

**Attn. Legislative Affairs Committee- National Disability Insurance Scheme (NDIS) Amendment  
(Getting the NDIS Back on Track No. 1) Bill 2024\***

(\*hereafter called 'the Bill')

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## INTRODUCTION

The NDIS Occupational Therapy Community of Practice (NDIS OT CoP) is comprised of over 10,000 occupational therapist and was created to establish best practice and optimal outcomes for, and with, NDIS participants. We welcome the Inquiry by the Senate Standing Committee on Social Affairs, Legislative Committee into the Bill.

## SUMMARY

While the NDIS OT CoP welcomes NDIS reform, and opportunities to co-design, we highlight areas of concern contained within the Bill and propose solutions. The NDIS social model should be imminently recognisable through its governing legislation. However, the Bill relegates essential Scheme architecture to the legislative instrument (the Rules), rather than placing this architecture in the primary legislation. This creates risk of loss of Scheme integrity, and less visibility, accountability and parliamentary oversight of the development of key scaffolding for the future NDIS.

In the absence of publicly available economic modelling, we are also concerned that the expected cost savings to reduce the rate of NDIS cost growth (targeting 8% p.a) will not eventuate, and comprehensive access to essential disability support, and subsequent participant outcomes, will be compromised by the changes contained in the Bill.

We highlight that, while there is no publicly available Bill implementation plan – or formal acceptance of NDIS Review recommendations - legislative reform confirms implementation has begun. This plan needs to be shared urgently, transparently and as a priority, so that the community, and parliament, can understand the vision and intention of the Bill. The absence of Bill and NDIS Review implementation detail is not consistent with a compassionate and transparent Scheme, or a co-designed and trauma-informed approach to disability policy re-structure.

More immediately, there are Scheme costs and participant safety risks associated with rapid change implementation, and changes to support provision, during transition periods. Currently, the NDIS Participant Service Guarantee is on pause and there are unprecedented delays in plan reassessments, impacting access to supports, and causing enormous distress for participants and families. Occupational therapists are on the front line of identifying support needs, proposing solutions, and working with participants towards their goals. and have been witness to the direct impact of these delays on participant outcomes and wellbeing.

Further, we must ask if this Committee believes that the absence of a publicly available Bill exposure draft and very tight timelines to respond, are consistent with an inclusive approach to enable Australians, including Australian's living with disability, to engage with democratic process as active citizens.

## RECOMMENDATIONS:

1. The National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 should be rejected in its current form and re-written to ensure fundamental NDIS scaffolding is placed in primary legislation, not the NDIS Rules. This will optimally uphold the integrity, stability and intent of the NDIS for all Australians.
2. The proposed implementation framework and government plan to enact the NDIS Bill, the NDIS Review and the Disability Royal Commission recommendations, should be made publicly available so that further legislation drafts can be understood in the context of a transparent national vision for the future.
3. The shared governance and funding agreements between State and Territory governments determining responsibility for the provision of disability support, must be clear and confirmed, and foundational supports established, prior to changing the NDIS legislation. Without this, there are unacceptable risks of service and infrastructure gaps; and risks to disability support access, including access to capacity building interventions delivered by the occupational therapy profession.

## CONSULTATION PROCESS

This submission was informed by broad community engagement with occupational therapists spanning all areas of disability practice within the NDIS. Broad recommendations 1-3 are listed above, with further technical recommendations detailed below. Our engagement strategy included:

- Online consultation session focused on the Bill, April 10<sup>th</sup> - 300 occupational therapists engaged.
- NDIS OT CoP leadership group direct OT community engagement by phone and email – 50 OT's.
- Ongoing CoP leadership group direct engagement with participants and the disability community

### 1. IMPLICATIONS FOR ACCESS TO THE NDIS

#### 1.1. Eligibility criteria

While the disability requirements under Section 24 have not been changed in the Bill, Section 24 notes subsection 27 may have implications for NDIS access. The Bill has not provided any further definition of functional capacity or substantially reduced functional capacity, beyond what is contained in the current legislation. Participants will still be required to demonstrate 'substantially reduced functional capacity' or 'permanence' to gain access to the NDIS under Section 24. We recommend that any further alteration or definitions of these terms, should be placed in the primary legislation, not the NDIS Rules.

The Bill does not legislate a requirement for a functional capacity assessment. Instead, it legislates a requirement for a mandatory Assessment of Support Needs. There is no reference to a process to establish or fund functional capacity assessments, through this Bill. In fact, the concept of functional capacity is reduced through the Bill, with a stronger emphasis placed on the construct of 'need for support'. The NDIS Review indicates that the functional assessment to assist in testing Scheme eligibility may be done by the treating provider, as per the current arrangement; and it may be considered for a specific Medicare item in future, to be implemented by suitably qualified occupational therapists. Currently, inequitable access to these assessments is a barrier for people seeking to test eligibility for NDIS access.

New entrants under Section 24 will also be required to undergo Support Needs Assessment, after meeting disability requirements. The Bill indicates there are two distinct assessment processes required to enter the NDIS and receive NDIS supports – Functional Capacity Assessment AND Support Needs Assessment. Current best practice regards both of these as two steps within the same process. Assessment of functional capacity informs the identification of support needs and ensures that all support needs related to the unique functional impact of the person's disability, are identified. Extensive co-design will be required to ensure the mechanisms for both assessment processes are fit-for-purpose.

## RECOMMENDATIONS:

4. Any changes to disability requirements, including alterations or definitions of key concepts such as 'substantially reduced functional capacity' for individuals or groups must be placed in the primary legislation, not the Rules.
5. Functional assessments to test eligibility for NDIS eligibility be made accessible, affordable and available to uphold equitable access to the NDIS e.g. funded as a Medicare item. This assessment should be identified through the Bill and cover all NDIS functional domains. The Bill should state that this information is to be considered at the point of support needs assessment and provide a mechanism for the functional assessment to be updated if there is significant change in the person's functional capacity.

## **1.2. Section 27 National Disability Insurance Scheme rules relating to disability requirements and early intervention requirements.**

Section 27 (1) states “The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of section 24 (disability requirements) or 25 (early intervention requirements)”

### **RECOMMENDATION:**

6. Section 27 represents an unconfined ‘God’ power and threatens the core intent, function and stability of the NDIS. We recommend this is removed from the Bill - all provisions for determining both disability requirements and early intervention requirements should be placed in the primary legislation, not the Rules. (See Recommendation 1)

## **1.3. Implications of Section 34 (f) for NDIS Access**

The Bill confirms that access to the NDIS may be restricted through Section 34 (f). According to Section 10 of the Bill, which defines NDIS supports, the disabled person meeting both disability and permanence criteria, but requiring a support that is not a NDIS support, may be deemed ineligible for NDIS supports, under Section 34 (f). Section 10 holds nuanced implications for NDIS access and eligibility, which requires further scrutiny. See Recommendation 22.

## **1.4. NDIS eligibility can be influenced by consideration of whether the support is best provided by the NDIS or another system.**

If the Rules state a support (s) should be funded by an alternative system, the person may be deemed ineligible for the NDIS. The implications for this clause on access to the NDIS must be further explored, to ensure access to the NDIS is not unfairly denied; to ensure the NDIS does not discriminate against particular disabilities or support needs; and to ensure these alternative systems genuinely have capacity to meet disability support needs.

7. While the Bill doesn’t cover ‘foundational supports’ (low intensity disability supports falling outside the remit of the NDIS) it does set up new powers that will divert people with disabilities, and potentially, entire disability groups, to foundational supports. Clearly, there are ongoing negotiations with State and Territory governments, and federal jurisdictions, regarding responsibilities for provision of disability support and services. It is essential to establish clarity on designated responsibilities, prior to dismantling the current legislative framework underpinning the NDIS. The Bill should not be passed until the foundational supports are in place, to prevent creating service gaps. Leading lawyers have indicated the Applied Principles and Tables of Support (APTOS) tool is not ‘useable law’ and should not be linked to the Bill [1]. More work must be done with States and Territories to ensure there are no service gaps which must occur *prior* to changing the legislation to ensure there are clear designated responsibilities for disability support across all jurisdictions.

**RECOMMENDATION:**

7. Foundational supports must be established and available prior to enacting the aspects of the Bill that can deny access to the NDIS based on the support falling under the responsibility of another jurisdiction. Implementation of the Bill, including Section 10, must recognise that low-intensity foundational supports are not an alternative to the NDIS for people with complex disability needs (See recommendation 3)

**1.5. Revocation of Participant Status (Section 30 and 30A)**

Section 30 of the Bill grants enhanced Plan Revocation powers to the NDIS CEO. We propose/recommend a review of these powers is warranted, particularly concerning the 90-day non-response/ non provision of information timeframe, where there is evidence that the delayed participant response is disability-related. Prior to exiting a participant, the Agency would need to ensure a risk assessment is completed; is sighted by the participant; and written confirmation of alternative supports is obtained. There are risks here for participants with high support needs. We refer the reader to the case of David Harris for such an example. [David Harris was left to die alone after his NDIS payments were cut off \(smh.com.au\)](#)

"Where such information is not provided within the allotted timeframe (90 days) and the CEO is satisfied that extenuating circumstances do not apply (the example of the participant being hospitalised at the time of the request is provided), then the persons participant status can be revoked."

**RECOMMENDATIONS:**

8. We recommend all circumstances and process through which a participant's plan can be revoked, be included in the primary legislation, not the Rules (Section 30A,1).
9. The NDIS Rules must include provisions to ensure participant safety and support scaffolding are in place prior to revoking participant status for any reason. For high risk and complex needs participants who require support supported decision-making accommodations, the Agency must undertake due diligence e.g. risk assessment is completed; meeting and sighting the participant; and obtained written confirmation of alternative supports, prior to exiting a participant.

**1.6. 'Classes' of NDIS participants**

There appears to be a classification system in force within the Bill, however the nature of this classification is not explained or defined. The term 'class of' is mentioned almost 80 times within the Bill and explanatory memorandum. Classification systems segregating groups of participants determined by 'identifiable characteristics', are **at risk of becoming discriminatory and of creating policy segregation**.

Classification systems determined by 'identifiable characteristics' are considered an outdated and archaic phenomenon when considered through an equality lens and have no place in contemporary disability policy. Such classification systems can disproportionately impact and potentially exclude, individuals or targeted groups of disabled people. The introduction of a legislated classification system within the NDIS raises questions around equality, equity and Australia's obligations under the UNCRPD.

**RECOMMENDATIONS:**

10. The terms 'Classes of participants' and 'classes of supports' will need to be defined in the primary legislation, to clarify their intended meaning and purpose.
11. We recommend all circumstances and process through which a participant's plan can be revoked, be included in the primary legislation, not the Rules (Section 30A,1).
12. Any classification system introduced to the NDIS and identified by the Bill must be scrutinised by independent review and considered through the lens of Australia's obligations under UNCRPD.

**2. BUDGET-SETTING****2.1 Impairments at access**

An amendment to Section 34 (item 46), means that only impairments identified at the point of NDIS access can have supports funded, which may disadvantage participants with complex, acquired and progressive disabilities. We recommend that the process for adding additional impairments, be made clear in the Bill. Further, we recommend enabling a functional assessment to occur at the point of Support Needs assessment where indicated, where there is evidence of new or acquired disability (See recommendation 5).

Without these provisions, we return to the issues that have been in existence since the commencement of the NDIS, where 'primary disability' determines the types of supports participants can be approved, resulting in extreme difficulty for those with complex support needs and multiple disabilities, to have their support needs met. The effective and consistent implementation of this amendment will be complex because reductions in function resulting in support needs are not always easily attributable to one specific impairment and this may create further barriers to identifying and meeting support needs.

The NDIS Review Supporting Analysis (p.299) states "it is important to note that, the new approach to support needs assessment should take account of all of people's disabilities and end the focus on primary and secondary diagnosis". [2]

**2.2 The NDIS Budget-Setting Method**

The Support Needs Assessment will directly inform plan budgets. The 'method' for this will be determined by the Minister (subclause 32K (2)). Defining features for this method 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' i.e. utilising assessment scores in an unknown and potentially unproven manner. Key principles around this 'method' will need to be included in the primary NDIS legislation, for transparency, trust, sound fiscal management; to meet community expectations; and to protect the rights of NDIS participants.

**RECOMMENDATIONS:**

13. Principles, key features and expectations of the new NDIS 'budget setting method' including how assessment scores will be utilised to inform budgets, must be detailed in the primary legislation.
14. The new budget setting method would need to be extensively trialled, piloted and evaluated prior to rollout across the Scheme, to ensure fitness for purpose.

## 2.3 Participant right to appeal a decision.

Appeal rights will need to be further clarified under the new Bill. It is not clear from the Bill what a participant can do if they do not agree with the outcome of the needs assessment, including the determination of discrete early interventions. The Public Interest Advocacy Centre (PIAC) note “Most importantly, a ‘needs assessment’ would not be a ‘reviewable decision’ under section 99 of the NDIS Act and cannot be reviewed through internal or external review. This means the Bill does not provide a way for a participant to challenge an inappropriate needs assessment – and therefore to prevent an inadequate budget being set based on that needs assessment. Further, the Bill does not currently ensure a participant has the opportunity to see the needs assessment report before it is ‘given to the CEO’ under Section 32L (5)” [1]. This would be experienced as disempowering; denies the opportunity to pick up inaccuracies in information; increases assessment-related stress; and reduces transparency.

### RECOMMENDATIONS:

15. Participants' rights to appeal a decision relating to their budget and support, must be upheld by the new Bill.

## 2.4 Flexible budgets

While the flexible budget aims to create flexibility, the redefinition of what constitutes ‘NDIS supports’ (Section 10) restricts the range of supports eligible for funding through NDIS plans; potentially excluding existing supports that do not meet the new, more stringent criteria.

The structure of the flexible budget, should the budget be insufficient to meet basic ‘core’ support needs, may mean that capacity building is not possible due to participants needing to prioritise day-to-day living needs as a priority. This may result in participants being unable to access capacity-building supports; allied health; or other supports that have potential to reduce longer-term needs. This could ultimately **increase** the cost of the Scheme.

The Bill enables the Agency to release funds at pre-determined intervals, rather than all at once. While this may enable longer plan periods, we caution that there may be instances where a participant may need access to greater portions of their budget. This would need to be accounted for in the co-designed Rules.

## 3. ASSESSMENT OF SUPPORT NEEDS

There is not enough detail in the Bill, regarding Needs Assessments. These will be mandatory assessments and will determine plan budgets. These must be delivered by qualified health professionals, as recommended by the NDIS Review. We must get the key principles and features right BEFORE legislation is changed.

The Bill introduces a new construct ‘participant need for support’ as very central to the understanding of disability needs, and to resource allocation. The Bill enables this to be established by Ministerial power, without parliamentary oversight. Given the centrality of this construct to resource allocation; the mandatory nature of the support needs assessment process; and the multiple functions this assessment process holds; we recommend the term “Assessment of participant’s need for supports” be defined in the primary legislation, the purpose of

Support Needs Assessment be defined in the primary legislation, and key features of the assessment process and tools, also defined in the legislation.

These key features should be co-designed, but should cover the assessment process, information to be gathered, the assessor skills and qualifications. The assessment tools will require co-design, however at a minimum, key features and minimum standards should be identified within the legislation.

The NDIS Review report supported the Support Needs Assessment process take place cross a number of sessions and would not be point-in-time. This recommendation is not reflected in the NDIS Bill.

The participant would need to have the option to bring evidence from current providers and treating therapists for consideration within the Support Needs Assessment process. This was recommended by the NDIS Review and will need to be made clear in the NDIS legislation.

It is clear from the Bill, that ALL existing participants will be required to undergo Support Needs assessment, which will result in assessment for eligibility for support (s). This is likely to be experienced as atraumatic and distressing requirement and will bring high levels of fear and anxiety regarding loss of support. There are significant and well-researched risks to health, mental health, and well-being associated with disability insurance reassessment, including research in the Australian context [The impact of Disability Insurance reassessment on healthcare use - Badji - 2023 - Health Economics - Wiley Online Library](#) . This research highlights negative mental health impacts for people with disability, even when they did not lose funding – the impacts can be attributed to the process of reassessment. Again, an implementation plan including risk assessment will be required to forecast the impact on participants, before this Bill can be approved with due diligence.

PIAC note “The needs assessment is limited to impairments that meet the disability or early intervention requirements (subclause 32L (3)). We are concerned this may fail to achieve a ‘whole of person’ approach by imposing artificial distinctions in the way a person with multiple and interrelated disabilities accesses supports” [1]

The Support Needs Assessment appears to hold the additional function of determining who should receive particular Early Interventions and Stated Supports. This determination suggests the assessors will be called upon to use high-level decision making and would need to be appropriately skilled and trained assessors and working within scope of practice. They require allied health training to complete the Support Needs Assessment function of determining and predicting the ‘likely to benefit’; nature and frequency of particular supports and interventions; and to incorporate Theory of Change in decision making. The NDIS Review report highlighted the value of the concepts of ‘likely to benefit’ and ‘theory of change’.

PIAC note “It seems this will also be determined by the Minister (subclause 32L(8)(b)). It will be important the Minister’s determination ensures needs assessments are conducted by health professionals who understand the participant’s history and needs” [1]

The Support Needs Assessment will be mandatory, and the outcomes from the assessment will inform plan budgets. There is a very high risk that this assessment process may become adversarial. How is this risk understood and mitigated amongst the current deliberations of decision makers?

## RECOMMENDATIONS:

16. The constructs ‘support need’ and ‘assessment of support need’ will need to be further defined in the primary legislation, to clarify their intended meaning and purpose.



17. Principles, key features and expectations of the new NDIS Assessment of Support Need must be detailed in the primary legislation. Following extensive co-design, further details on assessment process must be listed as Category A Rules
18. The new 'assessment of support need' would need to be extensively trialled, piloted and evaluated prior to rollout across the Scheme, to ensure fitness for purpose. This would include current and new assessments that may be utilised for this purpose. Assessment processes must be proven to be equitable for all people with disability.
19. Key NDIS Review recommendations, including the need for assessments to be completed by skilled allied health assessors working within scope of practice; the requirement for support needs assessor to consider information provided by treating professionals; and the need for an extended time period in which to complete assessments, should, be accepted and confirmed within Category A Rules.
20. A detailed policy-risk assessment must be completed prior to introducing mandatory assessments. A co-designed trauma-informed framework would need to be developed and implemented alongside the introduction of new mandatory assessment processes, to reduce risk of participant harm.
21. Given the proposed centrality of the assessment of support needs and the multi functions it will hold for the effective working of the NDIS, exceptionally high standards of quality and oversight are required. We recommend dedicated processes to ensure ongoing quality, and independent and rigorous standards and governance. A dedicated allied health role should be added to the Independent Advisory Council for this purpose, and the primary legislation should be updated to enable this role. This role would further be held accountable to the Australian Chief Allied Health Officer.

(Also, See Recommendation 5).

#### 4. DEFINING NDIS SUPPORTS

Section 10 details the defined nature of NDIS supports. The Bill defines and narrows the specific disability supports that can be funded through the NDIS. Disability supports falling outside the definition documented in Section 10, will in future no longer be the responsibility of the NDIS. Regarding Section 10, PIAC note "the current categories are too restrictive, and have been drafted in a way that could have unintended legal consequences" [1]. The Bill indicates that these categories can be further defined through the NDIS Rules that can "narrow the scope of these constitutionally valid supports."

Section 10 is not an inclusive list of NDIS supports and it is unclear if broad categories of essential disability support will continue to be funded by NDIs. These could include a range of home modifications; assistive technology; psychosocial supports; and support to enable economic participation.

The Bill attempts to define NDIS supports by drawing on particular aspects of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). We note the definition does not reflect the UNCRPD in its entirety (e.g. Article 19 in full).

The language of the UNCRPD used in Section 10 creates confusion – for example, it refers to habilitation and rehabilitation supports being NDIS supports, in direct contrast to the current APTOS Table which indicates rehabilitation is a State-responsibility. We recommend the Bill not be implemented until a revised APTOS agreement can be made by National Cabinet, to replace the existing APTOS agreement. This will ensure clarity of responsibility for the provision of a range of disability supports (See recommendation 3).

Reliance on the APTOS as a transitional measure, is a strategy incompatible with the new definition of NDIS supports in Section 10. There is existing confusion around the NDIS interface (with State and Territory based systems; with DVA; TAC; Aged Care; iCARE, and others), and a risk of further chaos and service gaps, without well-constructed boundaries.

The NDIS OT CoP holds the view that there are instances where everyday appliances can be a cost-effective disability support. This was previously reflected in NDIS policy. An OT stated:

“For someone with dysphagia, who needs all meals prepared to a prescribed consistency, isn't a food blender a disability support?”

## RECOMMENDATIONS:

22. NDIS rules made for the purposes of proposed new paragraphs 10(b) and 10(c) will be Category A rules requiring the unanimous agreement of all States and Territories before they can be made. For accountability, and visibility, these Rules should be drafted and made publicly available prior to legislation change (See Recommendation 3).
23. Section 10 needs to be revised to ensure all essential disability supports that enable social and economic participation, can be accessed through the NDIS, including home modifications; assistive technology; psychosocial supports; and support to enable economic participation.
24. Restrictive support categories will negate the benefits of a flexible budgets. There must be process to evaluate the instances where an everyday item becomes a disability support, written within the NDIS rules.

## 5. EARLY INTERVENTION

The Bill signposts a greater focus on early intervention, with the early intervention 'pathway' likely to be used to a greater extent in NDIS 2.0, including across adult groups. For example, the NDIS Review recommended most people with psychosocial disability enter the Scheme under Early Intervention. While the early intervention pathways may enable prevention of future escalation of support needs by building participant capacity i.e. 'going upstream' on disability, it needs to be designed and implemented carefully in a manner consistent with insurance principles, and delivered by appropriately skilled and qualified workforce, to ensure this outcome. Without this, it could become a pathway to delay support or divert from the Scheme, and ultimately increase cost to governments.

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.

The Bill introduces specific, *determined* Early Interventions through the 'likely to benefit' criteria, for the first time in the NDIS. There is a concern that the rules will be a narrowing of options for people under the early intervention pathway, and this narrow range may not have capacity to accommodate the diverse range of available, effective, early interventions (e.g. for psychosocial disability; and early childhood). Where 'likely to benefit' involves a NDIA -decision to offer a defined support, such as a specific intervention or therapy, rather than an in-principle 'likely to benefit' from early intervention broadly, then input from a skilled clinician working

within scope of practice, is required, to determine this. NDIA delegates cannot prescribe specific interventions or therapies without appropriate skill, experience and training.

The Bill raises a number of issues related to early interventions -for example, what are the participants rights to decline a prescribed intervention? Should a treating clinician disagree with the NDIS determination to undergo a prescribed intervention, what does this mean for the participant and their access to NDIS support? What will be the implications of a declined Early Intervention, for access to further disability support through either S24 or S25? The NDIS CoP supports the right to bodily autonomy; and the right to choose and decline intervention.

## **RECOMMENDATION:**

25. The draft Rules detailing the intended structure and nature of new early intervention pathways should be drafted and made publicly available, prior to changing the primary legislation.

## **6. A CAPACITY BUILDING NDIS**

Reduced focus on capacity building, combined with removal of participant goals-based funding, shifts the NDIS from a social model of disability to a model of passive coping with disability. Introduction of 'Reasonable & Necessary Budget Framework' shifts from direct support items to broader budget allocations that might lead to a reduction in tailored supports, as budget caps could force participants to prioritize certain needs over others.

For example, in an underfunded or tight flexible budget that does not reflect capacity building or goals, the participant may be pushed into a position where they need to use available flexible funds to sustain basic daily 'core' supports. Capacity-building and skill-building become a luxury, rather than a fundamental element of the participants' support structure. Hence, the NDIS becomes a model of passive coping. This is a departure from insurance principles which would recognize the value of investment in capacity building to reduce long term Scheme costs. Effectively, participants are at risk of becoming trapped in a cycle of passively coping rather than actively participating, in their own lives, and society. When you consider this in the context of a policy and proposed legislation that no longer values participant goals or potential... THIS is the essence of the departure from a social model of disability.

The re-positioning of participant goal-setting to occur after the budget is set, may limit the person's capacity to strive towards their goals. This reflects a substantially reduced focus on capacity building, under the NDIS Bill. It is not clear if the participants capacity building supports will be funded; funded as a stated support; or will come from the flexible budget.

Indeed, the proposed reforms provide a disincentive for people with disability to build their skills and capacity, as these activities may trigger a re-eligibility assessment or a Support Needs Assessment that risks them losing access to essential NDIS supports.

The concept of capacity building and its role in future NDIS 2.0, is not articulated through the Bill. We are concerned that this Bill will re-create the issues posed through recent aged care legislation, which has led to reduced access to allied health for older people. We are concerned that access to skilled occupational therapists will be significantly reduced, impacting capacity building opportunity for NDIS participants.

Finally, we ask if the full impact of the Bill on the care economy has been considered. What is known about the impact on access to supports? Employment of carers and people with disability? Loss of essential support

providers? Access to allied health? Impact on small business and sole traders nationally? Without detailed analysis, the Bill may lead to unintended or unconsidered consequences – including risk to participant welfare; access to supports; job losses and impact on GDP.

### **RECOMMENDATION:**

26. Uphold the right to capacity building within the NDIS through maintaining commitment to capacity building supports, including access to tailored capacity building interventions provided by occupational therapists.

## **7. CONCLUSION**

The NDIS OT CoP is committed to a sustainable NDIS but also a NDIS that functions to meet the needs of people with disability. We believe that the NDIS Bill should not be passed until the 25 recommendations contained in this document, have been addressed. Should the Bill proceed to parliamentary vote, there should be significant amendments to address the concerns raised.

