

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

Submission to the Community Affairs Legislation Committee

A joint submission from Disability Representative Organisations

17 May 2024



Children and Young People
with Disability Australia



Disability Advocacy
Network Australia



First Peoples
Disability Network
Australia



Inclusion Australia



N E D A

National Ethnic Disability Alliance



Women
With
Disabilities
Australia

(WWDA)

Contents

Acknowledgements and style note	3
Signatories to this submission	3
Contributors to this submission	3
Support for Public Interest Advocacy Centre’s submission	3
Contact.....	3
Introduction	4
Summary of recommendations.....	5
Co-design of NDIS reforms.....	8
Commitment to co-design must be legislated.....	8
Needs assessment framework	10
1. The needs assessment process must be ‘whole of person’ and fair	10
2. Assessment process must be flexible	10
3. Needs assessment report must be provided to the person	11
4. Clarity is needed on who performs the needs assessment	11
5. Needs Assessors need specific qualifications	11
6. The decision to rely on a person’s needs assessment report in preparing a person’s statement of participant supports must be a reviewable decision.....	12
7. Needs assessment tool must be developed in consultation with the disability community	12
8. NDIA must fund required assessments	13
‘NDIS Supports’	14
1. ‘NDIS Supports’ must be broad enough to ensure flexibility and individual choice and control.....	14
2. An alternative to APTOS needed	14
NDIS pathways	15
1. The implementation of sections 24 and 25 should be delayed as they disadvantage people with psychosocial disability	15
Reasonable and necessary budget.....	16
1. Draft budget must be provided to the person.....	16
2. Development of the budget ‘method’ needs to be transparent and take into consideration pivotal life transitions and circumstances	16
3. A person’s budget must be presented in a way that reflects their unique circumstances	16
Expanded NDIA/NDIS powers.....	18
1. Plan management – parameters in which the CEO can override a person’s plan management preference must be listed in the Bill	18
2. CEO power to revoke NDIS status if requested information not received – the Bill must state what circumstances the CEO considers as ‘reasonable’ for the information request not being complied with	18
3. Strengthened quality and safeguarding measures – continued reform is needed.....	19

Acknowledgements and style note

The organisations contributing to this submission acknowledge all the individuals who lent their time and expertise to its development. This submission would not have been possible without these efforts.

This submission is written in person first language (i.e., person/people with disability) to match the language commonly used by the Australian Government.

The submission was prepared with the assistance of the Coordinator, National Coordination Function for Disability Advocacy Network Australia (DANA).

The authors, organisations and individuals supporting this submission acknowledge the Traditional Owners of the lands on which this submission was developed.

Signatories to this submission

The following individuals and organisations endorse this submission.

- Children and Young People with Disability Australia (CYDA)
- Disability Advocacy Network Australia (DANA)
- First Nations Disability Network (FPDN)
- Inclusion Australia (IA)
- National Ethnic Disability Alliance (NEDA)
- Women with Disabilities Australia (WWDA)

Contributors to this submission

The following organisations contributed to the writing of this submission:

- Disability Advocacy Network Australia (DANA)
- Children and Young People with Disability Australia (CYDA)
- First Nations Disability Network (FPDN)

Support for Public Interest Advocacy Centre's submission

We wish to formally advise that DRO's who endorse this submission are in support of the recommendations PIAC has made in its submission to the Community Affairs Legislation Committee regarding the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]*.

Contact

Caitlin Clair
National Coordination Function (NCF) Administrator
Disability Advocacy Network Australia
coordinator@dana.org.au

Introduction

Disability Representative Organisations (DROs) welcome the opportunity to provide feedback on the exposure draft of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]*.

There are several aspects of the Bill we support, such as the introduction of flexible budgets, and the removal of primary and secondary disability. However, we are of the view the Bill is premature. The Australian Government has not made a formal response to the NDIS Review. Extensive work needs to be done with the state and territory governments to establish a system of foundational supports, which are critical to an ecosystem that supports people with disability, regardless of whether they are participating in the NDIS. Without this robust ecosystem, many people with disability will continue to be denied the essential supports they need, particularly the most marginalised.

Reforms to the NDIS need to be built upon the strong building blocks established by the recommendations from the NDIS Review and the Disability Royal Commission, both of which involved the significant input from the disability community. We also note that in December 2023 the National Cabinet agreed to the uplift to mainstream services and development of foundational supports, of which the Bill is heavily reliant upon.

Key amendments this submission responds to:

- Co-design of NDIS reforms
- Needs assessment framework
- 'NDIS supports'
- NDIS pathways
- Reasonable and necessary budgets
- Expanded NDIA/NDIS powers

A summary of our recommendations is in the next section.

Summary of recommendations

Recommendation 1:

Section 4 of the Bill be amended to include a requirement that people with disability must play a leadership role in the design and implementation of reforms to the NDIS, including related legislation and subordinate legislation. This involves:

- Leadership by people with disability and their representative organisations;
- Meaningful co-design and consultation with the disability community, including transparent engagement plans and timelines;
- Consultation with those most impacted by the changes, including People with disability who live in regional, rural and remote areas;
- Specific consultation with Culturally and Linguistically Diverse (CALD), LGBTQIA+SB, and other diverse communities; and
- Power sharing and consultation with First Nations communities and peak organisations, in compliance with the CTG Agreement.
- Adequate resourcing and time to properly consult with our communities and respond.

Recommendation 2:

Amend proposed subsection 32L(3) to require assessment of support needs on a 'whole of person' basis.

Recommendation 3:

Amend proposed subsection 32L(5) of the Bill to require the Needs Assessor to provide a draft needs assessment report to the person before it is given to the CEO. This must include a process that allows the person to request amendments to the assessment before it is provided to the CEO.

Recommendation 4:

Amend proposed subsection 32L to include the requirement for the Needs Assessor to engage with the person's existing support and health professional team and to involve the person in the assessment process. A Needs Assessor should not, without good and justifiable reasons, seek additional external evidence which could have been provided by the person's existing support team of health professionals.

Recommendation 5:

The Needs Assessors must have appropriate formal qualifications in allied health and experience in conducting assessments and be independent from service providers.¹ These requirements must be stated in the Bill.

Recommendation 6:

Amend existing section 99 of the Bill to include the decision to rely on a person's needs assessment report to prepare a person's statement of participant supports as a reviewable decision.

Recommendation 7:

¹ NDIS Review – Supporting Analysis, 2023, page 287-288.

Insert a legislative requirement for the assessment tool to be developed:

- using evidence from Australian and international peer-reviewed research about the impacts of assessment on people with disability; and
- tested with the disability community, including DROs, academics and health professionals with lived experience, family and carers, advocates, and service providers.

Recommendation 8:

Amend section 26 and proposed section 36 of the Bill to require the NDIA to fund (with no cap) requested/required assessments and reassessments.

Recommendation 9:

Amend proposed section 10 to include a note that requires the NDIS Rules, for the purposes of declaring what is and what is not an NDIS support, to be broad enough to ensure flexibility and individual choice and control and mirror the reasonable and necessary principles under existing section 34 of the Act.

Recommendation 10:

The APTOS tables should not be used as an interim measure. The Government should adopt a more appropriate set of transitional provisions while Rules for the proposed subsections 10(b) and (c) are developed.

Recommendation 11: Sections 24 and 25 are not implemented until 1 July 2026 or until foundational supports and inclusive mainstream services coordinated with the NDIS for people with psychosocial disability are in place.

Recommendation 12:

Amend the Bill (somewhere between proposed sections 32E and 32K) to require the NDIA to provide the draft budget to the person for their review before its finalisation. There must be a mechanism for the draft budget to be amended if it contains incorrect information or is insufficient.

Recommendation 13:

The NDIA develops the budget 'method' and user tests it with a broad representative group of people with disability, including children and young people, and First Nations people.

Recommendation 14:

Amend the Bill (somewhere between proposed sections 32E and 32K) to include a requirement that a person's reasonable and necessary budget is presented in a relevant and inclusive format.

Recommendation 15:

Amend proposed section 43 to:

- include details about the test for determining that 'the participant would likely suffer physical, mental or financial harm', and that such an assessment is to include the person (with support for decision making), family and/or carers and other significant people in the person's life, along with access to an independent disability advocate; and

- include details about what non-compliance with section 46 looks like and the threshold for this non-compliance to then override someone's plan management preference.
- ensure that NDIS Rules regarding this section are co-designed with people with disability and the broader disability community, and that information about them must be accessible to the disability community.

Recommendation 16:

Amend proposed subsection 30A to include what are 'reasonable' grounds for a person not complying with the CEO's request for information.

Recommendation 17:

Reform to the NDIS Quality and Safeguards Commission is essential to deliver substantial change to rates of violence and abuse against people with disability. If safety and quality is not embedded in the design of a new regulatory framework, it will fail to achieve the most important objectives of reform. Mechanisms to ensure scrutiny, with an emphasis on improving safety and quality, must be central throughout the reform and implementation process.

Recommendation 18:

Any changes must incorporate increasing the capacity of the current Quality and Safeguards Commission to manage the large increase in registrations, and to oversee compliance, as well as proactively preventing abuse and handling complaints. Changes also need to provide the ability for the Quality and Safeguards Commission's to adequately deal with 'conflicts of interest and client capture, sharp practices (including unfair service agreements), transparency and duties of care.'

Recommendation 19:

The recommendations from the Disability Royal Commission (Volume 10, Part B: NDIS Quality and Safeguards Commission) and the NDIS Review (Recommendation 19) both discuss the need for major safeguarding reform, and DROs believe this is urgent. The operations and structure of the NDIS Quality and Safeguards Commission need to be addressed as a vital part of any changes to the registration system.

Recommendation 20:

There needs to be accessible, peer led information and support to build skills and knowledge about what is a safe and quality service, for example, independent, accessible, peer led information and support to build skills and knowledge about what is a good quality service.

Co-design of NDIS reforms

The NDIS Review stated that changes to the NDIS must be genuinely designed with people with disability:

*[Changes to the NDIS] 'must be delivered sensitively in consultation with people with disability and in line with implementation of best practice. This is essential to build and maintain confidence in the integrity of the NDIS with people with disability and the Australian community. Genuine design with people with disability, their families, carers, Disability Representative Organisations, workers and disability service providers that centre and leverage the lived experience and expertise of the disability community and sector. This would involve people with disability at all stages of the design process, including identifying when new processes are ready to be implemented.'*²

Commitment to co-design must be legislated

We acknowledge, and welcome, the Australian government's statements that various aspects of the changes proposed in the Bill, such as the development of the needs assessment tools and process, the early intervention pathway, and the tools and NDIS Rules that need to be in place for new framework plans, will be designed in consultation with people with disability and the disability community. However, to ensure this occurs, the commitment to co-design must be legislated in this Bill and future proposed legislation.

People with disability must play a leadership role in the design and implementation of reforms to the NDIS, including related legislation, subordinate legislation, and policy. We have repeatedly raised the need for meaningful leadership and co-design in our responses to both the NDIS Review and Disability Royal Commission. Our organisations have called for the establishment of a Disability Reform Implementation Council, led by people with disability and our organisations, to oversee the changes flowing from the Disability Royal Commission and the NDIS Review. We have proposed that the Council report directly to National Cabinet and have working groups specialising in key reform areas, which would include changes to NDIS provider and worker registration.

Our organisations need sufficient time and resourcing to engage with people with disability about these reforms. To manage the large increase in workload for DROs, including engaging fully with people with disability and our families and supporters, our organisations need a significant uplift in resources. DROs need additional resources to engage staff, develop consultation mechanisms and deliver on this complex, cross-government liaison and co-design.

Consultation and co-design must centre people with disability from intersectional communities through resourced engagement with representative, advocacy and peer support organisations and networks operating in these local communities. This includes

² Commonwealth of Australia, Working together to deliver the NDIS – Independent Review into the National Disability Insurance Scheme, Final Report, 2023.

people who live in regional, rural and remote Australia, Culturally and Linguistically Diverse (CALD); and LGBTQIA+SB people with disability.

All Australian jurisdictions have signed the National Closing the Gap Agreement (CTG Agreement), and therefore made commitments to First Nations communities and peak organisations which must be honoured. The priority reforms require formal partnerships and shared decision making, targeted at building the community-controlled sector and meaningfully transforming the underlying behaviour of government organisations such as the NDIA.

Many of our organisations work with significantly marginalised people with disability, including from population groups that have many barriers to having their voices heard. Our organisations need the capacity to engage with people with disability, particularly those with significant barriers to having their voices heard, including the sustainability of staff and organisations to contribute to the engagement and consultation process.

Recommendation 1:

Section 4 of the Bill be amended to include a requirement that people with disability must play a leadership role in the design and implementation of reforms to the NDIS, including related legislation and subordinate legislation. This involves:

- Leadership by people with disability and their representative organisations;
- Meaningful co-design and consultation with the disability community, including transparent engagement plans and timelines;
- Consultation with those most impacted by the changes, including People with disability who live in regional, rural and remote areas;
- Specific consultation with Culturally and Linguistically Diverse (CALD), LGBTQIA+SB, and other diverse communities; and
- Power sharing and consultation with First Nations communities and peak organisations, in compliance with the CTG Agreement.
- Adequate resourcing and time to properly consult with our communities and respond.

Needs assessment framework

We understand that people wanting to access the NDIS, who have met the eligibility requirements for the Scheme, will undergo a needs assessment (using an 'assessment tool') (para 32L). This needs assessment will inform the person's Statement of Participant Supports and therefore their NDIS plan. We make the following submissions in relation to the needs assessment process.

1. The needs assessment process must be 'whole of person' and fair

The needs assessment must be grounded in human rights, and ethical considerations and capture a person's support needs, life stage, life circumstances and life transitions. The needs assessment must not be a return to the scheme of 'independent assessments', either in part or full.

The needs assessment must be an 'authentic assessment'. Assessment is most accurate, especially for children, when people are somewhere they feel comfortable. For example, in their home, school or around friends and family.

The NDIA should gather information about a person's needs from a variety of sources, including self-assessment, trusted professionals, family and/or supporters, as well as the outcomes of the needs assessment. This will enable a whole-of-person budget to be created.³ The assessment must take into consideration the whole and cumulative impact of a person's impairments across multiple domains. We welcome the move away from focussing on the person's diagnosis, but determining needs will require sensitive and culturally appropriate assessment methods to be accurate and fair.

The needs assessment process and resulting budget must be transparent to the person at all stages. There must be clear connection between the information gathered during the needs assessment and the resulting budget.

Recommendation 2:

Amend proposed subsection 32L(3) to require assessment of support needs on a 'whole of person' basis.

2. Assessment process must be flexible

A one size fits all approach to the needs assessment process will not work for everyone. Assessments need to be conducted flexibly to respond to a person's needs including variations in the process where required. Consideration must be given to the validity and reliability of tools, accessibility, communication and other intersecting needs.

The needs assessment must be designed to be appropriate and accommodate people with disability, particularly children and young people, including those who have complex communication needs and those with low levels of literacy. The needs assessment process must be flexible to account for the intersectional and practical factors relevant for each

³ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p.1194.

person. For example, if a person lives in a rural or remote area, they should not be obligated to arrange and pay for travel/accommodation to access the needs assessment unless there is a justifiable need to do so and no reasonable alternative.

3. Needs assessment report must be provided to the person

The Bill proposes that once a person's needs assessment is complete it is to be given to the CEO as soon as practicable after the assessment is completed (proposed subsection 32L(5)). There is no stipulated requirement for the assessor to give the person a draft of the needs assessment or a copy of the needs assessment. This means that a person and/or their nominee is not able to check the assessment for mistakes, inaccuracies, or inappropriate information before it has been given to the CEO. This undermines a person's choice and control and transparency of the decision-making process. Further, giving the person the ability to check the assessment will likely reduce the requests for review that are made to fix errors, and external appeals, once the person receives their plan.

Recommendation 3:

Amend proposed subsection 32L(5) of the Bill to require the Needs Assessor to provide a draft needs assessment report to the person before it is given to the CEO. This must include a process that allows the person to request amendments to the assessment before it is provided to the CEO.

4. Clarity is needed on who performs the needs assessment

For many people with disability, it takes years to develop a trusted relationship with the health and other professionals in their lives. Further, it can take considerable time for health professionals to develop a comprehensive understanding of the person's condition and needs. For these reasons, it is critical for the Needs Assessor to engage with the person's existing health and allied professional and engage with the person.

A Needs Assessor should not, without good and justifiable reasons, seek additional external evidence (such as in the form of medical reports or assessments) which could have been provided by the person's existing support team of health professionals. It is important to stress again that the needs assessment process must be flexible. Instead of developing fixed practices of always requesting evidence in specific forms from specific sources, a Needs Assessor should be capable of and obligated to genuinely evaluate whether information from a member of the existing support team would suffice.

Recommendation 4:

Amend proposed subsection 32L to include the requirement for the Needs Assessor to engage with the person's existing support and health professional team and to involve the person in the assessment process. A Needs Assessor should not, without good and justifiable reasons, seek additional external evidence which could have been provided by the person's existing support team of health professionals.

5. Needs Assessors need specific qualifications

The Needs Assessor must have specific qualifications, skills and training to fulfil the role. This must include the skills to conduct assessments that are culturally sensitive, trauma-

informed, and rooted in human rights principles. The NDIS Review discusses the requirements of the Needs Assessors in detail.⁴

The recruitment process for Needs Assessors should prioritise and facilitate the inclusion of these individuals in Needs Assessor positions. The needs assessment must be carried out by a skilled and well-trained professional who can build and demonstrate mutual trust with the person.⁵

Recommendation 5:

The Needs Assessors must have appropriate formal qualifications in allied health and experience in conducting assessments and be independent from service providers.⁶ These requirements must be stated in the Bill.

6. The decision to rely on a person’s needs assessment report in preparing a person’s statement of participant supports must be a reviewable decision

The Bill does not list the decision of the Agency to rely on a needs assessment report to prepare a person’s statement of participant supports as a reviewable decision under existing section 99. This means there is no mechanism for the decision to be internally reviewed, with the implication that it is not a decision that can be referred to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for external review.

Recommendation 6:

Amend existing section 99 of the Bill to include the decision to rely on a person’s needs assessment report to prepare a person’s statement of participant supports as a reviewable decision.

7. Needs assessment tool must be developed in consultation with the disability community

According to The Explanatory Memorandum, the needs assessment tool (or tools) will be highly technical and developed in consultation with the disability community, medical and professional experts, and international learning and best practice.⁷ We are concerned that the assessment tool, and resulting assessment process may be overly technical and complicated, and the disability community will not be adequately consulted in its development.

Recommendation 7:

Insert a legislative requirement for the assessment tool to be developed:

- using evidence from Australian and international peer-reviewed research about the impacts of assessment on people with disability; and

⁴ NDIS Review – Supporting Analysis, 2023, page 287-288.

⁵ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p.1194.

⁶ NDIS Review – Supporting Analysis, 2023, page 287-288.

⁷ The Parliament of the Commonwealth of Australia, House of Representatives, *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) Bill 2024*, Explanatory Memorandum, p.23.

- tested with the disability community, including DROs, academics and health professionals with lived experience, family and carers, advocates, and service providers.

8. NDIA must fund required assessments

Government funding for required assessments will create a fairer pathway to accessing the NDIS by eliminating the financial hurdles that prevent people with disability from obtaining current necessary evidence for their access requests. This will promote consistency in decision-making and ensure individuals with comparable levels of support needs receive the same access outcomes, irrespective of their diagnosis or ability to obtain expert reports.

Additionally, once individuals have qualified for access through these strengthened procedures, they will not need to frequently revalidate their disability status.⁸ Where it is obvious that a person's disability status is permanent, the NDIA should have internal procedures in place to ensure to avoid revalidation requirements entirely. If utilised without critical thinking, revalidation requirements can be humiliating to the person and a waste of resources.

Similarly, if the NDIA requests further assessments or reports under section 26 for the purposes of the needs assessment and/or preparing a statement of participant supports, then it must fund those.

Recommendation 8:

Amend section 26 and proposed section 36 of the Bill to require the NDIA to fund (with no cap) requested/required assessments and reassessments.

⁸ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p.233.

‘NDIS supports’

1. ‘NDIS supports’ must be broad enough to ensure flexibility and individual choice and control

DROs are concerned about the NDIA’s move towards long lists of prohibited and permitted supports. Our experience is that for a scheme that is individually orientated, such as the NDIS, what is a disability support for one person with disability will be something different for another, which is what the NDIS must continue to fund.

As per the Explanatory Memo, the example given of whitegoods is concerning, given that for many people with disability, assistive technology, including whitegoods, are a vital part of disability-related supports to maintain independence. In addition, technology is likely to continue to accelerate over the next decade, creating new categories of available assistive technology that people with disability may wish to utilise.

The alternative to providing funding for specific items is often for the NDIA to fund disability support worker hours, which is both a more expensive option, and not always what the person with disability prefers.

The details about what are, and are not, NDIS supports must be broad enough to ensure flexibility and individual choice and control, as well as not inadvertently create increasing costs. This is why the focus of the NDIS scheme has always been on which supports are ‘reasonable and necessary’ (which will now be a determination that applies to a participant’s whole budget, rather than ‘line-by-line’ for each support). The more leeway that is given to the NDIA to move towards broad (and potentially arbitrary) lists of restricted items, the more that this foundational pillar of the NDIS scheme will run the risk of being dismantled.

Recommendation 9:

Amend proposed section 10 to include a note that requires the NDIS Rules, for the purposes of declaring what is and what is not an NDIS support, to be broad enough to ensure flexibility and individual choice and control and mirror the reasonable and necessary principles under existing section 34 of the Act.

2. An alternative to APTOS needed

We understand under the new Part 3 (2) and (3) that until new NDIS Rules are made under para 10(b) and/or (c) regarding ‘NDIS Supports’, the Applied Principles and Tables of Support (APTOS) will be used to determine what is and is not an ‘NDIS Support’. We note the APTOS were developed early in the NDIS and were never intended to be operationalised and are not appropriate for determining what is and isn’t an ‘NDIS Support’.

Recommendation 10:

The APTOS tables should not be used as an interim measure. The Government should adopt a more appropriate set of transitional provisions while Rules for the proposed subsections 10(b) and (c) are developed.

NDIS pathways

1. The implementation of sections 24 and 25 should be delayed as they disadvantage people with psychosocial disability

The amended sections 24 and 25 outline new pathways for people with disability to access the NDIS. People with psychosocial disability will be streamed into early intervention supports. This assumes most psychosocial disability can be addressed by an early intervention pathway that will lessen the impact of this disability on their lives and that the person will 'recover' from their disability. The Bill effectively downgrades psychosocial disability. We support the Australian Psychosocial Disability Collective's position, that psychosocial disability is a very real disability and should be treated with equal rights under the NDIS Act. Further, psychosocial disability is a permanent disability for the purposes of the present NDIS eligibility criteria and is not adequately supported through current mainstream services.⁹

The breadth and depth of needed supports, provided under the current NDIS, are simply not available in mental health services. Many participants experience the clinical mental health system, grounded in a medication-based medical model, as harmful, traumatising, denuding of hope, coercive, judgemental, stigmatising, and systemically violent.¹⁰

Recommendation 11: Sections 24 and 25 are not implemented until 1 July 2026 or until foundational supports and inclusive mainstream services coordinated with the NDIS for people with psychosocial disability are in place.

⁹ Members of the Australian Psychosocial Disability Collective (n.d.). APDC statement regarding the NDIS Review & NDIS Bill Amendments 2024. The Australian Psychosocial Disability Collective. <https://www.apdcollective.net/apdc-statement-psychosocial-disability>

¹⁰ Members of the Australian Psychosocial Disability Collective. APDC statement regarding the NDIS Review & NDIS Bill Amendments 2024. The Australian Psychosocial Disability Collective. <https://www.apdcollective.net/apdc-statement-psychosocial-disability>

Reasonable and necessary budget

1. Draft budget must be provided to the person

There is no requirement in the Bill for a draft budget to be provided to the person and/or their nominee. This undermines a person's choice and control. Affording the person the ability to review their draft budget will likely reduce the requests for internal review and external appeal, once the person receives their finalised plan.

Recommendation 12:

Amend the Bill (somewhere between proposed sections 32E and 32K) to require the NDIA to provide the draft budget to the person for their review before its finalisation. There must be a mechanism for the draft budget to be amended if it contains incorrect information or is insufficient.

2. Development of the budget 'method' needs to be transparent and take into consideration pivotal life transitions and circumstances

For flexible budgets to be successful, several practical considerations are needed in the design of the budget 'method':

- The 'method' needs to be designed with people with disability to ensure their unique challenges are taken into consideration. The needs of children and young people, residents of remote and rural areas, First Nations persons, and others with a disability are all going to require individual consultation and tailored solutions.
- The 'method' must be user tested before it is implemented. This is especially relevant for children and young people because of the difficulty in determining what intensive supports a young person will need during pivotal life transitions. For example, when a person turns 18, they will likely require more supports and increased budget.
- The 'method' needs to be flexible enough to respond to unforeseen circumstances in a person's life, such as unexpected hospitalisations or increased support needs, the requirement for new assistive technology or home modifications because of health issues.

Recommendation 13:

The NDIA develops the budget 'method' and user tests it with a broad representative group of people with disability, including children and young people, and First Nations people.

3. A person's budget must be presented in a way that reflects their unique circumstances

An important part of the budget setting process is for a person's budget to be presented in a relevant and inclusive way that reflects their unique circumstances. For example, where a First Nations person has supports with a cultural component or support to assist them to engage with their cultural responsibilities, these are to be clearly defined.

Recommendation 14:

Amend the Bill (somewhere between proposed sections 32E and 32K) to include a requirement that a person's reasonable and necessary budget is presented in a relevant and inclusive format.

Expanded NDIA/NDIS powers

1. Plan management – parameters in which the CEO can override a person’s plan management preference must be listed in the Bill

The Bill proposes new subsections 43(2A), (2B), (2C) and (2D). These proposed subsections deal with situations in which the CEO may not comply with a participant’s plan management requests in relation to new framework plans.

The circumstances in which the CEO *may* make such a decision are (proposed subsection 43 (2C)):

- the participant would be likely to suffer physical, mental or financial harm if the CEO were not to make the decision;
- section 46 (dealing with the acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant’s previous plans;
- a circumstance prescribed by Category A NDIS Rules.

We are concerned the CEO has significant discretion to override a person’s plan management preference, without this authority having clearly defined parameters. Given the potential for the CEO to remove a person’s choice and control over who manages their plan, we strongly advocate that the parameters be included in the Bill as outlined in our recommendation. We also believe that these decisions by the CEO must be made with both access to an independent disability advocate, and support for decision making.

Recommendation 15:

Amend proposed section 43 to:

- include details about the test for determining that ‘the participant would likely suffer physical, mental or financial harm’, and that such an assessment is to include the person (with support for decision making), family and/or carers and other significant people in the person’s life, along with access to an independent disability advocate; and
- include details about what non-compliance with section 46 looks like and the threshold for this non-compliance to then override someone’s plan management preference.
- ensure that NDIS Rules regarding this section are co-designed with people with disability and the broader disability community, and that information about them must be accessible to the disability community.

2. CEO power to revoke NDIS status if requested information not received – the Bill must state what circumstances the CEO considers as ‘reasonable’ for the information request not being complied with

We understand that currently there is no ability for the CEO to request information for the purposes of considering the revocation of a person’s status as a participant. Proposed subsections 30(20) to 30(8) allows the CEO to request information from the person or other person if revocation is being considered. If a person fails to comply with a request for information within the timeframe (within 90 days or longer if stated in the request) then the CEO may revoke the person’s NDIS status under proposed subsection 30A(7) unless

satisfied it was 'reasonable' the request was not complied with in the required timeframe.¹¹ What is considered as 'reasonable' is not specified in the Bill, meaning the circumstances by which a person's status can be revoked are arbitrary.

Recommendation 16:

Amend proposed subsection 30A to include what are 'reasonable' grounds for a person not complying with the CEO's request for information.

3. Strengthened quality and safeguarding measures – continued reform is needed

We support the changes that the Bill (Schedule 2) proposes that allows the Quality and Safeguarding Commission to attach conditions to the approval of an approved quality auditor, and that the Commissioner's ability to take regulatory actions will be strengthened by delegating certain compliance and enforcement powers and functions to a broader range of personnel than currently have those powers.

However, these proposed changes are only the beginning of substantial reform to the quality and safeguarding ecosystem that are needed. To inform the Australian government's continued work in this area, we reiterate the DRO's position and recommendations expressed in our submission to the NDIS Provider and Worker Registration Taskforce.¹²

Recommendation 17:

Reform to the NDIS Quality and Safeguards Commission is essential to deliver substantial change to rates of violence and abuse against people with disability. If safety and quality is not embedded in the design of a new regulatory framework, it will fail to achieve the most important objectives of reform. Mechanisms to ensure scrutiny, with an emphasis on improving safety and quality, must be central throughout the reform and implementation process.

Recommendation 18:

Any changes must incorporate increasing the capacity of the current Quality and Safeguards Commission to manage the large increase in registrations, and to oversee compliance, as well as proactively preventing abuse and handling complaints. Changes also need to provide the ability for the Quality and Safeguards Commission's to adequately deal with 'conflicts of interest and client capture, sharp practices (including unfair service agreements), transparency and duties of care.'

Recommendation 19:

The recommendations from the Disability Royal Commission (Volume 10, Part B: NDIS Quality and Safeguards Commission) and the NDIS Review (Recommendation 19) both discuss the need for major safeguarding reform, and DROs believe this is urgent. The operations and structure of the NDIS Quality and Safeguards Commission need to be addressed as a vital part of any changes to the registration system.

Recommendation 20:

¹¹ The Parliament of the Commonwealth of Australia, House of Representatives, *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) Bill 2024*, Explanatory Memorandum, p.10.

¹² NDIS Provider and Worker Registration Taskforce - A joint submission by the DROs to the Department of Social Services, 1 May 2024.

There needs to be accessible, peer led information and support to build skills and knowledge about what is a safe and quality service, for example, independent, accessible, peer led information and support to build skills and knowledge about what is a good quality service.