

16 May 2024

Ms Apolline Kohen
Secretary
Legislation Standing Committee on Community Affairs
The Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Kohen

In summary:

We support the proposed changes to the *NDIS Act (2013)*.

We see these changes to the *NDIS Act* as reinforcing the importance of community integration by creating a mechanism for foundational supports in mainstream services to be enlivened.

We underline the importance of changes not in time limiting choice and control for NDIS participants, and supports needing to be both consistent and respond to individual circumstances. Framework plans will help do this.

The *NDIS Act* changes will in time lead to alteration of participant funding, and financial arrangements for good providers. Design of these changes in new rules yet to be drafted must be considered carefully.

The Alliance20 Also supports the changes to the *NDIS Act*.

Introduction

Thank you for your invitation of 3 May 2024 for representatives of Aruma to give evidence at a public hearing by video conference at 4.15pm on 21 May 2024 to the Inquiry into the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*.

Aruma Board Chair Candice Charles, Aruma Human Rights Advisor James McCoy and I are available to appear before the Inquiry on behalf of Aruma.

In appearing before the Inquiry, Alliance20 has additionally asked me to speak on their behalf in response to your invitation for Alliance20 to contribute to the Inquiry.

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Aruma and Alliance20 support passage of the Bill, (subject to clarification of the scope of s10(a)(iv) that may unintentionally extend NDIS funding to additional healthcare costs).

Our support for passage of the *Bill* is to improve total scheme cost control arising from more people entering the scheme than it was originally designed for.

The *Bill* gives to the National Disability Insurance Agency (NDIA) new rule making powers aimed at restoring the original intent of the NDIS to focus on support for those with significant and permanent disability, while enabling alternate options outside the NDIS for those with mild to moderate disability.

To detail Aruma and Alliance20's support for passage of the *Bill*, this submission in three parts details assessment of the *Bill* by:

1. Aruma's Human Rights Advisors;
2. Aruma's Board Chair, Chief Executive and Management Team; and
3. Alliance20.

In providing this submission, Aruma draws on its experience as a national for-purpose organisation employing approximately 5,500 people across 480 locations. Aruma provides Early Childhood Intervention, Supported Employment, Community Participation, Accommodation and Support Coordination to almost six thousand children, young people and adult NDIS participants.

1 – Support for the *Bill* by Aruma's Human Rights Advisors

A Human Rights Advisory Committee, comprising people with intellectual and neurological disability, family members of people with disability and expert practitioners, advises Aruma's Board and Management on efficacy of Aruma's disability services. Aruma also employs a number of people with intellectual and neurological disability as Human Rights Advisors to provide consumer advice to Aruma and external organisations. These Human Rights Advisors have conducted an assessment of the *Bill*.

The Advisors support the passage of the *Bill*, believing it will help preserve the NDIS for those who need it most while enabling those with less need to access foundational supports. That said, the Advisors urge caution in how the new rule making powers to be created by the *Bill* are exercised in future years.

The table below details views of the Advisors to help inform how rule making power to be created by the *Bill* is ultimately exercised in years to come.

Subsection of Bill	Human Rights Ambassador assessment
s30(3)(b) enabling the CEO to require a participant to undergo an assessment.	"Assessments by an appropriately qualified person, will this be a person who knows and understands the potential participant or somebody independent like with Independent Reviews."
s32(F)(5) on rolling over unspent funding.	"I like the idea of rolling over any unspent funding."
s30(2) enabling the CEO to make multiple requests of a participant to determine their ongoing NDIS eligibility.	"With the lack of any communication about what changes, how can anyone currently on the scheme know that they won't be removed from it against their will."
s32D(7) enabling NDIA managed plans to specify services be provided solely by registered providers.	"Is it reasonable for the NDIA to decide that funding for a participant's plan is managed by the agency to only be spent on registered providers? Could this be a violation of the choice and control which the NDIS is meant to offer."
s32E(2)(a) enabling flexible funding provision in plans.	"How flexible will the flexible funding in a plan budget be?"
s69 enabling CEO to act on evidence of registered plan management risking plan acquittal.	"The amendment detailed in Item 69 about protecting participants and allowing the CEO to deal with any plan management provider taking advantage of a participant and their funding. Should this extend to providers other than plan management too?"
s32(A) enabling new Framework Plans.	"Will the NDIS Act mean plan makers will decide what is reasonable and necessary or that they know exactly what the participant will need?"
s32L(2)-(4) on how an assessment is to be undertaken.	"How will the needs assessment decide if a person needs NDIS or support from other services if their needs change like maybe daily, weekly, monthly or even yearly?"

2 – Support for the *Bill* by Aruma’s Board Chair, Chief Executive and Management Team

The *Bill* is the first tranche of legislative amendments to give effect to elements of the NDIS Review. Noting the *Bill* does not bring about immediate change but rather creates opportunity for the NDIA to create future rules, Aruma specifically lends its support to:

- s26(2)(b)(i) requiring the CEO to give written direction on if the participant meets the early intervention requirements, (as a precursor to establishment of foundational supports outside the NDIS). Aruma endorses establishment of alternate pathways to foundational supports for those with mild to moderate disability as a means of:
 - expanding supports in mainstream settings, which benefits both the individual in receipt of support and also community understanding and inclusion of people with disability; and
 - reducing total NDIS costs in time, to ensure the Scheme remains sustainable for access by those with significant disability.
- s32B enabling creation of new framework plans, combined with s10 that updates definitions of the types of supports the NDIS will fund. These changes in time can enable greater clarity to what a participant’s plan can legitimately provide. Aruma endorses the concept of reference packages to ensure greater national consistency in planning decisions and efforts to prevent funding supports of questionable benefit. Framework plans and better-defined supports will in time bring consistency in funding decisions for NDIS participants and contribute to NDIS scheme sustainability.

Noting Aruma’s support for passage of the *Bill*, Aruma has identified potential unintended consequences warranting mitigation:

- s10(a)(iv) proposes to define as NDIS supports health services as “*needed because of the person’s impairment or because of the interaction of person’s impairment with various barriers.*” This provision does not appear to attempt codification or curtailment of the decision in *National Disability Insurance Agency v Davis [2022] FCA 1002*, in which the Federal Court determined the NDIS should fund “*known, available and appropriate*” treatments for the purpose of determining if a person’s impairments are, or are likely to be, permanent. In doing so, the Court put aside the policy intent that the NDIS should not fund health services. Aruma contends:
 - The policy intent of the NDIS not funding health services better provided by the Medical Benefits Schedule, the Pharmaceutical Benefits Schedule or the health and aged care systems remains valid.
 - Changing the *NDIS Act* to include as a support a health service addressing interaction of a person’s impairment with **various barriers** is at least vague in meaning, open to future

judicial interpretation, and at worst possibly expanding NDIS coverage to health care needs not currently envisaged.

- Clarification of the intent of the inclusion of health as a NDIS support should be addressed to provide certainty as to the subsection's scope, and if necessary, the subsection should be removed or amended.
- Consequences of s32B enabling creation of new framework plans and s32E(2)(a) enabling flexible funding have not been modeled to forecast impacts on adequacy of participant supports or service provider viability. The intention of capping expenditure to an annual plan allocation to prevent early exhaustion of plan funds is supported, but comes with risk to vulnerable participants being unfunded for ongoing supports if annual funds expire before plan renewal. Noting that new framework plans and flexible funding will be developed over time as new rules are codesigned with participants and the sector, and that all existing administrative and judicial appeal rights to revise participant planning decisions will continue, our immediate experience is:
 - Adequacy of participant plan decisions is regularly contested.
 - Aruma, and the service sector more broadly, often carries cost of providing supports where safety risks to participants and staff alike arise due to inadequate plans.
 - Change of circumstance requests to rectify inadequate plans or respond to significant life change events have in recent times been slow to process, and legitimate needs go unfunded while plans are being processed.

Compounding any future cost risks from framework plans and flexible funding on Aruma and the wider service sector, **the current Disability Support Worker Cost Model contains both errors and inaccurate assumptions resulting in faulty price determinations that have left registered providers facing operational costs higher than NDIS funding determinations.**

The gap between funded supports and their cost of delivery was calculated by the Ability Roundtable as being 10.9% higher in the 2023 financial year than the NDIS price determination for Disability Support Worker services. Aruma has raised errors and inaccurate assumptions of the Disability Support Worker Cost Model with Government and with the NDIA in its submission to the 2025 financial year NDIS price determination.

In development of future rules to give effect to new framework plans and flexible funding, Aruma recommends modelling of service continuance and financial impacts be undertaken to avoid unintended consequences of cost shifting to service providers. Aruma further recommends correction of errors and inaccurate assumptions of the Disability Support Worker Cost Model. However, these issues should not delay passage of the *Bill*.

3 – Support for the *Bill* by Alliance20

Alliance20 comprises twenty-six large, registered, for-purpose and commercial NDIS service providers. The Alliance is neither a peak body nor trade association, but rather a forum of likeminded service providers concerned to ensure the NDIS operates at its best to benefit people with significant disabilities.

Alliance20 has endorsed the direction of the NDIS Review. The *Bill* seeks to legislate specific outcomes of the NDIS Review, principally adaption of the NDIS to operate alongside foundational supports through s26(2)(b)(i) that will allow the CEO to specify eligibility for early intervention, and in time, direction of a NDIS applicant or participant to foundational supports outside the NDIS where appropriate.

More broadly, Alliance20 encourages Government to move promptly to implement the broader recommendations of the NDIS Review. Specifically, Alliance20 is concerned to see efficacy of NDIS pricing addressed as a matter of priority in response to market evidence of registered service providers facing costs of service delivery exceeding NDIS funding.

Endorsement of Ability First Australia's submission to the Inquiry

Ability First Australia's submission to the Inquiry is supported by Aruma.

Yours sincerely

Dr Martin Lavery
Chief Executive Officer