agree to National Disability Insurance Scheme (NDIS) rules
- Clarify and introduce additional safeguards around the exercise of information gathering powers by the Chief Executive Officer (CEO) of the National Disability Insurance Agency (Agency)
- Amend the provisions relating to the 'needs assessment', to clarify that the assessment will holistically assess a person's disability support needs
- Require the Minister to provide a consultation statement as part of the explanatory statement for all legislative instruments made under the Act.⁵⁷

1.60 The revised supplementary explanatory memorandum provides that these amendments also seek to respond to the recommendations made by the committee in its previous report tabled on 20 June 2024.⁵⁸

Definition of host jurisdiction Minister

1.61 Amendment (1) would expand the definition of host jurisdiction Minister in section 9 of the *NDIS Act* to include First Ministers of states and territories, in

⁵⁵ Ms Kate Chaney MP, Member for Curtin, *House of Representatives Hansard*, 5 June 2024, p. 47.

⁵⁶ The Hon Bill Shorten MP, Minister for the National Disability Insurance Scheme and Minister for Government Services, *House of Representatives Hansard*, 5 June 2024, p. 47; *House of Representatives Votes and Proceedings*, No. 125, 5 June 2024, pp. 1608–1610.

⁵⁷ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [2].

⁵⁸ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [2].

addition to members of the Ministerial Council who have portfolio responsibilities for the NDIS.⁵⁹

1.62 The amended definition would define a host jurisdiction Minister as:

a Minister of the host jurisdiction who is:

- a member of the Ministerial Council; or
- if the host jurisdiction is a State—the Premier of the State; or
- if the host jurisdiction is a Territory—the Chief Minister of the Territory.⁶⁰

1.63 In effect, this amendment would enable First Ministers and Ministers with portfolio responsibilities for the NDIS to provide agreement for NDIS rule-making on behalf of their jurisdiction.

1.64 The committee notes this amendment would directly action Recommendation 1 of the committee's previous report.⁶¹

Information gathering powers of the CEO

1.65 Amendments (2) through (5), (13) and (14) seek to clarify the circumstances under which the proposed information gathering powers of the CEO can be used.

1.66 Amendments (2), (4) and (13) insert new subsections 30(3AA), 30A(5AA) and 36(2A) respectively, requiring that requests for information made by the CEO under section 30A of the Act must be provided in writing or in the participant's preferred manner of communication.⁶²

1.67 Amendments (3), (5) and (14) insert new subsections 30(6A), 30A(7A) and 36(3A) respectively, providing guidance that the CEO must consider the reasonableness for a person not to have complied with a request for information and have regard to the following matters:

- the length of time the person has had to provide the information (for example, a delay of 6 months may be appropriate in certain circumstances whereas a delay of 12 or 18 months may not be)
- any previous failures by the participant to comply with a request for information made under this Act
- any previous failures by the other person to comply with a request for information made under this Act in relation to the participant

⁵⁹ Revised supplementary explanatory memorandum relating to sheet PA112 revised, pp. [2–3].

⁶⁰ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [3].

⁶¹ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 72. (accessed 11 July 2024).

⁶² Revised supplementary explanatory memorandum relating to sheet PA112 revised, pp. [3–5].

- the length of time since the CEO was last provided with information relevant to the decision whether or not to revoke the participant's status as a participant
- whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person
- any matters prescribed by Category A NDIS rules
- any other matters the CEO considers relevant.⁶³

1.68 The committee notes that these amendments respond to concerns raised by submitters to the previous inquiry that the specified timeframes for responding to request for information may be difficult for some participants.⁶⁴

1.69 The committee notes these amendments would directly action Recommendation 3 of the committee's previous report.⁶⁵

Needs assessment

1.70 Amendments (6) through (11) seek to clarify the scope of the needs assessments to be conducted under proposed section 32L. Collectively, these amendments seek to confirm that the new planning framework used to conduct needs assessments will take a holistic approach to assessing a participant's disability related support needs.⁶⁶

1.71 The EM states:

The intent of section 32L has always been that a needs assessment will assess a person holistically, looking at all of their disability related support needs, consistent with recommendations of the 2023 Independent Review into the National Disability Insurance Scheme (NDIS Review). While the assessment itself is holistic, funding for supports under the NDIS can only be provided in relation to impairments that meet the disability or early intervention requirements.⁶⁷

1.72 Amendment (6) amends proposed subsection 32K(1) to clarify that NDIS funding 'can only be provided in respect of impairments that meet the disability requirements or early intervention requirements'.⁶⁸

⁶³ Revised supplementary explanatory memorandum relating to sheet PA112 revised, pp. [4–6].

⁶⁴ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 74. (accessed 11 July 2024).

⁶⁵ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 75. (accessed 11 July 2024).

⁶⁶ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [6].

⁶⁷ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [6].

⁶⁸ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [7].

- 1.73 Amendment (7) would insert a new subsection 32K(3A) which provides that in making a determination under subsection 32K(2) 'the Minister must be satisfied that the determination adequately takes account of the variety of factors may affect a participant's need for NDIS supports'.⁶⁹
- 1.74 Amendment (8) makes a minor amendment to subsection 32L(1) to substitute the term 'need for supports' to 'disability support needs', to clarify that the needs assessment must assess all of a participant's disability support needs.⁷⁰
- 1.75 Amendment (9) omits subsection 32L(3), which reads:
- The assessment must assess the participant's need for supports only in respect of impairments in respect of which the participant meets the disability requirements or the early intervention requirements.⁷¹
- 1.76 This omission enables the needs assessment to assess the participant's need for supports holistically, regardless of whether they meet the disability or early intervention requirements.⁷²
- 1.77 Amendment (10) omits and substitutes subsection 32L(6) to clarify that a needs assessment report must:
- identify the participant's disability support needs arising from impairments in relation to which the participant meets the disability requirements or the early intervention requirements, and
 - include any information, and meet any requirements, determined in a legislative instrument made by the Minister under subsection 32L(8).⁷³
- 1.78 Amendment (11) amends paragraph 32L(8)(b) to clarify the power of the Minister under proposed subsection 32L(8) to determine the requirements for undertaking needs assessments, including for the purpose of assessing whether a participant's disability support needs result from impairments in relation to which the participant meets the disability requirements or the early intervention requirements.⁷⁴

Legislative notes

- 1.79 Amendment (12) would insert two legislative notes at the end of subsection 34(1) of the Act to provide that:

⁶⁹ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [7].

⁷⁰ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [7].

⁷¹ Proposed subsection 32L(3), National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024.

⁷² Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [6].

⁷³ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [7].

⁷⁴ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [9].

- the time at which a participant must meet the disability requirements or early intervention requirements is the time at which the CEO decides to approve the statement of participant supports; and
- a participant's disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors.⁷⁵

Category A NDIS Rules

1.80 Amendments (15) through (17) make consequential amendments to amendments (3), (5) and (15) which would insert references to the new NDIS rule-making powers in item 1 in section 209 of the NDIS Act to classify these new rules Category A NDIS rules. As a result, these rules would necessarily require the unanimous agreement of all states and territories.⁷⁶

Commitment to consultation and co-design

1.81 Amendment (18) would insert a new section 211 to the bill, which would prescribe that certain information about consultation must be included in explanatory statement to legislative instruments made under the NDIS Act.⁷⁷

1.82 This amendment seeks to clarify and strengthen the existing requirement on the Minister under paragraph 15J(2)(d) of the *Legislation Act 2003*, to provide information about consultation undertaken on legislative instruments made under the NDIS Act.⁷⁸

1.83 The amendment would require the Minister to provide explanatory statements adhering to the following requirements for all legislative instruments made under the NDIS Act moving forward:

- describe the nature of the consultation
- describe in general terms the persons, bodies or organisations who were consulted
- contain a summary of the views expressed by those persons, bodies or organisations.⁷⁹

1.84 The committee notes that this amendment responds to concerns raised by submitters to the previous inquiry that the Minister should be required to ensure appropriate consultation and co-design with the disability community on the

⁷⁵ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [9].

⁷⁶ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [10].

⁷⁷ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [10].

⁷⁸ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [10].

⁷⁹ Revised supplementary explanatory memorandum relating to sheet PA112 revised, p. [10].

design and implementation of legislative instruments made under the NDIS Act.⁸⁰

1.85 The committee notes this amendment would directly action Recommendation 2 of the committee's previous report.⁸¹

Amendments proposed by Senator Lidia Thorpe

1.86 Over 26 June and 27 June 2024, Senator Lidia Thorpe circulated 12 proposed amendments to Schedule 1 of the bill. These amendments chiefly relate to:

- consultation requirements relating to First Nations;
- consideration of cultural participation;
- First Nations representation on the NDIA Board; and
- NDIS participants in, or transitioning out of, a custodial setting.

1.87 Amendments (1) through (5) on sheet 2674 seek to expedite the timeframes for considering NDIS access requests for prospective participants who are to be released from a custodial setting.⁸²

1.88 Amendments (1) through (2) on sheet 2673 would require the Minister to consult with, and consider the views expressed by Aboriginal or Torres Strait Islander people in the development of legislative instruments under the NDIS Act and the development of the NDIS rules.⁸³

1.89 Amendments (1) and (2) on sheet 2672 would insert the word 'cultural' after the word 'social' in item 36 of the bill and on nine occasions in the NDIS Act, requiring consideration of the participant's cultural, as well as social and economic participation.⁸⁴

1.90 Amendments (1) and (2) on sheet 2671 would require that at least one member of the NDIA Board must be an Aboriginal person or Torres Strait Islander person that has lived experience with disability.⁸⁵

⁸⁰ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 72. (accessed 11 July 2024).

⁸¹ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 73. (accessed 11 July 2024).

⁸² Amendment sheet 2674, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, p. 1.

⁸³ Amendment sheet 2673, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, p. 1.

⁸⁴ Amendment sheet 2672, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, pp. 1–2.

⁸⁵ Amendment sheet 2671, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, p. 1.

1.91 Amendment (1) on sheet 2670 seeks to ensure that support is appropriately funded or provided for participants or prospective participants who are in, or transitioning out of, a custodial setting.⁸⁶

Consideration by other committees

1.92 Both the Parliamentary Joint Committee on Human Rights (PJCHR), and the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) commented on both the bill and the amendments currently before the Senate.

1.93 The PJCHR raised several concerns regarding the bill in its *Report 4 of 2024*, which tabled on 15 May 2024. These concerns are summarised in the committee's previous report.⁸⁷

1.94 The Scrutiny of Bills committee also raised several concerns regarding the bill in its *Scrutiny Digest 6 of 2024*, tabled on 15 May 2024. These concerns are summarised in the committee's previous report.⁸⁸

1.95 Key issues raised by both committees relating to the amendments currently before the Senate are outlined in the following sections.

Findings of the Parliamentary Joint Committee on Human Rights

1.96 The PJCHR maintained its concerns regarding the bill, including the most recent amendments, in its *Report 5 of 2024*, which tabled on 26 June 2024. These concerns were specifically around:

- the proposed definition of NDIS support;
- the proposed information gathering powers of the CEO; and
- the proposed approach to determining total funding amounts for NDIS participants.

Proposed definition of NDIS support

1.97 The PJCHR maintained its concern that the proposed definition of NDIS support set out in the bill was too narrow in its scope and posed a risk of 'reducing the type of supports that will be funded by the NDIS and thus available for participants'.⁸⁹

⁸⁶ Amendment sheet 2670, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, p. 1.

⁸⁷ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 31 (accessed 11 July 2024).

⁸⁸ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 34 (accessed 11 July 2024).

⁸⁹ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 16.

1.98 The PJCHR maintained its view that the proposed definition would engage and potentially limit the:

- rights of persons with disability;
- rights to an adequate standard of living and health;
- right to social security; and
- to the extent that the measure applies to children, the rights of the child.⁹⁰

1.99 The PJCHR sought the advice of the Minister regarding the compatibility of this measure with these rights. The Minister responded that the amended definition was intended to:

provide clarity and certainty for people with disability when selecting their supports but it does not change the types of supports that have always been appropriate to purchase with NDIS funding.⁹¹

1.100 The Minister provided reassurance that the measure would not be retrogressive and that the amended definition would necessarily be individualised, noting that:

The test is whether a person has a need for the support as a result of their disability. For example, a participant who does not experience impacts on their mobility as a result of their disability will not require mobility aids.⁹²

1.101 The PJCHR concluded that 'while the measure pursues a legitimate objective' the committee maintained its concern that the amended definition does not provide 'sufficient flexibility to ensure that any limitation on rights is proportionate in each case'.⁹³

1.102 The PJCHR proposed two suggested actions in relation to this measure:

- that the forthcoming NDIS rules allow for the NDIA to exercise discretion to provide supports beyond specified NDIS supports provided the participant has a demonstrated need as a result of their disability; and
- that the statement of compatibility for the bill be updated to reflect the information provided by the Minister.⁹⁴

⁹⁰ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, pp. 16–17.

⁹¹ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 20.

⁹² Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 21.

⁹³ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 25.

⁹⁴ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 26.

Proposed information gathering powers of the CEO

1.103 The PJCHR maintained its concern that the proposed information gathering powers of the CEO, specifically the ability to request that a participant undergo an assessment or examination and provide personal information, including sensitive medical information, engages and may limit the right to privacy.⁹⁵

1.104 The Minister provided reassurance that the proposed powers would only be used as prescribed in the forthcoming NDIS rules in circumstances where:

- there is reasonable evidence to suggest that the participant does not meet one of the relevant criteria; and
- the information requested is necessary for the purpose of considering whether the participant continues to meet the relevant criteria or not.⁹⁶

1.105 The PJCHR acknowledged that that the proposed information gathering powers of the CEO were intended to support of the legitimate objectives of improving the quality and consistency of NDIA decisions and was satisfied that the circumstances in which the right to privacy may be likely to be limited are sufficiently circumscribed.⁹⁷

1.106 The PJCHR proposed that the statement of compatibility with human rights for the bill be updated to reflect the information provided by the Minister.⁹⁸

Proposed approach to determining total funding amounts

1.107 The PJCHR maintained its concern that the proposed approach to determining total funding amounts poses 'a risk that the measures may result in fewer supports being approved and funded for participants'.⁹⁹

1.108 Specifically, the PJCHR expressed concern with the requirement that the Minister have regard to the financial sustainability of the NDIS when determining matters relating to working out total funding amounts and assessing participants' need for supports.¹⁰⁰

⁹⁵ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 27.

⁹⁶ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 30.

⁹⁷ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 33.

⁹⁸ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 33.

⁹⁹ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 34.

¹⁰⁰ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 34.

1.109 The PJCHR maintained its view that the proposed approach to determining total funding amounts would engage and may limit the:

- rights of persons with disability;
- rights to an adequate standard of living and health;
- right to social security; and
- to the extent that the measure applies to children, the rights of the child.¹⁰¹

1.110 The Minister provided reassurance that the requirement to have regard to the financial sustainability of the NDIS would necessarily be considered alongside:

- the principle that people with disability should be supported to receive reasonable and necessary supports, including early intervention supports
- the principle that reasonable and necessary supports for people with disability should:
 - support people with disability to pursue their goals and maximise their independence
 - support people with disability to live independently and to be included in the community as fully participating citizens
 - develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment.¹⁰²

1.111 With respect to balancing the competing priorities set out above, the Minister responded that 'generally equal weight should be given to each'.¹⁰³

1.112 The PJCHR maintained its concern that while the financial sustainability of the NDIS is 'an important policy aim':

...there remains a risk that the measures may be retrogressive in practice, as without any legislative or other guidance, there is a risk that the financial sustainability of the NDIS may be given greater weight than other matters, such as the needs of participants, and there do not appear to be sufficient safeguards accompanying the measures to mitigate this risk. The committee therefore considers that it has not been demonstrated that the proposed limitations on rights would be proportionate in all cases.¹⁰⁴

1.113 The PJCHR proposed two suggested actions in relation to this measure:

- that the proportionality of the measures may be strengthened by:

¹⁰¹ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 34.

¹⁰² Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 35.

¹⁰³ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 40.

¹⁰⁴ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 42.

- guidance co-designed by people with disability; and
- inclusion of the best interests of the child as a primary matter that the Minister must have regard to; and
- that the statement of compatibility for the bill be updated to reflect the information provided by the Minister.¹⁰⁵

Findings of the Senate Standing Committee for the Scrutiny of Bills

1.114 The Scrutiny of Bills committee maintained its concerns regarding the bill, including the most recent amendments, in its Scrutiny Digest 7 of 2024, tabled on 26 June 2024. These concerns were specifically around the:

- exemption from sunseting;
- broad delegation of administrative powers or functions; and
- the incorporation of external materials.

Exemption from sunseting

1.115 The Scrutiny of Bills committee reiterated its 'heightened' concerns regarding the proposed exemption of the forthcoming NDIS Rules and other instruments made under the NDIS Act from sunseting, via the insertion of item 42AC into section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015.¹⁰⁶

1.116 Sunseting provides for the automatic repeal of delegated legislation ten years after registration on the Federal Register of Legislation, to provide the Parliament, Ministers and agencies with an opportunity to review delegated legislation.¹⁰⁷

1.117 In response to concerns raised in relation to the proposed exemption from sunseting, the Minister advised the committee that the forthcoming NDIS rules are 'likely already exempt from sunseting under subsection 54(1) of the *Legislation Act 2003* and that this amendment seeks to clarify the exemption from sunseting'.¹⁰⁸

1.118 The Minister provided further justification that 'it is not appropriate for the Commonwealth to unilaterally repeal instruments that require agreement from state and territory governments to be made' and that 'it would be disempowering for the disability community for them to sunset'.¹⁰⁹

¹⁰⁵ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Report 5 of 2024*, 26 June 2024, p. 42.

¹⁰⁶ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, pp. 96–97.

¹⁰⁷ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 99.

¹⁰⁸ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 97.

¹⁰⁹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, pp. 97–98.

1.119 The Scrutiny of Bills committee stated that:

...the making of the NDIS rules is an exercise by the Commonwealth Executive of legislative power that has been delegated to it by the Commonwealth Parliament in pursuance of the objectives of a scheme legislated by the Parliament. As such, the committee is of the view that it would be entirely appropriate for the Parliament to maintain oversight of such instruments through the sunseting process.¹¹⁰

Broad delegation of administrative powers or functions

1.120 The Scrutiny of Bills committee raised further concerns with the broad delegation of administrative powers or functions to the CEO, or their delegate under the NDIS Act, the regulations or the NDIS rules and also queried whether these decisions are to be subject to independent review.¹¹¹

1.121 In response to these concerns, the Minister advised that:

...the bill does not expand the scope of the CEO's powers but rather confers necessary and appropriate powers that ensure the operation and implementation of new measures included in the bill.¹¹²

1.122 The Scrutiny of Bills committee maintained its concern that the proposed changes constitute an 'expansion of power' and expressed the view that the delegation of administrative powers and functions should 'be appropriately limited to individuals possessing appropriate training, qualifications, skills or experience, and this can be set out within the NDIS Act itself rather than relying on non-legislative operational guidance'.¹¹³

Incorporation of external materials

1.123 In relation to items 114, 36 and 39 of Schedule 1 of the bill, the Scrutiny of Bills committee had previously expressed concern that the incorporation of legislative provisions by reference to external materials and other documents that may not be readily or easily available may inhibit parliamentary scrutiny and create uncertainty for those obliged to obey, or those interested in, the law.¹¹⁴

1.124 The Minister concurred that the terms of the law, including any incorporated reference material, should be able to readily and freely accessible and committed that all incorporated documents would be available on the NDIA's website.¹¹⁵

¹¹⁰ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 99.

¹¹¹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 101.

¹¹² Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 102.

¹¹³ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 103.

¹¹⁴ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2024*, 15 May 2024, p. 32.

¹¹⁵ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 105.

1.125 The Scrutiny of Bills committee was satisfied with the Minister's commitment and made no further comment on the matter.¹¹⁶

Conduct of the inquiry

1.126 As noted above, the previous report of the committee considered 205 submissions and evidence from a range of academics, legal experts, professional peak bodies, care workers, participants, advocates and government officials over three public hearings held on 21 May, 22 May and 14 June 2024.¹¹⁷

1.127 In addition, the re-referred inquiry received 314 submissions, and a number of supplementary submissions, which are listed at Appendix 1.

1.128 The committee also received correspondence from approximately 90 individuals as part of an advocacy campaign via the digital lobbying platform DoGooder. An example submission from this campaign was published as Submission 151.

1.129 The committee heard further evidence from a range of stakeholders and government officials during three public hearings held in Canberra, and via videoconference, on 24 July, 25 July and 6 August 2024. Witnesses are listed at Appendix 2.

Note on references

1.130 References to Committee Hansard in this report are to proof transcripts. Page numbers may vary between proof and official transcripts.

1.131 References to explanatory memoranda in this report are to a range of materials, including revised, corrected and supplementary explanatory memoranda. The specific explanatory memoranda document is referenced in the footnotes.

Acknowledgements

1.132 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information, and appearing at public hearings. The committee is grateful to all those who have shared their experience, expertise, knowledge and ideas in support of improving the bill and amendments.

1.133 In particular, the committee acknowledges the contributions of people living with disabilities, their families, kinship networks and carers, who shared their personal experiences and perspectives throughout the inquiry. The evidence of

¹¹⁶ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2024*, 26 June 2024, p. 105.

¹¹⁷ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 36 (accessed 11 July 2024).

people with lived experience is critical to identifying issues within the NDIS and improving its operation.

Chapter 2

Views on the bill

The NDIS is achieving great things—extraordinary things—and it has won a place in the heart of the nation. But, at the same time, people with disability and their families need a fair system, must have certainty about the future and should not be put in a position where they can be easily exploited. I therefore cannot overstate how essential it is that this legislation is now passed without further delay or significant changes to its current balance.¹

- 2.1 Over the course of the inquiry the committee received evidence reflecting a range of views on the amendments to the bill currently before the Senate. Whilst submitters and witnesses were broadly supportive of the amendments, many raised concerns with some of the amendments.
- 2.2 The committee also received a significant amount of evidence that spoke to the broader NDIS reform context but did not specifically address the amendments being considered in this inquiry. As noted in Chapter 1, the current inquiry relates to the amendments currently before the Senate and does not seek to re-examine issues examined in the first report, specifically the purpose and key provisions of the bill and background information relating to the National Disability Insurance Scheme (NDIS, the Scheme) and the broader context for these reforms.
- 2.3 This chapter therefore examines key issues raised by submitters and witnesses on the amendments relating to:
 - unresolved issues around the definition of NDIS supports;
 - information gathering powers of the Chief Executive Officer (CEO);
 - consultation and co-design;
 - whole-of-person approach to determining support needs;
 - participant review rights;
 - debt raising provisions; and
 - the positions of state and territory governments.

Support for the amendments

- 2.4 Some submitters and witnesses offered support for the amendments to the bill currently before the Senate and the government's NDIS reform agenda more generally.

¹ Professor Bruce Bonyhady, Co-Chair (Former), NDIS Review, *Proof Committee Hansard*, 24 July 2024, p. 17.

- 2.5 For example, Ms Elly Desmarchelier, a disability rights campaigner and NDIS participant, offered her support for the bill and amendments at the public hearing on 24 July 2024, explaining that:

This bill and the amendments before us today deliver consistency, fairness, flexibility and the opportunity to put people with disability back at the centre of planning. I urge the committee to support the amendments before it, and I urge the Senate to move quickly to pass this bill.²

- 2.6 Ms Claire-Louise McCrackan, the CEO of Carers and Advocates Australia, also called for the bill to be passed, 'sooner rather than later'.³

- 2.7 Professor Bruce Bonyhady impressed upon the committee that the bill, and the amendments, should be urgently passed to ensure that the NDIS can achieve its promise, and purpose. He said that:

[T]hree reforms are essential at this time. People with disability and their families must be put back at the centre of the NDIS, we must restore trust and confidence in the scheme, and the NDIS must be sustainable. These three goals are inseparable. You cannot have one or two without the third. Today, the NDIS is not sustainable, it's not equitable and there are major problems with scheme integrity which are undermining confidence. In my view, as you consider this legislation, it is these issues—sustainability, equity and scheme integrity—which must now take priority so that the full NDIS vision can be delivered.⁴

- 2.8 This view was shared by Ms Robyn Shannon, Deputy Secretary of the Disability and Carers stream at the Department of Social Services (DSS), who explained that the bill is a starting point for further reforms:

It provides the scaffolding, the foundation—however you want to describe it. It gives us the mechanism to create those rule-making powers and then get on with the work together to make the rules.⁵

Issues raised in evidence

Unresolved issues around the definition of NDIS supports

- 2.9 The proposed definition of NDIS supports was a significant concern raised by many submitters to the previous inquiry that felt that it was too prescriptive, relied on the outdated Applied Principles and Tables of Support (APTOS tables)

² Ms Elly Desmarchelier, private capacity, *Proof Committee Hansard*, 24 July 2024, pp. 33-34.

³ Ms Claire-Louise McCrackan, CEO, Carers and Advocates Australia, *Proof Committee Hansard*, 24 July 2024, p. 35.

⁴ Professor Bruce Bonyhady, Co-Chair (Former), NDIS Review, *Proof Committee Hansard*, 24 July 2024, p. 17.

⁵ Ms Robyn Shannon, Deputy Secretary, Disability and Carers Stream, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 59.

and did not cover all the rights entrenched in the United Nations Convention on the Rights of Persons with Disability (UNCRPD).⁶

- 2.10 Despite further amendments to the proposed definition of NDIS supports which responded to the concerns raised by submitters to the previous inquiry and removed APTOS tables from the bill, a number of submitters and witnesses maintained unresolved issues with what they perceived as 'narrowly defined NDIS supports that have restrictive lists of permitted and prohibited supports'.⁷
- 2.11 Mr Darryl Steff, the CEO of Down Syndrome Australia, shared his view that:
- ...the approach that the NDIA and the department are trying to take with, in particular, the section 10 definition of 'NDIS supports' is to define them as the current state of what is and is not an NDIS support. Therefore, you would hope that that means that there are not too many supports that are completely removed, and therefore people relying on foundational supports.⁸
- 2.12 At the public hearing, Mr Matthew Swainson, the Acting Deputy CEO of the National Disability Insurance Agency (NDIA), responded to these concerns citing that the proposed definition is intended to provide clarity for participants and those assisting them 'what they're actually allowed to use their budgets to spend on'.⁹
- 2.13 Noting these concerns, the definition of NDIS supports set out in this bill will be subject to future changes in consultation with state and territory governments on the development of the NDIS rules, particularly the Category A NDIS rules, which require the unanimous agreement of states and territories.¹⁰

Information gathering powers of the CEO

- 2.14 Several submitters and witnesses shared their concerns around the proposed information gathering powers of the CEO of the National NDIA.¹¹ Responding

⁶ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, pp. 52–53 (accessed 11 July 2024).

⁷ Ms Nicole (Nick) Avery, Deputy Chair, Every Australian Counts, *Proof Committee Hansard*, 24 July 2024, p. 10. See also, South West Autism Network Inc (SWAN), *Submission 40*, p. 8; Victorian Mental Illness Awareness Council, *Submission 27*, pp. [5–6]; Griffith University, *Submission 74*, p. 3; Deafblind Australia, *Submission 111*, p. 1.

⁸ Mr Darryl Steff, Chief Executive Officer, Down Syndrome Australia, *Proof Committee Hansard*, 24 July 2024, p. 6.

⁹ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 40.

¹⁰ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 7.

¹¹ See, for example, Every Australian Counts, *Submission 47*, p. 6; People with Disability Australia, *Submission 107*, p. 21; Justice and Equity Centre, *Submission 19*, p. [4]; Disability Advocacy Network

to concerns raised in response to the original bill, and the committee's subsequent recommendation, the government has introduced amendments in the Senate to clarify the circumstances under which the proposed information gathering powers of the CEO can be used.¹²

2.15 The Justice and Equity Centre, welcomed the amendments in connection with information gathering powers, but called for further protections 'against operation of these powers'.¹³

2.16 Mr Steff asked for further clarification of how the NDIA CEO powers should be implemented, especially in circumstances where participants have not complied with requests for information:

We think there should be further amendments to sections 43 and 46 in particular, to identify what constitutes things like physical, mental and financial harm, and that some of those powers should be limited to being implemented only in certain circumstances, such as if there is repeat noncompliance with requests for information.¹⁴

2.17 Professor Bonyhady assured the committee that, in his view, the proposed CEO powers struck the right balance 'in terms of procedural fairness' because:

It enables the agency to collect the information that is absolutely essential for the scheme to be equitable and fair while, at the same time, ensuring that participants' rights are maintained in terms of what was expected of them.¹⁵

2.18 The DSS and NDIA in a joint submission stated that these amendments seek to 'provide additional clarity about how and when the CEO will exercise certain information gathering powers'.¹⁶

2.19 Ms Worswick, the Chief Counsel at DSS, explained the steps that were taken to respond to feedback from stakeholders regarding additional safeguarding:

Although requests for information from participants and other people under the Act are generally given in writing, it was seen as important by stakeholders that this be clarified in the legislation. It also ensures the CEO

Australia (DANA) on behalf of the National Coordination Function, *Submission 108*, p. 4; Disability Advocacy NSW *Submission 39*, p. 5; University of Queensland Union, *Submission 42*, p. 6; Australian Autism Alliance, *Submission 41*, p. 4; South West Autism Network (SWAN), *Submission 40*, p. 10; Allied Health Providers Australia, *Submission 61*, p. 7; Allied Health Providers Australia, *Submission 61*, p. 7.

¹² See Chapter 1 for a discussion of these proposed amendments.

¹³ Justice and Equity Centre, *Submission 19*, p. [4].

¹⁴ Mr Darryl Steff, Chief Executive Officer, Down Syndrome Australia, *Proof Committee Hansard*, 24 July 2024, p. 1.

¹⁵ Professor Bruce Bonyhady, Co-Chair (Former), NDIS Review, *Proof Committee Hansard*, 24 July 2024, p. 18.

¹⁶ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 6.

has the power to explicitly vary or revoke the request any time after it has been made. For example, if information was requested but then subsequently obtained from another source, it would no longer be required; that was made explicit in the provision.¹⁷

- 2.20 The committee notes that these amendments respond to concerns raised by submitters in the previous inquiry and propose additional safeguards. These amendments directly respond to Recommendation 3 of the committee in that report.¹⁸

Commitment to consultation and co-design

- 2.21 A number of submitters and witnesses welcomed the Minister's commitment to co-designing forthcoming legislative instruments and the NDIS rules with the disability community. The proposed government amendments require the Minister to provide a statement outlining what consultation and co-design have been undertaken for all legislative instruments under the NDIS Act (the Act).

- 2.22 However, some argued that the proposed amendments relating to consultation and co-design do not sufficiently require the Minister to adhere to these processes, and therefore may allow future Ministers to potentially circumvent the co-design process by simply having conceptual 'regard' to co-design as a principle, without genuinely engaging in a co-design process.¹⁹

- 2.23 Every Australian Counts articulated this concern, submitting that:

The Bill requires the Minister to consider co-design principles but stops short of making co-design mandatory, potentially leaving future ministers the option to ignore input from people with disability and their representative organisations. Although the proposed amendment for transparency in consultations is a step forward, a legal commitment to co-

¹⁷ Ms Bronwyn Worswick, Chief Counsel, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 8.

¹⁸ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 75. (accessed 11 July 2024).

¹⁹ See, for example, People with Disability Australia, *Submission 107*, p. 8; Osteopathy Australia, *Submission 7*, p. [5]; Victorian Mental Illness Awareness Council (VMIAC), *Submission 27*, p. [4–5]; Disability Advocacy Network Australia (DANA) on behalf of the National Coordination Function, *Submission 108*, p. 6; National Legal Aid, *Submission 67*, p. 2; Disability Advocacy NSW, *Submission 39*, p. 5; Dietitians Australia, *Submission 110*, p. 4; Victorian Council of Social Services (VCOSS), *Submission 109*, p. [4]; Kin Advocacy, *Submission 45*, p. 8; University of Queensland Union, *Submission 42*, p. 5; Foundation First Speech Pathology, *Submission 29*, p. [4]; Deafblind Australia, *Submission 111*, p. 5; Deafness Forum Australia, *Submission 112*, p. 3; Recovery In Mind Occupational Therapy, *Submission 172*, p. 1; South West Autism Network (SWAN), *Submission 40*, p. 6; Rainbow Speech Pathology, *Submission 49*, p. [2]; Allied Health Providers Australia, *Submission 61*, p. 6.

design is essential to uphold the disability community's rights in shaping the NDIS.²⁰

2.24 People with Disability Australia (PWDA) also acknowledged the government's commitment to co-design, but argued that 'the way people with disability are engaged must be made more explicit in the legislation'.²¹

2.25 Mr Tony Clark supported the bill and the amendments overall, stating:

Not moving forward would be catastrophic to the National Disability Insurance Scheme as a whole, given it will continue to erode public confidence.²²

2.26 However, at the public hearing on 24 July 2024 he called for changes to the language around co-design, because the term can be interpreted differently by different people. Mr Clark called for the words 'regarding co-design' to be removed and instead for the government to:

...actually encourage and facilitate through legislation the development of clear standards, of definitions and of ways that we can actually start to engage, to undertake and to develop mutually positive arrangements and outcomes not only for the people who have to process and manage the program but, most importantly, for the people who are using it.²³

2.27 At the public hearing on 24 July 2024, Dr George Taleporos, Independent Chair of Every Australian Counts and a Ministerial appointment to the NDIS Independent Advisory Council, stated that the co-design requirements need to extend beyond the process of co-design to acting in accordance with the outcomes of any co-design process. Dr Taleporos advised the committee:

The problem that we've had, though, is that we do all this co-design work and then the government comes along and says: 'No, no, no. This is what we're going to do.' As valuable and as wonderful as the work that the NDIA executives and staff are doing is, and as wonderful as their commitment is—I want to be on the record to say they are fully committed to co-design—it amounts to nothing when the government says: 'No, none of that. This is what we're going to do.' That is the problem that we have at the moment.²⁴

²⁰ Every Australian Counts, *Submission 47*, p. 2.

²¹ People with Disability Australia, *Submission 107*, p. 8.

²² Mr Tony Clark, private capacity, *Proof Committee Hansard*, 24 July 2024, p. 37.

²³ Mr Tony Clark, private capacity, *Proof Committee Hansard*, 24 July 2024, p. 36.

²⁴ Dr George Taleporos, Independent Chair of Every Australian Counts, *Proof Committee Hansard*, 24 July 2024, pp. 14–15.

2.28 The sentiment that 'having regard to' co-design is not the same as legally mandating co-design, and thus allows for ministerial circumvention of co-design, was expressed by several submitters.²⁵

2.29 The DSS and NDIA, in their joint submission, clarified that the amendments currently before the Senate are intended to 'explicitly require the Minister to have regard to the principle of co-design when making certain new legislative instruments'.²⁶ Ms Worswick explained the purpose of the amendment was to respond to feedback about the opportunity for stakeholders to be part of the making of instruments and rules under the Act and the committee's recommendation:

This amendment, in response to the committee's recommendation, requires an explicit explanatory statement to be included in legislative instruments made under the Act. Although the minister has that obligation to detail the consultation that has undertaken for a legislative instrument in any event by virtue of the Legislation Act and related matters—and that then is subject to parliamentary scrutiny—it was important for stakeholders to have confidence that they would see an explicit statement of that consultation. It clarifies and strengthens the obligations on the minister to include information about the degree and depth of the consultation that has been undertaken in the development of the content of the instruments.²⁷

2.30 The committee also heard that the NDIA's commitment to co-design continues its work since late 2022. Mr Swainson told the committee:

Under the current leadership, we've been putting in an enormous amount of effort in terms of reforming the agency's operations, in bringing the participant back to the centre of everything we do. That started with our Reform for Outcomes program, which is about our workforce and better planning. We've been using co-design groups to inform that work, and that work will continue; no matter what happens with the agency, we need to continue to work with participants to make sure the scheme is designed with them and for them.²⁸

2.31 The committee notes that these amendments respond to concerns raised by submitters to the previous inquiry that the Minister should be required to ensure appropriate consultation and co-design with the disability community on the design and implementation of legislative instruments made under the NDIS

²⁵ See, for example, Every Australian Counts, *Submission 47*, p. 5; Disability Advocacy Network Australia (DANA) on behalf of the National Coordination Function, *Submission 108*, p. 6.

²⁶ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 8.

²⁷ Ms Bronwyn Worswick, Chief Counsel, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 8.

²⁸ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 18.

Act. The committee welcomes this amendment, which directly actions Recommendation 2 of the committee's previous report.²⁹

Whole-of-person approach

2.32 Several submitters and witnesses expressed concern that the proposed amendments do not require a whole-of-person approach to determining a participant's support needs and therefore risk providing inadequate supports for people living with multiple, complex and interrelated disabilities.³⁰

2.33 Every Australian Counts submitted that the proposed approach imposed artificial distinctions that can result in funding gaps:

By limiting needs assessments and budget-setting methods to impairments that meet specific disability or early intervention criteria, the Bill imposes artificial distinctions that can result in insufficient funding for those with complex and interrelated needs. People with disability are impacted by all of our disabilities, not merely the ones that NDIA arbitrarily determine to have met access criteria. People with disabilities are whole people - our diagnoses cannot and should not be separated.³¹

2.34 At the public hearing on 24 July 2024, a number of witnesses acknowledged that while the proposed amendments seek to recognise whole-of-person support needs, the use of diagnostic lists determining what supports are, and are not, NDIS supports inherently risk extricating a participants NDIS needs from their non-NDIS needs, and thus failing to provide holistic support.³²

2.35 For example, Ms Catherine McAlpine, the CEO of Inclusion Australia outlined the importance of NDIS discretion for people with very complex support needs in individualised circumstances:

²⁹ Senate Community Affairs Legislation Committee, [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 \[Provisions\]: Report - June 2024](#), 20 June 2024, p. 73. (accessed 11 July 2024).

³⁰ See, for example, Victorian Mental Illness Awareness Council (VMIAAC), *Submission 27*, p. [3]; Justice and Equity Centre, *Submission 9*, p. [2]; Every Australian Counts, *Submission 47*, p. 5; People with Disability Australia, *Submission 107*, p. 12; Disability Advocacy Network Australia (DANA) on behalf of the National Coordination Function, *Submission 108*, p. 3; Disability Advocacy NSW, *Submission 39*, p. 2; Dietitians Australia, *Submission 110*, p. 5; Free and Equal Australia, *Submission 50*, p. [5]; University of Queensland Union, *Submission 42*, p. 5; Australian Autism Alliance, *Submission 41*, p. 7; Deafblind Australia, *Submission 111*, p. 8; South West Autism Network (SWAN), *Submission 40*, p. 6; Allied Health Providers Australia, *Submission 61*, p. 5.

³¹ Every Australian Counts, *Submission 47*, p. 5.

³² See, for example, Dr Georgia van Toorn, Lecturer, La Trobe Law School, *Proof Committee Hansard*, 24 July 2024, p. 40; Mr Darryl Steff, Chief Executive Officer, Down Syndrome Australia, *Proof Committee Hansard*, 24 July 2024, p. 8; Ms El Gibbs, Deputy Chief Executive Officer, Disability Advocacy Network Australia, *Proof Committee Hansard*, 24 July 2024, p. 25; Ms Marayke Jonkers, President, People with Disability Australia, *Proof Committee Hansard*, 24 July 2024, p. 26.

It is critical that a needs assessment consider the whole of person. For example, the experience of being hard of hearing is very different and very impactful if you already have an intellectual disability, and it can be very hard to diagnose/distinguish the respective impacts of having both an intellectual disability and autism.³³

2.36 Mr Darryl Steff, the CEO of Down Syndrome Australia, further provided explained that while generally supportive of many of the changes proposed in this area, there should be more clarity 'about which impairments have enabled the participant to access the scheme and for that to be communicated and identified to the participant'.³⁴

2.37 Ms Nick Avery, the Deputy Chair of Every Australian Counts, shared these concerns that the proposed planning framework 'does not fully accommodate individuals with multiple and interrelated disabilities' and as a consequence 'the framework risks insufficient funding for those with complex needs'.³⁵

2.38 However, the committee heard evidence from witnesses that supported the proposed amendments.

2.39 Ms El Gibbs, the Deputy Chief Executive Officer of Disability Advocacy Network Australia, acknowledged the improved posture of the bill in relation to whole-of-person considerations since the previous inquiry, noting:

When we came to talk to you last time, we were talking particularly around the whole-of-person section of the bill and the need for amendments. The government has come a significant way around that. We believe there are still some things left to do, and that is in our submission, which will ensure a person's full set of disabilities can be listed, considered and challenged. That challenge is very important; it's a reviewable decision.³⁶

2.40 Ms Desmarchelier, a disability advocate, offered support for the proposed amendments, describing them as strengthening the 'whole-of-person part of the needs based assessment'. She explained:

I want to be clear with people with disability here, because there is a fear campaign going on: this needs based assessment could not be further from what independent assessments were. Independent assessments were about functionality, about putting people with disability in boxes, about paternalistic, condescending questions—people coming in and saying, 'Show me how you make a sandwich.' These amendments ensure it's a holistic needs based assessment. They are about coming in and saying: 'In

³³ Ms Catherine McAlpine, CEO of Inclusion Australia, *Proof Committee Hansard*, 24 July 2024, p. 28.

³⁴ Mr Darryl Steff, Chief Executive Officer, Down Syndrome Australia, *Proof Committee Hansard*, 24 July 2024, p. 8.

³⁵ Ms Nicole (Nick) Avery, Deputy Chair, Every Australian Counts, *Proof Committee Hansard*, 24 July 2024, p. 10.

³⁶ Ms El Gibbs, Deputy Chief Executive Officer, Disability Advocacy Network Australia, *Proof Committee Hansard*, 24 July 2024, p. 25.

this part of your life, what supports do you need to just get on with it, to just do it? What support can we get you so you can get on with your life?' They're less about line items and more about the flexibility of budgets again. They're putting people with disability in the decision-making role.³⁷

- 2.41 The committee heard that, consistent with the NDIS Review recommendations, there is an intention for an assessment to consider the whole person. At the public hearing, Mr Swainson explained:

There is a clear intent through this legislation, as recommended by the review, for the assessment to consider the whole person. However, those impairments or needs arising from the impairments are those which are intended to be funded by the scheme. This recognises a person's significant and permanent disability can be impacted by other factors, whether those are other health related concerns or impairments or environmental factors.

In terms of assessment, the intent is that the assessment considers all those factors and how they impact on a person's impairment for which the scheme is intended... This is intended to provide quite a clear and transparent mechanism for assessing and making clear what the law says about what will and won't be funded under the scheme, which we don't currently have.³⁸

- 2.42 Ms Worswick, elaborated that while the assessment is intended to be holistic and 'take into account other environmental factors and other personal needs that the individual has that are quite distinct from their disability support needs', it still must be assessed within the limits of 'what the NDIS can ultimately and legitimately and properly fund'.³⁹

Participant review rights

- 2.43 A number of submitters and witnesses raised concerns around the perceived lack of participant review rights, specifically in relation to participant's ability to seek a review of their needs assessment report.⁴⁰

³⁷ Ms Elly Desmarchelier, *Proof Committee Hansard*, 24 July 2024, p. 37.

³⁸ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 43.

³⁹ Ms Bronwyn Worswick, Chief Counsel, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 44.

⁴⁰ See, for example, National Legal Aid, *Submission 67*, p. 2; People with Disability Australia, *Submission 107*, p. 8; Justice and Equity Centre, *Submission 9*, p. [3]; Every Australian Counts, *Submission 47*, p. 6; Disability Advocacy NSW, *Submission 39*, p. 3; Free and Equal Australia, *Submission 50*, p. [7]; Kin Advocacy, *Submission 45*, p. 9; Queensland Advocacy for Inclusion, *Submission 44*, p. 4; Foundation First Speech Pathology, *Submission 29*, p. [4]; South West Autism Network (SWAN), *Submission 40*, p. 7; Rainbow Speech Pathology, *Submission 49*, p. [3]; Queenslanders with Disability Network, *Submission 60*, p. [2].

2.44 Ms Lindsay Ash, a Senior Solicitor with Legal Aid NSW, told the committee that the bill would have a 'significant impact on participants' review rights' and explained that:

This is twofold, because the bill introduces new types of decisions that are not reviewable, including not allowing participants to challenge the basis on which they gain access to the scheme, and because the planning based on needs assessment reports will limit the scope of what a decision-maker can do on review and make it harder for it a participant to obtain independent decisions about their support needs.⁴¹

2.45 The Justice and Equity Centre submitted that the amendments did not provide a sufficient 'legislative definition of a participant's right to a replacement needs assessment' because currently this was left to the Rules. The Justice and Equity Centre explained that:

...proposed subsection 32L(7A) would allow NDIS Rules to govern when a replacement assessment should or should not be undertaken. As a needs assessment informs the funding for supports in an NDIS plan, covering a period of up to five years, it is crucial to provide a participant with procedural rights to ensure their assessment is accurate. This warrants the right to a replacement assessment being secured in the NDIS Act. As set out at section 7.2 of our Previous Submission, the Bill must expressly provide a participant with the right to access one replacement assessment in relation to each NDIS plan developed for them. Following a replacement assessment, if a participant requests a further replacement assessment in relation to that same plan the CEO should have the discretion to arrange one where appropriate.⁴²

2.46 Ms Avery from Every Australian Counts told the committee that the bill did not have a clear way for participants to appeal or replace needs assessments:

Provisions for replacement assessments remain vague, with no clear pathway for participants to request a replacement needs assessment. We recommend introducing amendments to make needs assessments a reviewable decision, allowing participants to appeal these assessments and related plan decisions. Further, there remains no right of appeal if the NDIA determines that a participant has incurred a debt, even if the debt was incurred through no fault of the participant or due to lack of information and support from the NDIA. All new decisions introduced by this bill must be reviewable, and no right of appeal should be removed.⁴³

2.47 Ms Belinda Kochanowska, the Principal Lawyer and Founder of Intrepidus Law explained why it is important that decisions under the NDIS Act be reviewable:

It is a fundamental tenant of democracy and the rule of law that a citizen have procedural fairness to question a decision made by government that

⁴¹ Ms Lindsay Ash, Senior Solicitor, Legal Aid NSW, *Proof Committee Hansard*, 24 July 2024, p. 39.

⁴² Justice and Equity Centre, *Submission 19*, p. [3].

⁴³ Ms Nicole (Nick) Avery, Deputy Chair, Every Australian Counts, *Proof Committee Hansard*, 24 July 2024, p. 10.

impacts them so intimately and to have the right to be heard or in particular provide further information and evidence about their disagreement with that government decision... there are a number of decisions included in the bill which lack review rights in circumstances which will significantly impact a person. It is essential these decisions are reviewable.⁴⁴

- 2.48 Regarding a review of the needs assessment report, officials from the NDIA explained that the amendments were deliberately drafted in such a way to ensure that NDIS participants have a budget and access to supports—rather than having no budget or supports while going through a review process. Ms Shannon explained that the objective was to 'get both a good policy outcome that balances people's rights to review and a timely outcome that gets them some support'.⁴⁵
- 2.49 As touched on in Chapter 1, government amendment (7) on sheet PA110 would insert a new legislative note under proposed subsection 32L(7) of the bill to clarify that a decision-maker, upon internal and external review, can arrange for a replacement needs assessment if the participant is not satisfied with their plan, including because they disagree with the needs assessment report that was used to develop their plan.⁴⁶
- 2.50 The NDIA absolutely assured that the committee that the supports needs assessment process will be subject to review. Mr Swainson told the committee:
- A participant is not losing their review rights under the arrangements which are reflected in the bill. It is just a quicker, simpler, easier process for a participant to access their review rights whilst moving forward and getting a plan in place.⁴⁷
- 2.51 The NDIA provided further assurance that the *Administrative Appeals Tribunal Act 1975* explicitly provides that the external reviewer, being the Administrative Appeals Tribunal (AAT), has before it all powers available to the original decision-maker, including the power to order a new needs assessment.⁴⁸

⁴⁴ Ms Belinda Kochanowska, Principal Lawyer and Founder, Intrepidus Law, *Proof Committee Hansard*, 24 July 2024, p. 38.

⁴⁵ Ms Robyn Shannon, Deputy Secretary, Disability and Carers Stream, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 48.

⁴⁶ Supplementary explanatory memorandum relating to sheet PA110, p. [6].

⁴⁷ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 48.

⁴⁸ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 47.

2.52 In his second reading speech, the Minister provided additional assurance that the bill 'makes no changes to internal or external review rights in regard to participants' plans'.⁴⁹

Debt recovery provisions

2.53 While it does not specifically relate to the amendments, some submitters and witnesses raised concerns around the proposed debt recovery provisions in the bill, citing the lack of sufficient protections for participants as reminiscent of the robodebt scheme.⁵⁰

2.54 Mr Miles Browne, Managing Lawyer, Economic and Social Rights Program at National Legal Aid outlined his concerns about the small number of decisions that would be reviewable under the Act, arguing that the bill risks creating:

...an environment where a person can't just go and have a contest or a dispute with the agency about whether they should have a debt in the first place... it is very surprising, in legislation of this type, in a circumstance where we're going to see far more debts raised against participants, that these fundamental debt protections do not exist... in robodebt, at least people could seek a review of their debt.⁵¹

2.55 Dr Darren O'Donovan, Senior Lecturer, La Trobe Law School, outlined why he considered that the raising of a debt must be reviewable:

Debt raising itself needs to be reviewable. It surprises people in the 2013 Act. You can only review the refusal to waive a debt. But a debt in this bill is a compliance event that can change your plan management. So we need to have a review of the original birth of the debt. When a debt is created, I'd love a commission that is resourced to charge in and get to the bottom of it to ensure that we don't have elements of abuse in driving that debt. I would love to have an agency that comes in with the first idea of supported decision-making.⁵²

⁴⁹ The Hon. Bill Shorten MP, Minister for the National Disability Insurance Scheme and Minister for Government Services, *House of Representatives Hansard*, 5 June 2024, p. 35.

⁵⁰ See, for example, Foundation First Speech Pathology, *Submission 29*, p. [4]; Australian Psychosocial Disability Collective, *Submission 71*, p. 2; Free and Equal Australia, *Submission 50*, p. [2]; Ms Cat Walker, Mr Uli Cartwright & Ms Kath Madgwick, *Submission 183*, p. 1; Ms Marayke Jonkers, President, People with Disability Australia, *Proof Committee Hansard*, 24 July 2024, p. 24; Ms Belinda Kochanowska, Principal Lawyer and Founder, Intrepidus Law, *Proof Committee Hansard*, 24 July 2024, p. 41.

⁵¹ Mr Miles Browne, National Legal Aid, Managing Lawyer, Economic and Social Rights Program, *Proof Committee Hansard*, 24 July 2024, pp. 42–43.

⁵² Dr Darren O'Donovan, Senior Lecturer, La Trobe Law School, *Proof Committee Hansard*, 24 July 2024, p. 42.

2.56 The committee heard that there were no elements of automated decision making in connection with debt. Mr Swainson further explained that 'there is nothing in here which authorises an automated or algorithmic decision-making process'.⁵³

2.57 In his second reading speech, the Minister rejected the suggestion that automated decision-making would be utilised to raise debts against NDIS participants:

There is nothing in this bill that has anything to do with robodebt and there is nothing in this bill that requires or allows automated decision-making or the use of algorithms.⁵⁴

State and territory views

2.58 The Council for the Australian Federation (CAF) is the peak representative body for state and territory leaders in Australia. Through CAF, states and territories commented on the amendments to the bill.

2.59 In their submission to the previous inquiry, CAF raised several concerns around the following matters:

- The lack of meaningful consultation with the disability community, or with states and territories, on the legislation;
- the risk of emerging service gaps for people with disability resulting from the complexity of the legislation;
- the unsuitability of the proposed transitional mechanisms;
- the lack of appropriate safeguards around the expanded powers of the Federal Minister and the NDIA; and
- insufficient attention to the failures of the NDIS Act and the NDIS Quality and Safeguards Commission.⁵⁵

2.60 In their submission to the current inquiry, CAF acknowledged that the proposed amendments address several of these concerns. However, they maintained their concern that the bill:

- risks creating service gaps for people with disability by altering the operation of the NDIS before improvements are made to the broader disability ecosystem, including the implementation of Foundational Supports; and

⁵³ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 45.

⁵⁴ The Hon. Bill Shorten MP, Minister for the National Disability Insurance Scheme and Minister for Government Services, *House of Representatives Hansard*, 5 June 2024, p. 35.

⁵⁵ Council for the Australian Federation, *Submission 106 - Attachment 1*, pp. 3–4.

- does not sufficiently ensure that states and territories' role in scheme governance is maintained, to support safeguarding against unintended consequences which may lead to worse outcomes for NDIS participants.⁵⁶
- 2.61 CAF's priority concerns are centred on Schedule 1 to the bill, and specifically the forthcoming Category A NDIS Rules that will require the unanimous agreement of states and territories in order to come in effect. CAF resubmitted their recommendation that Schedule 1 to the bill be amended to defer commencement until all Category A NDIS Rules should be developed and agreed.⁵⁷
- 2.62 CAF submitted their support for Schedule 2 of the bill and conveyed the view that this schedule should commence 28 days after the Act receives Royal assent, in line with the current intent of the Bill.⁵⁸
- 2.63 CAF reiterated that states and territories 'remain wholeheartedly committed to supporting disability system reform to improve the experience and outcomes of people with disability'.⁵⁹
- 2.64 In their joint submission, the DSS and NDIA addressed the concerns of states and territories regarding Schedule 1 of the bill, outlining that the bill seeks to establish the 'enabling framework' required to support the development of the forthcoming NDIS rules and future reforms and that the majority of the changes 'do not take effect until activated by future changes to NDIS rules and instruments'.⁶⁰
- 2.65 At the public hearing on 25 July 2025 officials from DSS assured that committee that the government is working closely with state and territory governments in good faith. Ms Shannon outlined the regular engagement and consultation with state and territory governments:

[W]e have a disability senior officials group that's meeting fortnightly. Noting that this work really commenced post National Cabinet in December last year, that group's met at least 10 times. It's meeting with quite an intense rhythm at the moment. There's also a disability department heads forum that I chair that has met eight times this year, where the legislation is typically a key agenda item. Ministers themselves meet through the Disability Reform Ministerial Council every six to 12 weeks, and they've met

⁵⁶ Council for the Australian Federation, *Submission 106*, p. 1.

⁵⁷ Council for the Australian Federation, *Submission 106 - Attachment 1*, p. 12.

⁵⁸ Council for the Australian Federation, *Submission 106*, p. 1.

⁵⁹ Council for the Australian Federation, *Submission 106*, p. 1.

⁶⁰ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 7.

three times so far this year, with another meeting scheduled for later in August.⁶¹

- 2.66 CAF also raised concerns about the bill's ability to adequately address the issues of provider fraud and misconduct identified in the NDIS Review. Though Schedule 2 of the bill contains amendments which aim to improve quality and compliance measures in the NDIS, CAF argued that they did not go far enough:

States and territories are concerned that these provisions do not go far enough to address the serious known issues of provider fraud and misconduct. There are further opportunities to improve the integrity of the NDIS through legislative changes, which should be progressed and implemented as a priority.⁶²

- 2.67 The committee notes that CAF, and state and territory leaders, declined repeated invitations to appear at a public hearing to engage in further dialogue on their concerns.

Consideration of the proposed amendments circulated by Senator Thorpe

- 2.68 The First Peoples Disability Network (FPDN) expressed their strong support for the proposed amendments circulated by Senator Thorpe and noted that the amendments:

... represent the amendments FPDN has been advocating for, in addition to eliminating the uncertainty for people with disability leaving incarceration. The Amendments... amplify the rights and needs of First Nations people with disability.⁶³

- 2.69 The ongoing work of the FPDN advocating for better outcomes for First Nations people with disability, their families and communities, and by extension, the amendments circulated by Senator Thorpe were also endorsed by SNAICC – National Voice for our Children, the peak body for Aboriginal and Torres Strait Islander children, the Victorian Mental Illness Awareness Council and the University of Queensland Union.⁶⁴

- 2.70 At the public hearing on 25 July 2024, Ms Worswick indicated that the government was considering supporting amendments (1) and (2) on sheet 2671 circulated by Senator Thorpe, which would require that at least 1 member of the

⁶¹ Ms Robyn Shannon, Deputy Secretary, Disability and Carers Stream, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 53.

⁶² Council for the Australian Federation, *Submission 106*, p. 23.

⁶³ First Peoples Disability Network, *Submission 52*, p. 2.

⁶⁴ SNAICC – National Voice for our Children, *Submission 43*, pp. [3–4]; Victorian Mental Illness Awareness Council, *Submission 27*, p. [2]; University of Queensland Union, *Submission 42*, p. 6.

NDIA Board must be an Aboriginal person or Torres Strait Islander person who has lived experience with disability.⁶⁵

- 2.71 This amendment is aligned with Recommendation 9.6 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.⁶⁶ In its response to the Royal Commission released on 30 July 2024, the government accepted this recommendation in principle.⁶⁷
- 2.72 In their joint submission, the DSS and NDIA confirmed that the government would consider each of these amendments in the lead up to the Committee of the Whole stage in the Senate.⁶⁸

Committee view

- 2.73 Since the National Disability Insurance Scheme was established in 2013, it has been transformative for many people with a disability and their families through increased economic, social and community participation. It is critical that changes to the NDIS are implemented in-step with NDIS participants, their advocates, families and kin networks, who depend on the scheme's ability to continue to provide quality, safe and sustainable supports into the future.
- 2.74 The committee notes that the bill includes both provisions to ensure the sustainability and integrity of the NDIS that would be implemented immediately, as well as rule-making powers providing for future reforms to be developed in consultation with participants, the wider disability sector, and states and territories.⁶⁹
- 2.75 It is the committee's view that it is essential that the government continues to undertake appropriate consultation and co-design with the disability community on the design and implementation of reforms to the NDIS.
- 2.76 The committee notes that this is the second inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024. On 27 June 2024, the Senate re-referred the provisions of the bill, including

⁶⁵ Ms Bronwyn Worswick, Chief Counsel in the Legal Services Group at the Department of Social Services, *Proof Committee Hansard*, 25 July 2024, pp. 8–9. A decision had not yet been made to support or not to support.

⁶⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report, Volume 9: First Nations people with disability](#), 29 September 2023, p. 9 (accessed 30 July 2024).

⁶⁷ Department of Social Services, [Australian Government Response to the Disability Royal Commission](#), 30 July 2024, p. 189 (accessed 30 July 2024).

⁶⁸ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20*, p. 9.

⁶⁹ The Hon Bill Shorten MP, Minister for the NDIS, House of Representatives Hansard, 5 June 2024, p. 34.

examining any circulated amendments to the bill and the positions of state and territory governments, to the committee for further inquiry.

- 2.77 The first inquiry reported on 20 June 2024 and made four recommendations, including that the bill be passed. These recommendations remain unchanged. This report and committee view is focussed on the circulated amendments to the bill and the views of state and territory governments.
- 2.78 The committee is concerned by the significant costs of a delay of passage of the bill for the Australian taxpayer. In particular, the committee notes the estimates of the Scheme Actuary that the existing 'two-month delay in the passage of the Bill is estimated to result in a \$1.06 billion increase to NDIS expenditure over the forward estimates'.⁷⁰ The significant costs connected to the delay was confirmed by the Scheme Actuary at a public hearing on 6 August 2024.⁷¹
- 2.79 The committee supports the further amendments which have passed the House of Representatives and the government amendments before the Senate. The committee is of the view that these amendments have improved the bill and notes that some of these amendments directly action the recommendations made by the committee in its previous report as discussed in Chapter 1.
- 2.80 Specifically, the committee notes that the recommendations of its previous report have been addressed by the amendments proposed by the government in the Senate on sheet PA112:
- Recommendation 1, that the bill include amendments so that First Ministers are also recognised as Ministers for the purposes of Category A rule-making, has been addressed by amendment (1);
 - Recommendation 2, that a consultation statement be tabled accompanying legislative instruments that sets out consultations undertaken, has been addressed by amendment (18); and
 - Recommendation 3, that the government further clarify the circumstances under which the additional powers granted to the National Disability Insurance Agency Chief Executive Officer will be used, has been addressed by amendments (2) through (5), (13) and (14).
- 2.81 The committee also notes that the government's circulated amendments (6) and through (11) address the Committee's concerns, raised in its previous report, that it had 'received significant evidence relating to the provisions on support needs assessments, with many submitters holding concerns regarding new section 32L and its relevant subsections'. In particular, witnesses raised concerns about the ability of the assessment to deliver a 'whole of person budget'. The government amendments clarify the scope of the needs assessment conducted

⁷⁰ Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA), *Submission 20.1*, p. 1.

⁷¹ Mr David Gifford, Scheme Actuary, NDIA, *Proof Committee Hansard*, 6 August 2024 p, 6.

under new section 32L and make it clear that the needs assessment is undertaken by examining the entirety of a participant's disability related needs. They do not alter the position that funding may only be provided in respect of impairments that meet the disability requirements or early intervention requirements.

- 2.82 The bill, and associated government amendments, are the first legislative step to implement the recommendations of the NDIS Review. This will restore the scheme to its original intent and put participants back at the centre of the NDIS.
- 2.83 The committee notes concerns raised by submitters about debt recovery provisions in the bill, but is satisfied that the bill does not attempt to change or create any new debt recovery powers: section 182 of the Act remains the same. The committee considers that the proposed changes to section 46, which provide greater clarity in terms of what participants can and cannot spend their plan on, are measured and needed to ensure that funds are only used for supports appropriately funded by the NDIS.
- 2.84 In relation to information gathering powers of the CEO, the committee notes the concerns raised by some stakeholders. The committee endorses the government's proposed amendments in response to the previous inquiry's recommendation on this issue, and considers that these amendments provide improved additional safeguards. The committee is also reassured by the evidence provided by officials that further safeguards on these powers will be contained in the forthcoming NDIS rules.
- 2.85 With respect to the definition of supports in the NDIS, the committee notes the evidence from the NDIA that the proposed definition would help to clarify and identify the constitutional basis of the NDIS and has been drafted to provide the NDIA 'with the ability to give participants and providers clarity around what can and cannot be appropriately funded in the NDIS'.⁷² The committee notes that the development of the transitional and the Category A NDIS rules, which require the unanimous agreement of states and territories, will provide further opportunity for consultation on the definition of NDIS supports.
- 2.86 The committee heard some evidence regarding the needs assessment process proposed by the bill. The committee considers that the amendments introduced by the government further ensure that the needs assessment will take a holistic approach to assessing a participant's disability support needs. The proposed changes also, importantly, provide a clear statement of what the NDIS will and will not fund. This transparency would provide important clarity for NDIS participants, their families and providers.

⁷² Ms Robyn Shannon, Deputy Secretary, Disability and Carers, Department of Social Services, *Proof Committee Hansard*, 25 July 2024, p. 3.

- 2.87 The committee heard concerns of some submitters regarding external or internal review rights in connection with participant plans. However, the committee notes evidence from officials that the bill proposes no changes to existing rights.⁷³ The proposed planning framework would provide participants with internal and external review of their plan, and this would include their reasonable and necessary budget arising from a holistic needs assessment.
- 2.88 While some stakeholders have expressed concerns about consultation and co-design, the committee considers that the government has demonstrated a strong commitment to both. The government has responded to concerns raised by submitters to the previous inquiry, which led to the Recommendation 2 of the committee's previous report, that a consultation statement be tabled by the Minister accompanying a legislative instrument that sets out consultations undertaken on that instrument. These amendments would directly address this recommendation.
- 2.89 The committee also acknowledges the amendments circulated by Senator Lidia Thorpe, as discussed in Chapter 1. Accepting Senator Thorpe's amendments (1) and (2) on sheet 2671, or a variation thereof, would implement Recommendation 9.6 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability that the 'NDIS Act should be amended to provide that the NDIA Board must include at least one First Nations person at all times'.⁷⁴
- 2.90 The committee heard from the NDIA that the bill introduces measures that aim to help participants and make it easy for participants to do the right thing.⁷⁵ This is intended to strengthen the integrity of the scheme. However, the committee also heard that integrity is not a specific function of the NDIA and that this creates a level of uncertainty about the scope of functions that the NDIA are enabled to do to strengthen integrity.⁷⁶ Officials provided evidence to the committee that more could be done to improve integrity in the NDIS, such as strengthening the claiming framework to ensure the validity of payments.⁷⁷

⁷³ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 48.

⁷⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report, Volume 9: First Nations people with disability](#), 29 September 2023, p. 9 (accessed 30 July 2024).

⁷⁵ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 29.

⁷⁶ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 52.

⁷⁷ Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, NDIA, *Proof Committee Hansard*, 25 July 2024, p. 47.

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- 2.91 The committee strongly encourages the government to consider potential further changes that would provide strengthened protections against provider fraud and to strengthen scheme integrity. This would also address the concerns of state and territory governments regarding provider fraud and misconduct identified in the NDIS Review, and the recommendation in CAF's submission that 'the Bill be amended to strengthen quality, safeguarding, fraud and compliance measures'.⁷⁸
- 2.92 The committee thanks all participants for their input into both inquiries into this bill. We acknowledge the significant engagement from the disability community on this bill and the concerns raised by witnesses and submitters. The committee believes that people with disability deserve an NDIS that both delivers the best outcomes for them, and is safe from exploitation, and that the prompt passage of this bill is critical to restore certainty and sustainability for NDIS participants and their providers, and to strengthen the integrity of the NDIS.
- 2.93 Additionally, the committee is of the view that the bill has been strengthened by the amendments introduced by the government in the Senate, in recognition of concerns raised by the disability community, sector, and experts, as well as the committee's previous report.

Recommendation 1

- 2.94 The committee recommends that the bill be passed as soon as practicable.**

Senator Marielle Smith
Chair

⁷⁸ Council for the Australian Federation, *Submission 106*, p. 23.

Coalition Senators Additional Comments

Introduction

1.1 The National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions] intends to reform the National Disability Insurance Scheme to create a stronger, more sustainable program that supports people with disability. A number of questions remain unanswered due to important measures yet to be finalised at the time of writing. According to NDIS Minister Bill Shorten, the Bill will 'usher in a new era of NDIS reforms that ensure the Scheme can continue to provide life-changing outcomes for future generations of Australians with disability and to make sure every dollar in the Scheme gets to the participants for whom the Scheme was designed'. We expect this is merely a first tranche in a suite of policy measures that will be rolled out, but already, there are large gaps that threaten to become chasms in due course if not addressed. The Coalition seeks to make the government and the public aware of these to ensure this legislation is an air tight, ironclad bedrock that future policies might build on in this reclamation project for Australians living with lifelong and permanent disability.

Summary of the Legislation

1.2 This Bill amends the NDIS Act 2013 to:

- Require the NDIA to provide participants with a clear statement of the basis on which they entered the NDIS. The Bill will also clarify and expand the NDIS rules relating to access provisions, including the methods or criteria to be applied when making decisions about the disability and early intervention criteria and the matters which must or must not be taken into account.
- Create the new reasonable and necessary budget framework for the preparation of NDIS participants' plans. The Bill provides for 'new framework plans' to be developed in accordance with a new budget framework. Participants will receive funding based on whether they accessed the Scheme on the basis of impairments that meet the disability requirements or the early intervention requirements or both.
- Provide for the needs assessment process and the method for calculating the total amount of the participant's flexible funding and funding for stated supports for new framework plans to be specified in legislative instruments and NDIS rules.
- Insert a new definition of 'NDIS supports' which will provide a clear definition for all participants of the authorised supports that will be funded by the NDIS and those that will not.
- Insert measures focussed on protecting participants including: allowing the CEO to specify the total funding amount for reasonable and necessary

supports together with the funding component amount under the plan for each support or class of support up to a specified amount; Clarifying the requirement that an NDIS participant who receives an amount or amounts for NDIS supports may only spend that money in accordance with the participant's plan; and enabling the NDIA to change the plan management type, as well as impose shorter funding periods to safeguard the participant who may be exploited or coerced to use their package in a way not consistent with their best interest.

- Inserts quality and safeguard amendments, enabling the imposition of conditions on approved quality auditors to not employ or engage a person against whom a banning order has been made, and to enable greater delegation of the Commissioner's compliance and enforcement powers to specified positions.
- 1.3 The Bill contains two schedules. Schedule 1 sets out the new definition of NDIS supports; clarifies the process for reassessment of participant status; provision for participants to transition to a new framework plan; provision for new framework plans that include a flexible budget and budget for stated supports; old framework plans to have total funding amount; updates to circumstances in which the Agency will manage funds; specification of the requirement that participants spend money only on NDIS supports and in accordance with their plan; and exemptions for NDIS rules from sunseting. The instrument would regulate the system and make determinations on which stream people are applied to. It would regulate and assess those who are temporary supports and permanent ones.
- 1.4 Schedule 2 of the Bill enables the Commission to attach conditions to the approval of an approved quality auditor. This schedule will also strengthen the NDIS Commissioner's ability to take regulatory actions by delegating certain compliance and enforcement powers and functions.
- 1.5 The expectation would be, the implementation of these new measures would reduce the cost burden of taxpayers on the scheme and cap growth at 8% p.a.

Coalition Commitment

- 1.6 The Coalition will work constructively with the Government on this NDIS overhaul, because we believe the scheme is for everyone and is a valuable support for many Australians, sitting beyond partisan politics and tit-for-tat opportunism. The reality is, no one knows when they might require its services, and the existence of such a scheme, as a safety net for our most vulnerable, speaks volumes to the character and goodwill of Australians at large.
- 1.7 Unfortunately, in recent times, the aligned priorities for the scheme have begun to diverge and have disappointingly become somewhat more political, to the detriment of all those concerned with the scheme's success.

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- 1.8 The Coalition remains committed to a NDIS that is person-oriented, responsive, sustainable, and continues to provide vital support for participants, but it in turn, will not simply support poorly formed policy, nor will it hand the government a blank cheque.
 - 1.9 Collaboration is not marked by fierce agreement, rather the willingness to critique and be critiqued in the pursuit of a common good.
 - 1.10 The Coalition believes the Government ought to outline how the measures included in this Bill will achieve the projected savings and contribute to the overall sustainability of the scheme, while addressing the diverse needs of NDIS participants, sooner rather than later. A number of stakeholders have raised concerns anecdotally with their local members and patron senators about the uncertainty that remains around the NDIS. Whether or not this is indeed the case, the government must acknowledge public perception and work to allay the fears of Australians living with disability, as well as providers, plan managers and all adjacent services and individuals impacted by the scheme.
 - 1.11 As it stands, the current proposed legislation remains ambiguous and is therefore difficult to meaningfully engage with, and it holds additional, serious concerns around potential litigation arising from absent detail and minimal clarity as to how savings will be achieved and growth will be capped. The NDIS remains one of the largest costs to taxpayers and sources of budgetary blowout for the government.
 - 1.12 Labor went to the 2022 election claiming the Coalition were slashing NDIS plans by up to 90 per cent 'leaving people with disability without the supports they need for daily life and cutting funding for autistic children, stopping them from accessing the scheme'. As part of its 'Better Future for the NDIS' election policy, to get the Scheme back on the right track, Labor committed to review the NDIS design, operation and sustainability with the findings of the Review to guide the Government on priority areas of reform.
 - 1.13 The final report of the NDIS review 'Working together to deliver the NDIS' was released on 7 December, making 26 recommendations and 139 supporting actions. The final report noted all recommendations and actions be implemented as a package to achieve a more inclusive and fairer Australia for all people with disability. Among the recommendations, the Review recommended legislative reforms to improve eligibility and access and an early intervention pathway for children. Foundational supports were recommended that would be available to people with disability and in some cases if appropriate families and carers. Foundational supports would be available to all Australians with disability regardless if they are on the NDIS or not. These supports would interconnect with existing services such as schools and childcare. Early childhood intervention would help children with disability and developmental delays be identified early and receive the support needed. Another recommendation was

a new approach for those with psychosocial conditions, to better meet episodic needs and focused on personal recovery. Service navigation was also recommended to help people with disability find and access the services that are available to them, including mainstream services, community supports and the NDIS. The amendments in this Bill give effect to NDIS Review recommendation 3 and elements in recommendations 5, 6 and 7. The amendments also support the partial implementation of recommendation 17.

- 1.14 All of these processes have been crucial in identifying areas of concern and specific choke points in the administration of the scheme, however, instead of a process of rolling reform and consultation, the government has chosen to receive in full, the recommendations and findings of various reviews as a whole, before considering its response. The Coalition reserves judgement as to whether this was or was not the correct approach; rather responding to the information which is now before us.
- 1.15 The Bill provides concepts and processes without much detail and was described by the Minister as 'scaffolding'. Further detail is to be included once consultation has occurred with the disability community and states and territories. This approach, means engagement can only occur in a piecemeal fashion, with the expectation or hope that that which is lacking in present legislation, shall be included in forthcoming tranches. This proves difficult to adequately scrutinise, and limits the certainty with which participants and providers are offered at any given time, but the nature of rolling reform does provide for changes to occur more expediently than waiting for a comprehensive and complete framework, one would assume.

State & Territory Responsibilities

- 1.16 It is imperative states are brought back to the table, and service providers are making themselves available to all people in need if we are to succeed in reigning in spending on the scheme whilst ensuring that the community still has ample access to various supports. Some providers have seen the opportunities presented for greater profitability through the NDIS and have jumped at it, leaving services beyond the scheme sparsely available and financially unviable. States ultimately have better access to community health services and therefore should return to the field. Rather, in partnering more closely with the Commonwealth, it can be ensured there are services sitting beyond the NDIS that are readily available for members of the community who do not require significant and lifelong supports.
- 1.17 Last year the Government announced the imposition of the National Disability Insurance Scheme growth cap of 8 per cent by 1 July 2026. Nowhere in this legislation is there an outline or an explanation of where the savings will be made. When the Coalition was in government and sought to put the scheme on a sustainable footing, Labor ran its 'Hands off our NDIS' campaign claiming the

Coalition were to slash plans. Plans will likely be reduced following these reforms (and future reforms) if the Scheme is to be put on a sustainable footing. State premiers attempted to delay the introduction of this legislation, accusing the Commonwealth of going far beyond the scope of the funding deal announced last year. NSW Premier Chris Minns warned people could end up off the NDIS and without suitable services. Reports in *The Australian* also revealed growing concern in the Labor Party about the absence of costings and modelling. Victorian Premier Jacinta Allen said 'We do not believe...that it reflects the agreement that was struck by first ministers at national cabinet last December.'

- 1.18 While Minister Shorten argued any delay to the passage of the legislation would have a financial impact on the scheme, the Coalition sought to hear from state and territory officials about what commitments - if any - had been made to ensure and assure the disability community that supports would exist beyond the scope of the scheme.
- 1.19 An entire inquiry day was set aside for this. Unfortunately, not a single minister from any jurisdiction appeared before the committee.
- 1.20 State and Territory governments must be held accountable and must do their part in ensuring supports exist for people with a disability in their jurisdictions, not only to alleviate pressures on taxpayers in the sustainability of the NDIS, but because of their obligations to administer health services and supports for all Australians in their respective jurisdictions, of which they are presently failing.
- 1.21 There must be clearly outlined responsibilities and rules for state and territory governments to avoid ambiguity about service delivery expectations. These statements should be prepared and published as soon as is practicable on a departmental website.

Choice and Control

- 1.22 Choice and control lies at the heart of providing participants with a sense of empowerment, enabling them to live as comfortably as possible without the cumbersome limitations of an already difficult situation coping with the difficulties of disability as well as navigating supports.
- 1.23 The Coalition feels this lens should be applied as consistently as possible, enabling participants to tailor their plans to their needs, where applicable and appropriate, rather than a one-size-fits all approach.

Financial Sustainability

- 1.24 There is a pessimistic view in the disability community that expected cost savings to reduce the rate of cost growth (targeting 8% p.a) will not eventuate, and participant outcomes, and potential safe access to essential disability support, could be compromised by the changes contained in the Bill. The

Coalition agrees the Bill fails to clearly articulate where the savings are to be made to put the Scheme back on a sustainable financial footing.

- 1.25 A large portion of the uncertainty embedded within the scheme sits with the opacity over the 8% growth cap. There remains little detail on how the growth cap will be met, if it is indeed even met at all. Indexation of fees continues to see increasing fees charged on individuals still struggling to navigate services to access affordable providers. There is no transparency over the apparent looming \$60bn black hole that is hovering over the scheme.
- 1.26 The NDIS Scheme Actuary has outlined that the \$14.4 billion of savings across the forward estimates results from changes to intraplan inflation and budget model efficiencies. However, the NDIA, DSS and the Government have refused to release the actuarial data and modelling to support the savings, despite consistent calls from the Coalition. In addition, the lack of cooperation in providing necessary information to scrutinise the Bill through the committee process, including questions on notice, is of deep concern.
- 1.27 The Coalition has called for the government to release the NDIS Financial Stability Framework and the cost savings to be made by this legislation and to provide a detailed outline of the inevitable cuts that participants should expect as a result of these changes.
- 1.28 Providers themselves are taking advantage of significant opportunities for increased profitability by charging at the top end of the price guide. Because of the price guide, service providers on the scheme can make significantly more than if they were off the scheme, leading participants' budgets to increase in line with the additional costs. Dissolving the price guide and replacing it with one more consistent with fees charged across the sector will assist in driving down cost pressures on the scheme.
- 1.29 Despite the Prime Minister's pre-election commitment running a government of transparency and honesty, the Albanese Labor government has been marked its inability to provide detail, timely information or be forthcoming about various financial or social implications as a result of its policies. If reform of the scheme is to be possible, it is imperative that the NDIA and the government begin to restore the faith and trust of the community by beginning to be transparent about the state of the scheme.
- 1.30 The NDIA must ensure the financial sustainability of the scheme and release the Financial Stability Framework outlining cost savings and sustainability at the 8%p.a. growth target. This should be done in order to provide greater clarity and certainty around the scheme's trajectory, for greater accountability, and where cuts and savings have and will be made.
- 1.31 It must also publish reports and statistical summaries on a website outlining total amounts of paid supports for participants each month, the number of participants on the scheme, and average annualised payments made to

participants in order to increase transparency and accountability of the agency, providers, and participants alike.

Rorts & Misuse of the Scheme

- 1.32 There is a complex balancing act that must be applied when legislating around the issue of rorts and misuse of the scheme. It is, after all, the area that garners the most media attention. However, the pursuit of justice must be applied most intentionally and carefully so as to not punish participants for the actions of the few who abuse the system. During the most recent round of Senate Estimates hearings, we heard from NDIS Head of Fraud and Integrity John Dardo who told the committee up to \$2 billion in NDIS funding was being misused, with revelations there were criminal syndicates using the scheme to sell and traffic illegal substances. In recent years, there have also been indications of NDIS funding used for accessing the services of sex workers, using funding to go on lavish holidays, among many others. It must be stressed that these are exceptional cases, but nonetheless, in a scheme that is continuing to cost taxpayers more and more, work must be undertaken to curtail unnecessary and inappropriate spending.
- 1.33 The services of sex workers should be excluded from NDIS Supports.
- 1.34 Furthermore, plans should be wholly managed by the NDIA if participants are or have been convicted of a serious criminal offence, or convicted of an offence involving fraud or dishonesty.

Definitions

- 1.35 The concept of reasonable and necessary is still present in the legislation, however the term will now relate to the budget level of a plan – that is, if the budget is 'reasonable and necessary' as opposed to if individual supports are 'reasonable and necessary' as is currently the case. Using reasonable and necessary for plan budgets and not individual supports should give the NDIA greater visibility of the overall costs of individual plans and not have officials deciding if individual supports are reasonable and necessary. This may make it easier for the government to reign in spending within the scheme to meet the 8 per cent growth target. The reform provide greater flexibility to allow participants to use the funding as long as the expenditure meets the new definition of NDIS Supports. The definition provides the constitutional underpinning for the new planning framework by setting out the kinds of supports that the Commonwealth is constitutionally capable of funding. The definition will also allow NDIS rules to be made that narrow the scope of constitutional supports funded under the Scheme. It will be clearer for participants to know what can be funded and what cannot be funded.

- 1.36 There remains no clarity of definition for what 'permanent' and 'lifelong' constitute with regard to a disability as a means to determine eligibility and term of funding received from participants.
- 1.37 There needs to be clear definitions inserted into the legislation for 'reasonable' and 'necessary', as well as for 'permanent' and 'lifelong'.

Supports

- 1.38 The Bill places essential Scheme architecture to the legislative instrument (the Rules), rather than placing essential architecture in the primary legislation; this means there will not be parliamentary oversight of the development of the future NDIS.
- 1.39 The Support Needs Assessment will directly inform plan budgets. The 'method' will be determined by the Minister (subclause 32K(2)). This should be detailed in the primary legislation. Without transparency principles outlined in the legislation, this process will not have parliamentary oversight, and we return to the issue of the method of budget-setting taking place in a 'black-box'. Key principles around this 'method' will need to be included in the NDIS legislation, for transparency, trust, sound fiscal management; and to protect the rights of NDIS participants.
- 1.40 Under the legislation, participants can enter the scheme, meeting early intervention requirements, disability requirements or both. Plan budgets will be determined on a 'needs assessment' and a needs assessment will be introduced to provide 'consistency and equity for planning decisions'.
- 1.41 The Coalition welcomes the streamlining of processes that are difficult to navigate and exacerbate anxieties and frustrations within the community. It is especially welcome, individuals who have permanent disabilities would no longer have to repetitively provide evidence of disability, and that funding within a plan may also be released in instalments, rather than in full at the commencement of the plan. This should assist participants in better utilising funding and make it less likely funding allocations will be exhausted earlier.
- 1.42 Longer plans should also moderate plan growth as the costs of plans tend to increase whenever plans are replaced.
- 1.43 However, little information is available on the needs assessment process, with no evidence the Government has consulted with the disability sector on what the process will involve. A significant workforce would be required to conduct needs assessments of all current and new entrants into the scheme. The Labor Party ran a scare campaign against the Coalition when it sought to introduce independent assessments. Like needs assessments, independent assessments were to provide 'consistency' in participants' plans.
- 1.44 As yet, there is no publicly available Bill Implementation plan (or formal acceptance of the NDIS Review recommendations), while implementation has

clearly begun. This plan needs to be shared transparently and as a priority, so that the community, and parliament, can understand the vision and intention of the Bill. There remains a dearth of detail in the scaffolding of the Bill, regarding Needs Assessments. These will be mandatory assessments and will determine plan budgets. It is crucial they are delivered by qualified health professionals, as recommended by the NDIS Review and it is prudent to have clarity around the function and determination of the needs assessment before the legislation is changed, rather than retroactively. Appeal rights will also need to be clarified. With the current reformation of the Administrative Appeals Tribunal, there is currently additional uncertainty and anxiety around the appeals process that was already, anecdotally, causing participants distress.

- 1.45 Greater detail should be included in the primary legislation outlining the function of the forthcoming 'Rules' to ensure parliamentary oversight.
- 1.46 The needs assessment process should be outlined clearly, even if in an external communicate. Existing assessments should be prioritised over the development of bespoke assessments and these must be appealable.

Stakeholder Concerns

- 1.47 Other concerns raised by stakeholders included the failure by the minister to give adequate opportunity for consultation in the drafting of the Bill. These stakeholders maintain without examination and scrutiny of the full and complete proposed changes, the Bill would deliver a result akin to 'Frankenstein's monster' making it increasingly difficult for participants, their families and providers, to gain fair and equitable access to the scheme and supports they need. For example, what is and is not an NDIS support must not be so strict as to disallow a participant to justify why it is reasonable and necessary for a requested support to be funded. There has been a lack of a co-design approach to developing the Bill. It is unclear who has been consulted. Disability representative organisations have allegedly been consulted; however, Non-Disclosure Agreements were in place. The Bill makes multiple references to co-design, yet the Bill was not open for public consultation, which harks back to the lack of transparency, fairness, compassion and accountability stakeholders have expressed misgivings about.
- 1.48 Minister Shorten's address to Parliament on 27 March 2024 in his Second Reading speech made multiple references to 'foundational supports', additional funding and a financial commitment from States and Territories:

I applaud their commitment last December to finance additional disability services outside the NDIS program – the 'foundational supports' we speak

of – on a 50-50 funding model, so we can meet an agreed growth rate target of 8% from 1 July 2026.¹

- 1.49 At no point does the Bill refer explicitly to foundational supports. The Bill refers to a 'larger landscape of supports outside of the NDIS'. These supports will be a part of 'new framework plan', however, it is unclear what these will be.
- 1.50 There has also, as of the time of writing this report, been no formal government response to the Disability Royal Commission or the NDIS Review. Without understanding the government's position on the various recommendations, it is difficult to ascertain how they might intend, in future, to progress or reform the scheme.
- 1.51 The success of the proposed reforms will depend on a viable sector with quality providers, so without the other elements required to achieve that (addressing workforce shortages, realistic and independent pricing, and a regulatory system that promotes quality and an even playing field) then the risk of any reforms being unsuccessful is heightened. Equally, the process to determine, and offer, defined NDIS Early Interventions would need to be described in the Bill, to ensure the scaffolding for effective, evidence-based, contemporary, and co-design of early intervention is in place.

Overreaching Governing Powers

- 1.52 The Bill attempts to keep participants' spending within their budget by introducing a requirement to stay within their budget. This will reduce the need and circumstances for the NDIA to provide additional funding in cases where participants exhaust their funding early. Plans will clearly set out funding amounts and the period this amount applies to. Arrangements will also be legislated to change plan management to agency managed if plans are exhausted early, or if issues are identified with current management arrangements. This may also moderate growth within the Scheme. However, providers have stated these arrangements are already in place. The real issue is the NDIA having the resources to manage these plans. The Bill refers to NDIS supports rather than reasonable and necessary supports. This includes a framework that outlines participant budgets instead of line-by-line reasonable and necessary supports. We have concerns with this amendment to flexible funding without transparency around services that can be funded by participant budgets.
- 1.53 The Bill also provides a new power for the CEO to receive information, such as medical reports to decide if the participant should remain in the scheme. Section 30 of the Bill grants enhanced Plan Revocation powers to the NDIS CEO. This extraordinary expansion of powers should be carefully considered and

¹ The Hon Bill Shorten MP, Minister for the NDIS, [NDIS Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024 – Second Reading Speech](#).

reviewed with appropriate checks and measures to ensure the abuse of such powers is not made accessible, especially the 90-day non-response timeframe where there is evidence that the delayed participant response is disability-related.

- 1.54 Current language in the legislation should be amended to clarify without ambiguity, the function of CEO powers and the protections therein to mitigate abusive conduct.
- 1.55 Consideration should also be given to the establishment of a rigorous external review process for the expanded CEO powers that provides clear oversight on any decisions made through the exercising of the sweeping powers.

Psychosocial and Autism Uncertainty

- 1.56 Whilst it is unlikely psychosocial and autism will be moved off the scheme, and while some Coalition senators feel psychosocial supports ought to be overwhelmingly provided by the states - when they are actually able to deliver on their mandate - there is still an element of uncertainty about their fate on the scheme due to the lack of clarity made around provisions for them.

Supported Independent Living

- 1.57 In the case of Supported Independent Living, the government should work with people on the scheme to design a range of living options into their future. Supported Independent Living is an incredibly valuable component of the NDIS, but has become one of the highest cost-burdens of the scheme.
- 1.58 There remains significant gaps for reform in the development of a method for more consistently assessing and determining funding levels for housing and living supports.
- 1.59 Community members have made wide-ranging recommendations to address some of these issues including specific regulations for group home settings to enhance safety and quality, to remove abusive and neglectful conduct by workers in the homes and address the conduct more expediently when it occurs.
- 1.60 Methods for determining adequate funding levels for housing and living supports should be refined as well as ensuring there are stringent safeguards and regulations for group home settings.

Rural & Regional Perspective

- 1.61 We mustn't forget that the NDIS is the NATIONAL Disability Insurance Scheme, not just the major city insurance scheme. We have to ensure regional and rural communities have equitable access to support. Our regions are heavily impacted by natural disasters and social isolation and these issues are exacerbated by the inaccessibility of these supports, especially for families who are caring for a child with a disability. Addressing this underutilisation will require a multi-faceted approach. It involves improving access, raising

awareness, enhancing service delivery, and addressing systemic barriers. This can be done through a mix of telehealth services, assistive technology, transportation assistance, education and training programs, employment support, social and recreational activities for community-building and advocacy and peer support networks as a mental health provision and suicide prevention strategy, which we know can be quite prevalent for farmers during times of severe hardship.

- 1.62 Policymakers must ensure a regional & rural lens is applied to legislation to ensure it is fit-for-purpose for all Australians irrespective of their location.

Coalition Record

- 1.63 The former Coalition government - and owning any of its shortcomings - undertook significant work on the NDIS over nine years including funding and implementing the scheme to provide support for more than 550,000 participants. Under the Coalition government – we successfully provided crucial services to Australians and fully financed the National Disability Insurance Scheme as a demand-driven initiative.
- 1.64 The Opposition will always be willing to consider and support change that is beneficial to participants. The Coalition remains committed to a non-partisan approach to dealing with the scheme. It will and ought to be a rigorous contest of ideas to produce the best possible outcomes for Australians living with disability.
- 1.65 We want a dedication to aiding all Australians with disabilities in attaining greater independence, honing employment skills, accessing development opportunities, and enhancing their overall quality of life. Our goal is to create opportunities for people living with disability in a financially manageable way; a way that taxpayers aren't burdened by, and that participants aren't a slave to.

Conclusion

- 1.66 For the reasons outlined, there remain grave concerns about this legislation's ability to both solve the current legislative issues that exist surrounding the scheme, protect participants or providers from unintended consequences, including legal complications. It remains unreasonable that the legislation herein still lacks the crucial elements that would form the central pillars of this NDIS amendment such as the provision of detail on the legislative instruments (the rules) and where significant budgetary savings will be made as a result of this new legislation provided by the government.
- 1.67 Whilst new reforms are welcome by the Coalition, there still remains sector-wide concerns and uncertainty as to whether this legislation put forward by the government, goes anywhere to addressing present problems and/or concerns.
- 1.68 However, the Coalition also believes that reform must begin immediately, now that there has been reasonable time given both to the scrutiny of the legislation

and for the introduction of a number of key amendments that will assist the government in striking a balance between driving down financial blowouts and choice and control for participants. We will seek to insert amendments to improve this legislation to ensure that this process of reform works to positively shape the scheme's future and mitigates existing and impending risk.

Senator Hollie Hughes Senator the Hon Linda Reynolds CSC Senator Maria Kovacic

Australian Greens Dissenting Report

Inquiry into the NDIS Amendment (Getting the NDIS back on Track) Bill, 2024

- 1.1 The Australian Greens are deeply grateful for the advocacy, submissions, time and expertise contributed to this inquiry by disabled people, their family members and representative organisations. We also wish to extend this gratitude to the many academics, legal experts, professional peak bodies, care workers and advocates who did the same.
- 1.2 The work undertaken by witnesses and via submissions to the inquiry was remarkable and provided the committee with invaluable information. The Australian Greens acknowledge that providing this evidence to the committee was a daunting experience for many, requiring significant preparation, vulnerability and emotional labour.
- 1.3 The Australian Greens appreciate the incredible and tireless work of the Committee Secretariat. This inquiry was only possible because of their efforts.

Context

- 1.4 Fairness and equality are values which are cherished by the Australian community.
- 1.5 When these values are violated the Australian community demands action from those they place in positions of power.
- 1.6 The National Disability Insurance Scheme sits alongside Medicare as the two most significant national programs created in response to this community demand.
- 1.7 Together, these programs have helped so many to live healthy and happy lives; and as a result they are supported by the vast majority of the Australian community.
- 1.8 Both programs require significant amounts of public money to run and in return they are two of largest sources of employment in the nation and one of the most significant drivers of economic activity.
- 1.9 As such, governments seeking to cut these programs, restrict access to them or remove people from them should naturally expect that their proposals will be subjected to the highest possible scrutiny.
- 1.10 Despite this, at every stage of development the Albanese Labor government has sought to avoid or limit scrutiny of a Bill which would enable cuts, restriction of access, and removal of participants from the NDIS.

- 1.11 As the community calls for this inquiry grew louder the government remained adamant that further inquiry was unnecessary and would not result in new information or valuable evidence.
- 1.12 In direct response to the prospect of this inquiry the NDIS Bill Shorten stated:
There's no good reason on God's Green Earth to have another eight weeks of review ... there won't be a whole lot of new submissions come in, there won't be some brand new arguments not considered.¹
- 1.13 The vital evidence gathered through this inquiry totally contradicts the above claims. Despite Labor's extensive efforts to prevent this inquiry, many new concerning aspects of the bill were uncovered through the testimony of the witnesses who participated. Key information revealed throughout this inquiry:

States and territories

- 1.14 There were concerns raised during the inquiry about the ability of the states and territories to conduct the work needed to support the outcomes of this Bill. The Council for the Australian Federation, representing the states and territories, expressed that they do not feel that they have been adequately consulted on this Bill and have not been given adequate time to develop the supports and systems that would be necessary to support implementation of the legislation.

The pace of the reform schedule is not allowing time for meaningful consultation with the disability community, or with states and territories ... The amendments are complex, and will alter the operation of the NDIS before broader improvements are made to the disability ecosystem, including Foundational Supports, creating a risk of emerging service gaps for people with disability.²

- 1.15 These concerns were repeated by disability representative organisations, who also flagged the likelihood of a service gap if this Bill passes, due to supports no longer being able to be accessed through the NDIS but also not yet able to be accessed through state and territory programs.

States and territories have not been able to meaningfully respond with a definition and explanation of what these new [foundational] supports would look like.³

NDIS Review independence

- 1.16 During 2024/25 Budget Estimates it was revealed the NDIA had awarded two contracts, one in February 2023 and one in September 2023 with a total value of \$400,000, to Redbridge Group for the purpose of conducting focus groups and

¹ <https://ministers.dss.gov.au/transcripts/15046>

² Council for the Australian Federation, *Submission 106.1*, p. 3.

³ Marayke Jonkers, People with Disabilities Australia (PWDA), Hearing 24 July

message testing to identify how to best frame the changes proposed in the NDIS Bill.

1.17 This research, conducted prior to the release of the NDIS Review, includes focus group findings specifically related to policy changes which subsequently appear as recommendations within the NDIS Review final report.

1.18 The research also includes suggested messaging, again based on focus group findings, designed to counter community opposition to these specific policy changes and elicit a level of 'qualified tolerance' for the changes. This suggested messaging appears within sections of the NDIS Review Final Report which are framed as providing the justification for recommended changes.

1.19 For example, Redbridge Report 4 states:

... we were able to elicit a degree of qualified tolerance for reforms that would restrict either eligibility for the Scheme (raising the threshold for children with developmental delay) or the amount of support high-need participants would receive (moving to a 1:3 care model for Supported Independent Living participants). Respondents do not like these reforms but they may be willing to tolerate them where there are/is:

- Carve-outs for exceptional circumstances (i.e. we're not forcing everyone into the same box, and the most in need are still fully supported);
- Initial goodwill generated by the measures to humanise the Scheme and to protect participants (and the Scheme) from exploitation. Conversely, there is a strong resistance to any discussion of costs alone as a driver of reforms; and
- Alternative or 'offsetting' benefits in place. For example, in relation to the threshold for developmental delays, there is more (but not outright) acceptance once respondents had been treated with the idea of investing in mainstream supports for children (through schools/kinders/etc) to enable earlier intervention and improve the safety net. In relation to the Supported Independent Living (SIL) changes, these become more acceptable when couched in benefits around reducing social isolation and ensuring people don't fall through the cracks.⁴

1.20 Recommendation 8, Action Item 8.1 of the NDIS Review Final Report states:

Funding for participants requiring 24/7 living supports should typically be on the basis of those supports being shared. In general, reasonable and necessary funding should be based on an average shared support ratio of 1:3.⁵

1.21 In justifying this recommendation, the report states:

⁴ Redbridge Report 4 <https://dataresearch.ndis.gov.au/media/3966/download?attachment>, page 4-5.

⁵ NDIS Review Final Report, page 144

While single living arrangements with no sharing of supports are needed in specified circumstances, they can lead to isolation and poor outcomes for participants.⁶

1.22 Examples like one this raise questions about the extent to which the results from these government commissioned focus groups influenced findings of the NDIS Review. These questions are critical because the Government has repeatedly assured the public that the NDIS Review would be independent and evidence driven.⁷

1.23 During this inquiry, the Chair of the NDIS review, Bruce Bonyhady, revealed that he had received a briefing of the Redbridge Report before the NDIS Review recommendations were published.

We did get a briefing on [the Redbridge report] during the course of the review, yes.⁸

1.24 He also stated that the reports:

did not influence what we recommended. It was an independent review.⁹

1.25 In response to requests by committee members for specific details about this briefing Mr Bonyhady provided, on notice, a written statement , which stated:

The Agency [The National Disability Insurance Agency] organised on-line briefings by Redbridge for its own purposes and also invited the Co-Chairs. I have checked my records and these invitations were for 16 March, 5 October, 9 October and 1 November 2023.¹⁰

1.26 After finally confirming, for the first time on the public record, that the NDIS Co-Chairs were repeatedly invited to briefings on the Redbridge Research Reports throughout 2023, Mr Bonyhady then claims a lack of recollection of the details of these briefings.

1.27 Firstly, Mr Bonyhady claims that he 'cannot recall how many of these verbal briefings I attended'. He then claims that: 'I do not have a record or clear recollection of the content of any briefings I attended.'

1.28 It is his final claim that causes the Australian Greens the most significant concern. Mr Bonyhady reiterates the claim that 'as I said in my evidence last week, the Redbridge research did not influence the NDIS Review recommendations.'

⁶ [NDIS Review Final Report](#), page 139.

⁷ [NDIS Review Final Report](#), page 139.

⁸ Bruce Bonyhady, Hearing 24 July.

⁹ Bruce Bonyhady, Hearing 24 July.

¹⁰ Bruce Bonyhady, Answer to Question on Notice.

- 1.29 Mr Bonyhady claims that he cannot recall the content of the Redbridge reports nor does he have records of content but is able to state repeatedly that content he can't recall had no influence on the outcomes of the NDIS Review. The evidence presented above showing the similarity between content in the Redbridge reports and the NDIS Review Final Report raises serious questions about the independence of the NDIS Review.
- 1.30 The concern is that these findings show that the Government had the opportunity to influence the Review in order to manufacture consent for this harmful Bill.
- 1.31 Considering the NDIS Review is being claimed by the Government as the basis for this Bill, the Australian Greens urge the Government to clarify how findings from the Redbridge Report ended up in the NDIS Review and how that aligns with the characterisation of the NDIS Review as independent.

Lack of transparency and consultation

- 1.32 It was confirmed by the Department of Social Services that the Government did ask stakeholders to sign a confidentiality agreement as a condition of being consulted on the legislation prior to release.

The department, in consulting with a small group of stakeholders before the bill was introduced into the parliament, did ask participating stakeholders to sign a deed of confidentiality.¹¹

- 1.33 Under questioning, the NDIA denied requesting non-disclosure agreements from participants in co-design processes related to proposed government reforms. They did, however, confirm that members of the Participant Reference Group are asked to sign confidentiality agreements. The Committee learnt, in an answer to a Question on Notice, that ten members of the current co-design working groups are also members of the Participant Reference Group, meaning that they would remain under confidentiality agreements while participating in co-design processes.
- 1.34 During this inquiry, the Committee learnt that consultation on the transitional guidelines has begun, and that these transitional guidelines will come into effect 28 days after Royal Assent is granted to this Bill. Consultation and development on particular Rules, including the list of NDIS supports, has also begun, with a public feedback period currently underway. If these Rules are entered into legislation by the Minister, they come into immediate effect and participants will only be able to use funds on supports that are included in the list.

¹¹ Ms Robyn Shannon, Deputy Secretary, Disability and Carers Stream, Department of Social Services

On commencement of the instrument... those things which are not NDIS supports will not be able to be purchased from that point by participants.¹²

- 1.35 There are serious concerns about the pace of this change, and the small window of public consultation that is being offered. If these rushed Rules are implemented, it will result in participants no longer being able to access essential supports that have previously been assessed as reasonable and necessary.

Within 28 days after the legislation receives royal assent, there needs to be this transitional rule in place, from my understanding, and the proposal is to do that via lists of what is and what is not an NDIS support. I think the challenge we have is: how does something that needs to be developed in that tight timeframe interact with the need for an appropriately co-designed solution here? I think that's the tension that we need to be able to manage. I understand that it is a transitional rule, but how long will it be in place? How long will it take to get the category A [rules] agreed with the states and territories?¹³

Limiting choice and control

- 1.36 Disability advocates and lived experience led organisations continued to express concerns that the culture driving this reform is fundamentally paternalistic and will result in disabled people losing agency over their own lives. An element of the bill that is emblematic of this concern is the proposal within the bill to grant the power to the federal NDIS minister to categorise disabled people into classes.
- 1.37 During the inquiry a Department of Social Services representative defended this proposal by 'saying that it is not intended to have offensive characteristics'. It is the view of the Australian Greens that empowering a government minister to divide disabled people into 'classes' is inherently offensive and dehumanising and has no place in modern legislation.
- 1.38 When questioned about community concerns relating to the bill's proposal of needs assessments being non-reviewable, another Department of Social Services representative claimed that this was necessary so as not to cause inconvenience to participants. This disregards the agency of participants and their ability to make their own judgements about what is best for them.

While that process is ongoing, people do not actually have a budget and cannot be accessing supports. Were the proposition [that disabled people be able to review their needs assessment] to be adopted, while somebody is going through the internal and external appeal process to challenge their needs assessment [...] they would actually not be getting any support. The desire is to come to a decision, with the opportunity for the participant to be

¹² Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal, National Disability Insurance Agency, Hearing 25 July

¹³ Darryl Steff, Down Syndrome Australia, Hearing 24 July

able to see their needs assessment before it's finalised and to request a reassessment [...]that request may be adopted in full, or it may not, but the intent is to try and get a timely decision for people.¹⁴

Misleading examples of fraud

1.39 In a media release,¹⁵ Minister Bill Shorten claimed that there were participants incorrectly claiming supports, and listed examples of mobile phones, bonds for cleaning fees, theme park passes, treadmills, TV antennas, and bird seed. During the course of the inquiry the following response from the NDIA was provided to questions by Senator Steele-John:

The NDIA is aware of a participant who has claimed all the items specifically listed by Senator Jordon Steele-John including 'mobile phones, rental bonds, cleaning fees, theme park passes, treadmills, TV antennas and birdseed'.¹⁶

1.40 The fact that so many of the examples of 'fraudulent' claims used by the Minister to justify this Bill actually can be traced back to a single participant is shocking and infuriating. Many news outlets, in particular the Australian,¹⁷ took this claim and ran with it, publishing stories that used this example to condemn NDIS participants and promote the Labor narrative that fraud is rampant within the NDIS.

Government attempts to manipulate public sentiment in the lead up to this inquiry

1.41 In the period of time leading up to this inquiry, Labor Ministers engaged in odd (and sometimes odious) stunt-based tactics, seemingly intended to distract from growing community concern about many elements of the bill.

1.42 These areas of concern that have been continuously expressed by the community included but weren't limited to, the removal of participant choice and control, categorisation of disabled people into 'classes', abolishment of reasonable and necessary supports, weakening participants rights to appeal decisions and increasing powers for the NDIA to suspend or remove participants from the scheme.

1.43 The above-mentioned tactics included:

¹⁴ Robyn Shannon, Deputy Secretary, Disability and Carers Stream, Department of Social Services , Hearing 25 July

¹⁵ <https://ministers.dss.gov.au/media-releases/14816>

¹⁶ [Question on notice](#), Budget Estimates

¹⁷ <https://www.theaustralian.com.au/nation/new-ndis-laws-needed-to-stop-claims-for-bird-seed-cuddle-therapy-shorten/news-story/fb4f256a7bbf0b1f6ec76799c7c8f4cc>

'Out of touch with the cost of living' web page

1.44 Minister launched a web page titled 'out of touch with cost of living,'¹⁸ positioning the resulting delay to the 'Getting the NDIS Back on Track' bill, passing through the Senate, as 'a billion dollar waste of taxpayer money'. The irony of this stunt is that it demonstrated clearly the depth and breadth of the cuts Labor intends using this Bill. The Australian Greens are proud to have prevented Labor from cutting \$1b worth of support funding from disabled people and their families.

'SAVE THE NDIS' campaign bus

1.45 Minister Shorten drove a large bus with the message; 'Save the NDIS: Put participants first, senators'¹⁹ around Canberra airport on a Thursday night - when most MP's and Senators typically fly home after a Parliamentary sitting week. The truck was also driven around the perimeter of Parliament House the week of the Senate's deliberation of the bill.

Public partnership between Labor and One Nation

1.46 This partnership was first demonstrated to the public when Labor's web page was released²⁰, sparking concerns for the intent of the bill based on Hanson's past derogatory and ableist statements directed at disabled adults²¹ and children.²²

Most of the time the teacher spends so much time on them [disabled and autistic children] they forget about the child who is straining at the bit and wants to go ahead in leaps and bounds in their education. [...] It is about the loss for our other kids. [...] It is no good saying that we have to allow these kids [disabled children] to feel good about themselves and that we do not want to upset them and make them feel hurt.

1.47 This partnership coincided with the release of a new episode of Senator Hanson's animated web series Please Explain titled, NDIS: The Movie.²³ The cartoon

¹⁸ 'Cost of the taxpayer of the Liberal and the Greens delays of NDIS Reform. www.outoftouchwithcostofliving.com

¹⁹ S. Wright, 'Sex toys, taxidermy and Pauline Hanson: Inside Shorten's rogue campaign', in *The Sydney Morning Herald*. July 2024, www.smh.com.au/politics/federal/sex-toys-pauline-hanson-shorten-goes-rogue-with-insurgent-campaign-20240705-p5jrcz.html

²⁰ P. Marlborough, 'Shorten teaming up with Hanson on the NDIS tacitly endorses her views of disability', in *Crikey*. July 2024, www.crikey.com.au/2024/07/08/labor-bill-shorten-pauline-hanson-disability-ndis/

²¹ B. Keane, 'Hanson's lock 'em up disability strategy two decades old', in *Crikey*. June 2017, www.crikey.com.au/2017/06/22/hansons-lock-em-up-disability-strategy-two-decades-old/

²² J. Norman & e. Borrello, 'Pauline Hanson under fire for 'bigoted' call to remove children with disabilities from mainstream classrooms', in *ABC News*. June 2017. www.abc.net.au/news/2017-06-21/pauline-hanson-under-fire-repulsive-bigoted-comments-autism/8640328

²³ NDIS: The Movie <https://www.youtube.com/watch?v=vsHQQjVvPhg>

does not comment on the contents of the bill or attempt to explain how blocking it, or how passing it would assist or harm disabled people. Notably, past episodes of the web series such as 'The NDIS' have been criticised heavily for mocking disabled people.²⁴

Announcement of banning sex based supports from the NDIS

1.48 This announcement resulted in immediate backlash from the disability community, demonstrated within a joint statement²⁵ released by peer led organisations Scarlett Alliance (Australian Sex Workers Association) and not for profit organisation Touching Base. The announcement was discussed across many media platforms. Much of this public discussion revolved around debating whether disabled people should have the same rights to intimacy and sexual expression as non disabled people. NDIS participants and disabled sex workers were prosecuted by the media throughout this period²⁶ and disabled advocates were largely required to discuss their sexuality, intimate lives and access needs on public media platforms, in order to be part of the conversation.²⁷

The reality is I've got one or two examples I'm aware of that it's ever happened, ever. It's just not a sustainable proposition [...] We will rule it out... it doesn't pass the test, does it? [...] I will take a packet of Tim Tams, uh, coffee, and tea over to any Liberal office to go through the issues.²⁸

The government has since released a draft NDIS supports list, detailing items which will and won't be considered an NDIS support if Labor's bill is passed. Sex work and sex toys are listed as 'supports that are not NDIS supports' under the 'lifestyle related' category in the draft list.²⁹

²⁴ D. Lu, 'One Nation video mocking NDIS condemned as 'vile' by disability advocates', in *The Guardian*. April 2023, www.theguardian.com/australia-news/2023/apr/08/one-nation-video-mocking-ndis-condemned-as-vile-by-disability-advocates

²⁵ 'Scarlett Alliance and Touching Base statement on exclusion of access to sex work services under the NDIS', in Scarlett News. July 2024, <https://scarlettalliance.org.au/scarlett-alliance-touching-base-statement-re-exclusion-of-access-to-sex-work-services-under-the-ndis/>

²⁶ <https://www.google.com/amp/s/www.dailymail.co.uk/news/article-13500169/amp/NDIS-sex-worker-estelle-lucas-guide-access-funding.html>

²⁷ J. Evans, 'William uses NDIS funding to see sex workers. He says before that, isolation left him in 'absolute despair'', in ABC News. July 2024, www.abc.net.au/news/2024-07-22/ndis-participant-sex-work-ban-fears-isolation/104085898

²⁸ NDIS Minister Bill Shorten, speaking to Sky News on Labor's announcement of their plan to ban access to sex work services on the NDIS.

²⁹ Department of Social Services, 'NDIS supports list - Supports that are not 'NDIS supports'', August 2024, p.12. engage.dss.gov.au/wp-content/uploads/2024/08/2024-08-02-draft-ndis-support-lists.pdf

Detailed areas of concern

1.49 The Australian Greens continue to have deep concerns about the content of multiple sections of this Bill. Many of these concerns were raised in our dissenting report to the previous inquiry³⁰ and remain unaddressed. Those listed below are based on new information gathered over the course of this inquiry.

Debt raising

1.50 The current NDIS Act allows the Agency to pursue debts against participants where they do not spend funds in accordance with their plans.

1.51 This Bill expands those debt raising powers both by tightening the restrictions about how participants must spend their funds, and by introducing harsh consequences for participants that fail to meet those requirements.

1.52 Changes to Section 46 introduce the requirement that a participant only spend their funds on NDIS supports and in accordance with their plan. This is a marked change to the NDIS, as the strict definition of NDIS supports and the ability for any conditions to be included in a participant's plan (as per Section 32H) create a significantly more difficult system for participants to navigate.

1.53 Concerns were raised during the hearings to this inquiry about whether debts that were caused by the actions of a third party or resulted from situations of coercion, abuse or neglect could be imposed on a participant. In particular, concerns were raised about whether debts issued for funds paid to a third party for supports could be raised to a participant, forcing the participant to pay back money that they have never had.

Is there duress here? Did we as an agency generate a legitimate expectation that the person could spend the support in this way? Did a third party, through their actions, unconscionable pressure or duress, shape what the person did? And the bill could be clearer on when the debt will go against the third party and when the debt will go against the people who everyone wants to help.³¹

1.54 Furthermore, under the current Act participants are not able to appeal the existence of a debt raised against them. With expanded debt raising powers included in this Bill, this is a significant concern.

In robodebt, at least people could seek a review of their debt... It's hard to see how you could get anywhere near an independent reviewer in relation to a debt raised under this act.³²

³⁰ [Australian Greens Dissenting Report](#)

³¹ Dr Darren O'Donovan, Hearing 24 July

³² Miles Browne, Victorian Legal Aid, Hearing 24 July

- 1.55 The Agency, in the hearing to this inquiry on 25th July, said that in situations of neglect or coercion the debt would instead be owed by the person responsible, but the inability of a participant to appeal a debt raises the question of how the Agency could be alerted that the debt came out of a case of coercion.
- 1.56 The current NDIS Act says that the Agency may waive a debt because of special circumstances, but there is very little clarity about what those special circumstances may be, only that disability and financial hardship are not able to be considered as special circumstances, which is highly alarming.
- 1.57 This Bill should be amended to include specific clarification that:
- No debts can be pursued against participants for funds paid to third parties, or for any debts accrued as a result of abuse, neglect, coercion or exploitation
 - Debts are subject to appeal
 - Special circumstances under which debts can be waived should include both financial hardship and the disability of the debtor

Whole of person needs assessment / reviewability

- 1.58 Since the previous inquiry, there have been amendments presented by the Government in response to concerns about the proposed needs assessment. In particular, they addressed the concerns around the needs assessment not being 'whole-of-person'. In practice, this means that the current version of the Bill requires that the reviewer only consider support needs that arise from the disability that meets Scheme access requirements. This is determined at the time of the needs assessments, so the disability that initially gains a participant access to the Scheme may not necessarily be considered in the needs assessment if access requirements change.
- 1.59 The changes proposed by the amendments would remove this requirement, so that the needs assessment may consider environmental factors and other disabilities. However, this would not result in the participant receiving funding for all the support needs identified in the needs assessment. The plan budget, which will be calculated via an unknown method based on the needs assessment report, will now include the requirement that it only consider support needs that arise from the disability that meets Scheme access requirements.
- 1.60 The impact of multiple disabilities and environmental factors is highly complex, and cannot be neatly divided in the way that this Bill requires. In essence, this amendment has made no material change to participant outcomes and will not achieve the 'whole-of-person' support provision that disabled people have clearly stated they need.
- 1.61 The reviewability of needs assessments was raised again in this hearing, with questions directed to the Agency about why the decision was made not to make the needs assessment reviewable. The Agency specified that they made the

decision to include review rights only as part of a later appeal of the budget to make it a 'quicker, simpler, easier process'. This admission revealed the deep, paternalistic nature that is at the centre of these reforms. The Government and the Agency believe that they know what's best for disabled people, despite the many disabled people expressing repeatedly and in detail that these reforms will harm them.

- 1.62 The Committee heard requests from witnesses at the inquiry to make needs assessments reviewable and to provide greater transparency to participants around their plan development.

We think there is still some further progress that needs to be made in terms of obtaining a replacement needs assessment and the ability to challenge a needs assessment, as a separate item to the full plan and budget for a participant. We would also like to see—and this is something that the sector has been calling on for a number of years—that, as part of that process, draft copies of the needs assessment report and plans are provided to participants before they're finalised.³³

- 1.63 The Australian Greens renew our call for the Government to make the needs assessment directly reviewable.

Impact of the Bill on women

- 1.64 There were concerns raised during the course of this inquiry about the impact that this Bill would have on women, in particular. It was communicated to the Committee that this would occur because of the carer role that women take on at higher rates.

We hold significant concerns about the bill and the impact it will have on women, in particular unpaid carers, who are mostly women, and who will be the ones forced to supplement deficient support funding with unpaid care work, forced to quit their employment and forgo financial independence to support their disabled loved ones because supports will be reduced with this bill.³⁴

- 1.65 The issue of deficiencies in Government services having a disproportionate impact on women engaged in unpaid care work is not limited to the NDIS, but it is of particular concern where it relates to this Bill. The cuts to supports that will result from this Bill will affect women engaged in unpaid care work, as will the expanded debt raising powers and limited review rights, both of which will require significant emotional and administrative support for participants. The service gap created by removing NDIS funded supports before foundational supports are operational will especially impact on those women undertaking unpaid care work for their disabled loved ones.

³³ Darryl Steff, Down Syndrome Australia, Hearing 24th July

³⁴ Belinda Kockanowska, Intrepidus Law, Hearing 24 July.

- 1.66 The Australian Greens urge the Government to consider the impact this Bill will have on women and not pass this legislation until the identified harms have been sufficiently mitigated.

Recommendations

- 1.67 It is the strong belief of the Australian Greens that this Bill should not pass in its current form, which includes the amendments passed by the House of Representatives which did not go nearly far enough, and the amendments that have been tabled but are yet to be voted on in the Senate. The above sections of this report detail some of the specific criticisms that have been raised during the course of this inquiry and the previous inquiry. We are increasingly concerned that even with all of these issues addressed there would still be remaining aspects that would seriously harm disabled people.

What's happened in this situation is that we've been given legislation that says, 'We're going to take away what you've got now and we're going to put in place something different.' But that other thing doesn't exist yet. So it's impossible for us to feel confident that that solution will work for us. The legislation raises many concerns that we have not seen the answers to, and we need to see the answers. This is about our lives. This is about our survival. This is so important to us and we need to be treated in a way that respects how serious this is for our lives, and I don't feel that that has happened, in this case.³⁵

Recommendation 1

- 1.68 Australian Greens Senators recommend that the Bill not be supported.**

Recommendation 2

- 1.69 Australian Greens Senators recommend that the government ensure foundational supports be comprehensively defined and implemented in states and territories**

Recommendation 3

- 1.70 Australian Greens Senators recommend that the Government deliver a formal response to the NDIS Review.**
- 1.71 Once these actions have been undertaken, the Government can return to the question of amending the NDIS Act but with a commitment to true, authentic co-design with disabled people to achieve change that will meaningfully improve the lives of the many people who rely on the NDIS.

³⁵ Dr George Taleporos, Every Australian Counts, Hearing 24 July

Senator Jordon Steele-John

Senator Penny Allman-Payne

Appendix 1

Submissions and Additional Information

Submissions

- 1 Mr Brian Cooper
- 2 Name Withheld
- 3 Ms Penelope English
- 4 Name Withheld
- 5 Name Withheld
- 6 Name Withheld
- 7 Osteopathy Australia
- 8 Mrs Leah Kateiva
- 9 Mr David Tomkins
- 10 Name Withheld
- 11 Mr Mark Davis
- 12 Name Withheld
- 13 Villamanta Disability Rights Legal Service Inc
 - 13.1 Supplementary Submission
- 14 Name Withheld
- 15 Name Withheld
- 16 Name Withheld
- 17 Name Withheld
- 18 Pear Tree Occupational Therapy
- 19 Justice and Equity Centre
- 20 Joint submission by Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA)
 - 2 Attachments
- 21 Name Withheld
- 22 Name Withheld
- 23 Name Withheld
- 24 Mr Jarrod Marrinon
- 25 Ms Marie Johnson
- 27 Victorian Mental Illness Awareness Council
- 28 Mr James Beach
- 29 Foundation First Speech Pathology
- 30 Name Withheld
- 31 Assistive Technology Suppliers Australia
- 32 Name Withheld
- 33 Name Withheld
- 34 Name Withheld
- 35 Ms Carolyn Fitzgibbon

- 36 Name Withheld
- 37 Name Withheld
- 38 Name Withheld
- 39 Disability Advocacy NSW
- 40 South West Autism Network Inc (SWAN)
- 41 Australian Autism Alliance
- 42 University of Queensland Union
- 43 SNAICC - National Voice for our Children
- 44 Queensland Advocacy for Inclusion
- 45 Kin Advocacy
- 46 Inclusion Tree
- 47 Every Australian Counts
- 48 Ms Janie Thomas
- 49 Rainbow Speech Pathology
- 50 Free and Equal Australia
- 51 Touching Base Inc
- 52 First Peoples Disability Network
- 53 Physical Disability Australia
- 54 Sisters in the City
- 55 Disability Clothesline Australia
- 56 Animal Therapies Ltd
 - 56.1 Supplementary Submission
- 57 Speech Pathology Australia
- 58 Carers NSW
- 59 Ms Tomika Hillebrand
- 60 Queenslanders with Disability Network
- 61 Allied Health Professions Australia
- 62 National Disability Services
- 63 Access Care Network Australia
- 64 Mental Health Australia
- 65 Axis Therapeutic Services
- 66 Australian Rehabilitation and Assistive Technology Association (ARATA)
- 67 National Legal Aid
- 68 Occupational Therapy Australia
- 69 Dementia Australia
- 70 NDIS Occupational Therapy Community of Practice
- 71 Australian Psychosocial Disability Collective
- 72 Autism Aspergers Advocacy Australia
- 73 Disability Intermediaries Australia
- 74 Griffith University
- 75 AEIOU Foundation
- 76 Name Withheld
- 77 Mx Sam Petersen

-
- 79 Name Withheld
- 80 Ms Cynthia Teo
- 81 Ms Stacey Adams
- 82 Name Withheld
- 83 Ms Sally Davison
- 84 Ms Amanda Smith
- 85 Name Withheld
- 86 Name Withheld
- 87 Name Withheld
- 88 Ms Carly Mill
- 89 Ms Mimi Horne
- 90 Ms Rosanne Milne
- 91 Name Withheld
- 92 Name Withheld
- 93 Mr Andrew Potter
- 94 Ms Nita Ackland
- 95 Ms Sue Roberson
- 96 Ms Ruth Cotton
- 97 Mrs Jay Anderson
- 98 Mrs Rebecca Jury
- 99 Mr Matt Lindsay
- 100 Name Withheld
- 101 Name Withheld
- 102 Mr Mark Pietsch
- 103 Ms Jenny Montague
- 104 Ms Isobella Austin
- 105 Name Withheld
- 106 Council for the Australian Federation
- Attachment
- 107 People with Disability Australia
- 108 Disability Advocacy Network Australia (DANA) on behalf of the National
Coordination Function
- 109 Victorian Council of Social Service (VCOSS)
- 110 Dietitians Australia
- 111 Deafblind Australia
- 112 Deafness Forum Australia
- 114 Dr Tim Gilley JP
- 116 Mrs and Mr Sue and Stephen Ferris
- 117 Mr Alan Tremolada
- 118 Name Withheld
- 119 Name Withheld
- 120 Name Withheld
- 121 Name Withheld

- 122 Mr Richard Bradley
- 124 Ms Talie Star
- 125 The Neil Family
- 126 Name Withheld
- 127 Name Withheld
- 128 Ms Cheri Allanby
- 129 Ms Genean Beetson
- 130 Mr Dean Mighell
- 131 Ms Melinda Sargent
- 132 Ms Jennifer Patullo
- 133 Name Withheld
- 134 Name Withheld
- 135 Ms Lucy Balfour
- 136 Name Withheld
- 137 Ms Anne-Marie Buttigieg
- 138 Dr Maggie Broom
- 140 Ms Narelle Martin
- 141 Ms Victoria Twiss
- 142 Ms Rachel Farr
- 143 Mr Aschleigh Perring
- 144 Ms Marielle Turner
- 145 Name Withheld
- 146 Ms Emma W
- 147 Name Withheld
- 148 Name Withheld
- 149 Name Withheld
- 150 Ms Anna Rimac
- 151 DoGooder campaign sample
- 152 Name Withheld
- 153 Ms Karen Kline
- 154 Ms Suzanne Lee
- 155 Name Withheld
- 156 Ms Georgia Gilkeson
- 157 Detlev Kerkovius
- 160 Ms Madeleine Flynn
- 161 Ms Julie Smith
- 162 Mr John White
- 163 Mr Brogey Harrison
- 164 Mr Caleb Rixon
- 165 Seen and Herd
- 166 Name Withheld
- 167 Name Withheld
- 168 Name Withheld

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- 169 Name Withheld
170 Name Withheld
171 Mrs Rosemary Ainley
172 Recovery in Mind Occupational Therapy
173 Name Withheld
174 Name Withheld
175 Solace Coordination
176 Name Withheld
177 Helen Walker Occupational Therapy
178 Name Withheld
179 Mr Stevie Howson
180 Self Manager Hub
181 Name Withheld
182 Name Withheld
183 Ms Cat Walker, Mr Uli Cartwright & Ms Kath Madgwick
184 Name Withheld
185 Dr Elizabeth Gass
186 Name Withheld
187 Name Withheld
188 Name Withheld
189 Driving Well Occupational Therapy
190 Name Withheld
191 Ms Shirley Humphris
192 Name Withheld
193 Name Withheld
194 Dr GS Lakes
195 Name Withheld
196 Name Withheld
197 Ms Kerry Greaves
198 Name Withheld
199 Mrs Caitlin Smithen
200 Name Withheld
201 Mr Finn O'Keefe
202 Mr Reuben Bristed
203 Name Withheld
204 Mr Mark Toomey
 • 204.1 Supplementary Submission
205 Mrs Annette Demack
206 Name Withheld
207 Name Withheld
208 Mr Leslie Cope
209 Name Withheld
210 Name Withheld

211 Name Withheld
213 Name Withheld
214 Ms Stephanie Travers
215 Name Withheld
216 Name Withheld
217 Name Withheld
218 Name Withheld
219 A C MCARTHUR SERVICES
220 Ms Ashleigh Rae
221 Mrs Jackie Cruickshank
222 Name Withheld
223 Mr David Brown
224 Mr Brian Radcliffe and Ms Robyn Radcliffe Radcliffe
225 Ms Carly Mill
226 Ms Gina Scott
227 Ms Shaunagh Stevens
228 Name Withheld
229 Ms Sarah Cooper
230 Mr Nathaniel Ringham
232 Ms Michelle Diss
233 Mr David Jones
234 Ms Jennifer Howard
235 Ms Tracey Sparkman
236 Ms Joanne Villani
237 Darcy Graham
238 Ms Janet Unterrheiner
239 Ms Francesca Varney
240 Ms Angela Davis
241 Name Withheld
242 Ms Anna Morris
243 Ms Ty Newnham
244 Name Withheld
245 Ms Margi Bruce
246 Mr Robert Haywood
247 Mr Byron Stol
248 Ms Jennifer Robinson
249 Sam Connor
250 Ms Samantha Zanker
251 Australian Lawyers Alliance
252 Ms Alyssa Lewellyn
253 Ms Maria McCaffrey
254 Mr Roger Gamble
255 P. Aplet

-
- 256 Ms Janine Guice
257 Professor Elisa Hill-Yardin and Mr Philippe Yardin
258 Ms Pam Geoghegan
259 Ms Sonia Kayssar
260 Sam Clayfield
261 Erosha Bakmiwewa
262 Ms Vicki Beaver
263 Mrs Fay Richards OAM
264 Ms Maria Scharnke
265 Ms Jenny McAllister
266 Ms Catherine Merry
267 Ms Dory Hickey
268 Mr Marcus Facer
269 Ms Lyn Jenkins
270 Name Withheld
271 Ms Jenny Owen
272 Name Withheld
273 Mr Matthew Potocnik
274 Name Withheld
275 Name Withheld
276 Name Withheld
277 Ms Elisabeth Storrs
278 Name Withheld
279 Frances Kupke-Smith
280 Ms Trish Roan
281 Ms Johanna Williams
282 Ms Phillippa Smoker
283 Aelis Miller
284 Ms Nicky Avramidis
285 Ms Lisa May
286 Ms Claire-Louise McCrackan
287 Ms Ariane Minc
288 Ms Shirley Humphris
289 Ms Daniella Fraser
290 Ms Carmel Flavel
293 Name Withheld
294 Ms Ellen Gould
295 Name Withheld
296 Name Withheld
297 Ms Annette Demack
298 Ms Jenna Oakley
299 Integrated Disability Action Inc
300 Denni McLennan

- 301 Ms Heidi Brandis
- 302 Name Withheld
- 303 Name Withheld
- 304 Name Withheld
- 305 Name Withheld
- 306 Mr Denis J. Daly
- 307 Ms Giselle Burningham
- 308 Name Withheld
- 309 Ms Hanneltjie van Aardt
- 310 Name Withheld
- 311 Name Withheld
- 312 Name Withheld
- 313 Name Withheld
- 314 Name Withheld

Answer to Question on Notice

- 1 Every Australian Counts, answers to questions taken on notice, 24 July 2024 (received 31 July 2024)
- 2 Professor Bonyhady AM, answers to questions taken on notice, 24 July 2024 (received 31 July 2024)
- 3 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 8 August 2024.
- 4 Answers to Senator Urquhart's question taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 8 August 2024.
- 5 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 8 August 2024.
- 6 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 8 August 2024.
- 7 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 8 August 2024.
- 8 Answers to Senator Hughes' questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 9 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 10 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.

- 11 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 12 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 13 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 14 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 15 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 16 Answers to Senator Urquhart's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 17 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024.
- 18 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024
- 19 Answers to Senator Kovacic's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024
- 20 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 6 August 2024; received 8 August 2024
- 21 Answers to Senator Reynold's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 22 Answers to Senator Reynold's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 23 Answers to Senator Reynold's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 24 Answers to Senator Reynold's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.

- 25 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 26 Answers to Senator Hughes' questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 27 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 28 Answers to Senator Darmanin's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 29 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 30 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 31 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 32 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.
- 33 Answers to Senator Steele-John's questions taken on notice by the National Disability Insurance Agency at a public hearing on 25 July 2024; received 9 August 2024.

Appendix 2

Public Hearings

Wednesday, 24 July 2024

Committee Room 2R1, Parliament House
Canberra

Down Syndrome Australia

- Mr Darryl Steff, CEO

Aruma/Alliance20

- Dr Martin Laverty

Every Australian Counts

- Dr George Taleporos, Independent Chair
- Ms Nick Avery, Deputy Chair
- Mr Scott Harry, Supporter

Professor Bruce Bonyhady, Private capacity

President of People with Disability Australia

- Ms Marayke Jonkers, President

Disability Advocacy Network Australia

- Mr Liam Thatcher
- Ms El Gibbs, Deputy CEO

USyd Centre for Disability Research and Policy

- Professor Jennifer Smith-Merry, Director

Inclusion Australia

- Ms Catherine McAlpine, CEO

Ms Elly Desmarchelier, Private capacity

Mr Tony Clark, Private capacity

Ms Claire-Louise McCrackan, Private capacity

Intrepidus Law

- Ms Belinda Kochanowska, Principal Lawyer & Founder
- Ms Jasmine Werneburg, Lawyer

National Legal Aid

- Ms Lindsay Ash, Senior Solicitor

- Mr Miles Browne, Managing Lawyer, Economic and Social Rights Program

Dr Darren O'Donovan, Private capacity

Dr Georgia Van Toorn, Private capacity

Thursday, 25 July 2024

Committee Room 2S3, Parliament House
Canberra

Department of Social Services

- Ms Robyn Shannon, Deputy Secretary, Disability and Carers Stream
- Ms Bronwyn Worswick, Chief Counsel, Legal Services Group
- Ms Sarah Hawke, Branch Manager, NDIS Governance Policy Legislation
- Ms Sarah Rubenstein, Principal Legal Officer, Public Law Branch

National Disability Insurance Agency

- Mr Matthew Swainson, Acting DCEO Governance, Risk and Legal
- Mr Daniel Flowers, General Manager, Chief Counsel

NDIS Quality and Safeguards Commission

- Mr Michael Phelan APM, Acting Commissioner
- Mr Brett Harris, Acting, General Counsel and Assistant Commissioner Legal and Integrity Branch
Department of Social Services

Tuesday, 6 August 2024

Main Committee Room, Parliament House
Canberra

National Disability Insurance Agency

- Ms Rebecca Falkingham, Chief Executive Officer
- Mr David Gifford, Scheme Actuary
- Mr Matthew Swainson, Acting Deputy Chief Executive Officer, Governance, Risk and Legal/Chief Counsel
- Mr Scott McNaughton, Deputy Chief Executive Officer, Service Delivery