



**National Disability Insurance Scheme
Amendment (Getting the NDIS Back on Track
No.1) Bill 2024**
Community Affairs Legislation Committee Submission
May 2024

Acknowledgement: *VMIAC proudly acknowledge Aboriginal and Torres Strait Islander people as Australia's First Peoples and the Traditional Owners and custodians of the land and water on which we live and work. We acknowledge Victoria's First Nation's communities and culture and pay respect to Aboriginal Elders past, present and emerging.*

We recognise that sovereignty was never ceded and the significant and negative consequences of colonisation and dispossession on Aboriginal communities.

Despite the far-reaching and long-lasting impacts of colonisation on First Nations communities, Aboriginal people remain resilient and continue to retain a strong connection to culture. We acknowledge the strong connection of First Nations Peoples to Country, culture and community, and the centrality of this to positive mental health and wellbeing.

VMIAC acknowledges the long legacy and advocacy of First Nations people with disability. We recognise the importance of raising and amplifying the voices of Aboriginal and Torres Strait Islander People with disability; and acknowledge the work that First Nations organisations have contributed to this space, including:

- *First Peoples Disability Network Australia – Support for Decision Making Consultation, National Disability Insurance Scheme; August 2021*
- *Victorian Aboriginal Legal Service – Collation of Relevant Recommendations for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; December 2022*
- *Victorian Aboriginal Legal Service – Submission on the Disability Inclusion Bill Exposure Draft; October 2022*
- *The National Aboriginal Community Controlled Health Organisation – Developing a Guide to the Guiding Principles – Australia's Disability Strategy; December 2022*

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About VMIAC

The Victorian Mental Illness Awareness Council (VMIAC) is the peak body run by and for Victorian mental health consumers¹. VMIAC's vision is a world where all consumers stand proud, live a life with their choices honoured and their rights upheld, and where these principles are embedded in all aspects of society. VMIAC pursues this vision across all its work providing advocacy, sector leadership and information and training to consumers across Victoria. Our advocacy programs provide individual and systemic support to consumers with psychosocial disabilities, using a rights-based approach, to ensure their rights and freedoms are exercised.

Introduction

VMIAC welcomes the opportunity to provide a submission on the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 to the Community Affairs Legislation Committee.

The participants of the NDIS deserve to live full, rewarding and autonomous lives, where they and their carers are fully supported and respected by their communities. When it works well, the NDIS has been described by NDIS participants as a lifeline that gives them a greater quality of life^{2,3}. The NDIS must also support the Australian Government's obligations under the Convention on the Rights of Persons with Disabilities, particularly around equality and non-discrimination⁴, equal recognition before the law⁵ as well as the right to enjoyment of the highest attainable standard of health without discrimination⁶.

The proposed reforms to the NDIS have been met with concern by NDIS participants who fear that their supports, and thus their quality of life, could be taken away or reduced by the proposed changes^{7,8}. VMIAC believes that NDIS participants deserve to have their quality of life central to their support and care, and not have to fear reduction or removal of essential supports and services.

This submission outlines four priority areas that have been identified by VMIAC and its members about the proposed reforms:

1. Early intervention pathway for people with psychosocial disability.

¹people with lived experience of mental health challenges, trauma, or emotional distress, who may have accessed mental health services or services with the purpose to support their mental and emotional wellbeing.

²NDIA (2024, 28 March); NDIS enables the Blacketts 'to live decent, ordinary lives'; <https://www.ndis.gov.au/stories/9980-ndis-enables-blacketts-live-decent-ordinary-lives>

³NDIA (2024, 20 March). Karen's grateful to Australia for letting him be who he is. <https://www.ndis.gov.au/stories/9952-karans-grateful-australia-letting-him-be-who-he>

⁴United Nations; Article 5 – Equality and Non-Discrimination. <https://social.desa.un.org/issues/disability/crpd/article-5-equality-and-non-discrimination>

⁵United Nations; Article 12 – Equal Recognition Before the Law. <https://social.desa.un.org/issues/disability/crpd/article-12-equal-recognition-before-the-law>

⁶United Nations; Article 25 – Health. <https://social.desa.un.org/issues/disability/crpd/article-25-health>

⁷Jake Evans (2023, 24 October), As NDIS overhaul nears, participants with psychosocial disability fear for 'unknown 27,000' who may miss out. <https://www.abc.net.au/news/2023-10-24/ndis-psychosocial-disability-fear-27000-who-may-be-diverted/103000730>

⁸Stephanie Convery and Sarah Basford Canales (2024, 13 April). 'Outrageously scary' NDIS participants fear proposed changes will give them less choice and control. <https://www.theguardian.com/australia-news/2024/apr/13/australia-labor-government-ndis-scheme-changes-comment>

2. Collaboration with NDIS participants will mitigate the risks that arise with the proposed NDIS reforms.
3. Adopting a whole of person approach will improve participants' experience and 'recovery' within the NDIS.
4. Broader reforms of the NDIS and their impact on people with psychosocial disability.

Psychosocial disability is a term used to describe a disability that may arise from a mental health issue. Psychosocial disability is not about a diagnosis, it is about the functional impact and barriers which may be faced by someone living with a mental health condition. Psychosocial disability may be lifelong, and the impact of psychosocial disability on a person can fluctuate over time.

People with psychosocial disabilities are among the most vulnerable cohorts of people with disability, with almost one quarter experiencing discrimination⁹; and a high proportion of people with psychosocial disability experiencing housing stress even when compared to other people with disability¹⁰.

People with psychosocial disability represent 10% of NDIS participants¹¹, making it the fourth most common disability of NDIS participants. It is essential that the specific needs and experiences of people with psychosocial disability be considered throughout the reform of the NDIS. This consideration can only be achieved through consistent, and meaningful, engagement with NDIS participants with psychosocial disabilities.

“They should not be making it harder for people with psychosocial disability to get on the NDIS. We deserve the support just like all the other groups of people with disabilities.”¹²

VMIAC has been offering NDIS Advocacy and Support services for people with psychosocial disabilities¹³ since 2017. The VMIAC staff in the NDIS team have a lived experience of mental health challenges, emotional distress and disability; and use this experience to inform their practice as part of the lived and living experience (LLE) workforce. The services provided by the NDIS team include, but are not limited to:

- ☐ Providing consumers with information about NDIS processes
- ☐ Advocacy and support to consumers through their NDIS applications, plan reviews, and complaints.
- ☐ Support through NDIS external review and appeal processes through the Administrative Appeals Tribunal (AAT)
- ☐ Systemic advocacy and submission responses centred around psychosocial disabilities.

⁹ AIHW (2024, 23 April). People with disability in Australia. https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/disability-discrimination?gh_jid=4922696003

¹⁰ NDIA. Housing – key findings from the pilot using NSW, VIC, QLD, and SA data. <https://www.ndda.gov.au/wp-content/uploads/2022/09/19-Infographics-Housing.pdf>

¹¹ NDIA (2023, June). Psychosocial disability summary. <https://data.ndis.gov.au/media/3827/download?attachment>

¹² Participant response to VMIAC member survey, 'NDIS changes for people with psychosocial disability', 8 March 2024

¹³ Psychosocial disability is a term used to describe a disability that may arise from a mental health issue. Psychosocial disability is not about a diagnosis, it is about the functional impact and barriers which may be faced by someone living with a mental health condition.

In addition to the expertise of the NDIS team, this submission is informed by feedback from VMIAC members and the wider disability community, which was gathered through an anonymous survey. The survey, sent out to all members, was focussed on what impacts the proposed reform of NDIS systems may have on people with psychosocial disabilities.

Quotes from these survey responses have been included in the submission to highlight participant voices and to platform their concerns with the Bill and proposed reforms.

“I know many NDIS participants; they are my friends. The NDIS has changed their lives; some would not be alive without it. It's the most important thing for them.”¹⁴

VMIAC would be happy to provide more information around VMIACs’ views as well as our members’ views as we believe this would be beneficial to the Australian Government when considering this legislation. We would also welcome meeting with the Committee to discuss this submission in more depth.

¹⁴ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

1. The ‘early intervention’ pathway for people with psychosocial disability

“I have a fluctuating mental health condition and I can myself and others becoming extremely vulnerable with this new process, contributing to deterioration and risk of hospitalisation or homelessness”¹⁵

The final report of the Independent Review into the NDIS “Working together to deliver the NDIS”¹⁶ included Recommendation 7: “to introduce a new approach to NDIS supports for psychosocial disability, focused on personal recovery, and develop mental health reforms to better support people with severe mental illness”.

The final report recommended that early intervention supports for people with psychosocial disability should be provided for up to three years under the [Section 25 pathway](#), which includes the following features:

- If after three years participants are determined to not need ongoing support, they will be assisted by a Navigator to connect with ‘foundational supports’, which under the new recommendations will be mostly state-based.
- For participants found to need ongoing support, they will need to re-apply for NDIS access through Section 24 with support from a Navigator through a ‘streamlined pathway’.
- Navigators will assist both people who need ongoing NDIS supports as well as those who are determined to no longer need NDIS supports through foundational supports.

The recently tabled National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024¹⁷ (the Bill) contains several proposed changes around the early intervention pathway, including:

- Section 25 will be amended to include a requirement that NDIS supports (as newly defined in the Bill) will benefit a participant. This impacts the access criteria for the early intervention pathway because even if supports which would fall outside the new definition would benefit the prospective participant, access will not be granted.
- Section 27 will be amended to broaden the NDIA’s powers to make NDIS rules. This is significant as the Explanatory Memorandum states that “(w)hen it is ready to be implemented, the new early intervention pathway will primarily be operationalised through rules made under section 27”. These rules are yet to be released.

VMIAC understands that the recommendations in the final report of the Independent Review will be the basis for developing the NDIS Rules. These NDIS Rules, once drafted, will provide additional detail on

¹⁵ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

¹⁶ NDIS review (2023, 7 December). Working together to deliver the NDIS. <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>

¹⁷ NDIS (2024, 27 March). National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7181

the processes outlined in the legislation, including detailing how early intervention pathways will operate under the scheme.

We need more clarity around how participants will be determined for either full access or early intervention supports (diagnosis, level of functional impairment, etc)”¹⁸

1.1 The NDIA misunderstands the concept of psychosocial disability and recovery.

The final report of the Independent Review specified that the early intervention pathway would apply to NDIS participants with psychosocial disability. Under the proposed changes in Recommendation 7, most people accessing the NDIS for psychosocial disabilities will have their supports geared towards ‘recovery’ goals and have their NDIS access transitioned to the Section 25 early intervention pathway¹⁹.

“Recovery’ does not necessarily mean what is implied by this recommendation, and in the context of profound long-term psychosocial disability which currently meets the s24 criteria, it often means remission from severe symptoms and is entirely dependent on ongoing support.”²⁰

For people with psychosocial disability, ‘recovery’ is not about being ‘well’ but instead having the choice and control in pursuing their goals and the planning and delivery of their supports²¹. The channelling of people with psychosocial disability through an early intervention pathway is based on a fundamental misunderstanding of what the concept of ‘recovery’ is for people with psychosocial disability and does not define what ‘recovery’ will look like in the context of the NDIS. There are concerns that this recommendation is based on the idea that people with psychosocial disability are more likely to recover from receiving short-term support and will then, once perceived to be ‘recovered’, be made to exit the Scheme²².

VMIAC endorses the concept of personalised approach to recovery that centralises choice and control, and which will differ from person to person. Personalised recovery may not include a reduction of symptoms or an increase in functional capacity. Applying a more general recovery lens to psychosocial disability suggests that people will recover from their disability, an approach which can be harmful to

¹⁸ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

¹⁹ NDIS. ‘Fact Sheet 7: For people with psychosocial disability and their families.’
https://www.ndisreview.gov.au/sites/default/files/resource/download/psychosocial-disability_0.pdf

²⁰ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

²¹ Wilson, E & Campain, R. (2018, December). Understanding people with psychosocial disability as choice-makers in the context of the National Disability Insurance Scheme (NDIS). https://www.mindaustrialia.org.au/sites/default/files/2023-05/Understanding_people_with_psychosocial_disability_as_choice_makers_summary_report.pdf

²² Jake Evans (2023, 24 October), As NDIS overhaul nears, participants with psychosocial disability fear for ‘unknown 27,000’ who may miss out. <https://www.abc.net.au/news/2023-10-24/ndis-psychosocial-disability-fear-27000-who-may-be-diverted/103000730>

participants. Any individual recovery may not reduce a participant's need for funded supports through the Scheme.

“Most participants accessing the NDIS for psychosocial disability have had a severe mental illness for many years and have already been engaged with and received 'early interventions' from public mental health services. So the term 'early interventions' is both confusing and misleading. Realistically how many participants with a psychosocial disability which substantially impacts their functional capacity are going to be determined as not needing ongoing support after 3 years? A severe mental illness is lifelong.”²³

Recommendation 1A: The current Bill does not define the term ‘recovery’ and as such there is significant confusion around how it is defined and applied to NDIS participants who access the ‘early intervention’ pathway. The Australian Government should review the language of this section and consider replacing the term ‘recovery’ with a more appropriate term that centralises choice and control and reflects the experiences of NDIS participants who will be placed on this pathway.

1.2 The ‘early intervention’ pathway does not show how it will accommodate the fluctuation of psychosocial disability that may be experienced over time.

“it's going to be a torture particularly for people who get kicked off because they're not quite as disabled any more, then become more disabled later.”²⁴

The impact of psychosocial disability is individual to each person and can vary depending on a variety of factors. How a person experiences their psychosocial disability can change over time. While their experiences and levels of need may fluctuate; their ‘diagnosis’ does not. For example, it is possible for a person with psychosocial disability to have low support needs for many years, and suddenly require high levels of support.

This fluctuating need is an important consideration in the application of an early intervention pathway, particularly around the strict timeframes that have been proposed in the final report of the Independent Review into the NDIS “Working together to deliver the NDIS”²⁵.

Feedback provided through the VMIAC member survey indicate members are very concerned about how their ability to access supports will be impacted by a forced early intervention pathway:

²³ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

²⁴ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

²⁵ NDIS review (2023, 7 December). Working together to deliver the NDIS. <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>

“They should not be making it harder for people with psychosocial disability to get on the NDIS. We deserve the support just like all the other groups of people with disabilities.”²⁶

Recommendation 1B: If the Australian Government elects to retain the term ‘recovery’ in the legislation, it should clearly define what recovery means in the context of the ‘early intervention’ pathway and the Bill more broadly, so that it is clear how ‘recovery’ will apply in the context of the fluctuations of psychosocial disability. This will require deep engagement with people with psychosocial disability, and NDIS participants with psychosocial disability, to ensure it reflects the diverse range of presentations psychosocial disability.

1.3 The ‘early intervention’ pathway unfairly targets people with psychosocial disability.

The Explanatory Memorandum of the Bill provides that “the new early intervention pathway will primarily be operationalised through the rules made under Section 27²⁷. The proposed new Section indicates an intention to determine eligibility for the early intervention pathway and allows for a far broader rule-making power than the existing provisions in the Act.

While the draft Bill does not specify this ‘early intervention’ pathway is only for people with psychosocial disability, the final report of the Independent Review specified this pathway would apply to NDIS participants with psychosocial disability.

“Participants with a psychosocial disability are being unfairly singled out by this proposed new NDIS recommendation which other disabilities within the NDIS are rightly not been subjected to.”²⁸

Under the proposed changes in Recommendation 7, most people accessing the NDIS for psychosocial disabilities will have their supports geared towards ‘recovery’ goals and have their NDIS access transitioned to the Section 25 early intervention pathway²⁹.

Currently there is no detail on what protections, if any, will be in-place to mitigate the risk of discrimination if the early intervention pathway is solely applied to people with psychosocial disability. For example, there are no protections in the legislation or recommendations outlined in the final report to

²⁶ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

²⁷ Parliament of the Commonwealth of Australia (2023, 7 December). National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 Explanatory Memorandum. https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7181_ems_f83281ef-0f46-4fbb-a59f-2e19439dcacb/upload_pdf/JC012589.pdf;fileType=application%2Fpdf

²⁸ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

²⁹ NDIS. ‘Fact Sheet 7: For people with psychosocial disability and their families.’. https://www.ndisreview.gov.au/sites/default/files/resource/download/psychosocial-disability_0.pdf

ensure that people who access the NDIS through the early intervention pathway are not discriminated against when applying to access the NDIS through a permanent pathway.

“An early intervention pathway may have its uses, especially in early childhood. However, for adults it cannot be a mandatory pathway nor one that individuals are ‘funnelled’ into merely based on type of disability.”³⁰

Given the intention to clearly distinguish between the disability requirement and the early intervention pathways, there is a clear risk that the early intervention pathway would provide access to a narrower range of supports primarily aimed at recovery. If participants with psychosocial disability are predominantly channelled through this pathway, they may be unable to access much needed supports, which would significantly improve day-to-day living and promote social and economic inclusion.

“Do not let them get away with denying and dismissing the importance of long term and maintenance supports. Pushing people back into public systems (that largely don't exist) will kill people.”³¹

Recommendation 1C: As currently drafted, the Bill does not include protections for NDIS participants on the ‘early intervention’ pathway to ensure that they are adequately supported ; and that they will not be penalised if they apply for access to the Section 25 pathway. Given that the Explanatory Memorandum describes people with psychosocial disability as the users of the ‘early intervention’ pathway, any legislation drafted that impacts people with psychosocial disability should include specific protections so that their rights, as per the NDIS legislation and the CRPD, are upheld within and across the services and systems they engage with. The Australian Government should redraft all sections of the Bill around the ‘early intervention’ pathway to include a section on protections for people who may be placed on this pathway.

1.4 The ‘early intervention’ pathway may be onerous or difficult to navigate for participants.

“This pathway looks very stressful for people with psychosocial disability who will worry re ongoing supports due to the time limited nature.”³²

The final report’s Recommendation 7³³ allows for participants who will likely require lifetime supports under the NDIS to access the scheme under the Section 24 disability requirements pathway. While the

³⁰ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³¹ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³² Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³³ NDIS review (2023, 7 December). Working together to deliver the NDIS. <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>

report acknowledges the Section 24 pathway is still an option for participants, the recommendation, and its actions, do not clarify whether new participants can bypass the Section 25 pathway and instead access through the Section 24 pathway. There is also no clarity around the process for how a participant can transition onto the Section 24 pathway once they are on the scheme.

“Expecting people with a psychosocial disability to reapply for NDIS access will disrupt services and supports and cause undue stress and secondary traumatization on participants as they wait to find out if their re-application has been successful or not.”³⁴

*

“I also think that if, after the early intervention period ends and a participant is deemed as requiring lifelong support, they should not need to reapply for Access.”³⁵

The ‘Working together to deliver the NDIS’ Final Report Supporting Analysis recommends early intervention supports should be re-assessed every two years, or ‘at a frequency determined by the Needs Assessor’³⁶ with no minimum or maximum ‘frequency’ set for reassessment at this time. There is currently not enough information to outline how this process differs from the previously proposed, and scrapped, Independent Assessments.

There is a risk that participants and prospective participants with psychosocial disability, regardless of the severity and permanence of their disability, could face repeat assessments, the need to repeatedly prove their disability and the need to go through the NDIS application process twice (once for each pathway) solely due to their disability being psychosocial in nature.

“This will cause significant additional stress, increased administrative burden (which is already hard with psychosocial), remove choice and control and risk all progress being lost once supports are removed”³⁷

There is also an additional risk flowing from the fact that the Bill allows approaches to be tailored towards specific “classes of participants”³⁸. Bearing in mind the complexity of the NDIS reforms and the amount of work that will be required to understand and implement the changes, bespoke approaches for

³⁴ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³⁵ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³⁶ NDIS review (2023, 7 December). ‘Working together to deliver the NDIS’ Final Report Supporting Analysis. p.311
<https://www.ndisreview.gov.au/sites/default/files/resource/download/NDIS-Review-Supporting-Analysis.pdf>

³⁷ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

³⁸ Parliament of the Commonwealth of Australia (2023, 7 December). National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 Sections 14 and 36
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7181

different cohorts of participants could mean different frameworks apply across the disability sector. This would increase the resourcing needs for each cohort of participants to ensure compliance with the relevant framework, particularly given the consequences of non-compliance introduced by the Bill.

Recommendation 1D: The Australian Government should revise the NDIA's default assumption on how to best support NDIS participants with psychosocial disability, and should instead instigate an impartial and individualised case-by-case approach to the review of each current and future participants to ensure that participants are funded and supported based on their individual needs and functional impact.

2. Collaboration with NDIS participants will mitigate the risks that arise with the proposed NDIS reforms

“Why hasn’t the NDIS listened to the psychosocial participants who participated in a feedback forum that was about 6 sessions over 6 months that gave feedback that not everyone can use mental health supports. They asked our opinion and then ignored it.”³⁹

Collaborative approaches to policy can be a useful tool in rebuilding and improving relationships between governments and priority populations⁴⁰, ⁴¹. Collaboration should occur throughout the design and development process; and requires early engagement with the identified stakeholders for it to be maximally effective⁴².

The benefits and importance of collaboration in the reform of the NDIS was identified in the final report of the Independent Review of the NDIS “Working together to deliver the NDIS”⁴³. Despite this, the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 was tabled on 27 March 2024 with minimal consultation and collaboration with NDIS participant and advocates. Participants were not given advance notice that a Bill was to be introduced and the community engagement sessions that were run after the Bill was introduced had minimal opportunities for participant collaboration. The Bill frequently refers to legislative instruments in the form of rules or determinations, which are not yet available.

Many advocates in the disability community have indicated that the approach to consultation with communities has been poor⁴⁴. Members of VMIAC held similar concerns:

“I want to see co-design & consultation, as promised, not these virtual town hall facades, where we're basically told the decisions have already been made & the

³⁹ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

⁴⁰ Slaton, C. D & Arthur, J. L. Public Information for a Democratic Society: Instilling Public Trust Through Greater Collaboration with Citizens. eTransformation in Governance: New Directions in Government and Politics. 2004. <https://www.igi-global.com/chapter/public-information-democratic-society/18625>

⁴¹ Mardiyanta, A (2013) "Restore Public Trust Through Deliberative Public Policy Formulation," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi dan Organisasi*: Vol. 20: No. 1, Article 2. <https://scholarhub.ui.ac.id/jbb/vol20/iss1/2/>

⁴² Björstig, T et. al. Collaboration as a policy instrument in public administration: Evidence from forest policy and governance — Environmental Policy and Governance - <https://scholarhub.ui.ac.id/jbb/vol20/iss1/2/>

⁴³ NDIS review (2023, 7 December). Working together to deliver the NDIS. p.g. 66, 231, 266. <https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>

⁴⁴ People with Disability Australia (2024, 27 March). Co-Design Vital for Survival, PWDA Reacts to NDIS Reform Bill. <https://www.miragenews.com/co-design-vital-for-survival-pwda-reacts-to-1204189/>

*decision-makers are doing their best to convince us their way is the right way.
That's offensive.”⁴⁵*

Recommendation 2A: The Australian Government should work to re-establish trust in the sector and with NDIS participants by engaging deeply with these stakeholders when drafting the second part of this legislation reform – the rules and determinations that will accompany the Bill. Drafting these rules and determinations through collaboration and engagement with the diverse range of NDIS participants is essential to rebuilding the relationship between participants and the NDIS.

⁴⁵ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

3. Adopting a whole of person approach will improve participants' experience and 'recovery' within the NDIS.

"I am very concerned to know how will NDIS adequately fund and meet the required housing, employment, occupational engagement, communication, self-care, independence and social inclusion support for people with psychosocial disabilities under S25 and s24."⁴⁶

A 'whole of person'⁴⁷ approach considers the physical, mental, social, and environmental needs and experiences of a person, so that they are best supported to make their own decisions. Whole of person approaches in healthcare settings have been shown to have positive outcomes for participants^{48, 49}. This approach is particularly important when considering disability support, as many people who have physical, and other, disabilities also experience mental ill-health and distress¹⁵. Similarly, many disabled people have multiple disabilities that impact on their day-to-day lives and the co-occurring disabilities may impact upon each other.¹⁶

A whole of person approach to disability support has been recommended by the NDIS Review, which states that "focusing on the whole person, their circumstances and their support needs would also end the current unhelpful and inappropriate focus on establishing a primary or secondary disability"⁵⁰.

Currently the NDIA will only fund participants for supports that are deemed reasonable and necessary for their 'primary disability'⁵¹ and other recognised and accepted secondary disabilities. This has been met with criticism from the sector with calls for a 'whole of person' approach to supporting NDIS participants^{52, 53}. Responses to the VMIAC member survey also called for a holistic approach once a participant has been granted access to the Scheme, arguing that this approach will improve health outcomes over time:

⁴⁶ Participant response to VMIAC member survey, 'NDIS changes for people with psychosocial disability', 8 March 2024

⁴⁷ NCCIH (2021, May). Whole Person Health: What You Need to Know. <https://www.nccih.nih.gov/health/whole-person-health-what-you-need-to-know>

⁴⁸ Thomas, HR. Best, M. Mitchell, G. (2020). Whole-person care in general practice: the nature of whole-person care. Australian Journal of General Practice. 49(1-2) doi: 10.31128/AJGP-05-19-49501

⁴⁹ ACSQHC. Rationale and approaches to person-centred care. <https://www.safetyandquality.gov.au/our-work/partnering-consumers/person-centred-care/rationale-and-approaches-person-centred-care>

⁵⁰ NDIS review (2023, 7 December). A fair, consistent and empowering NDIS experience. <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/part-one-unified-system-support-people-disability-2>

⁵¹ <https://www.ndis.gov.au/applying-access-ndis/how-apply/information-support-your-request/providing-evidence-your-disability>

⁵² Villamanta Disability Rights Legal Service Inc. (2020, 26 May). NDIS supports for people with complex or multiple disabilities. <https://villamanta.org.au/news/ndis-supports-for-people-with-complex-or-multiple-disabilities/#:~:text=The%20person%20must%20be%20seen,you%20otherwise%2C%20they%20are%20wrong.>

⁵³ Queensland Advocacy for Inclusion (2023, 4 April). QAI calls on the NDIS to follow the law when funding supports. <https://qai.org.au/qai-calls-on-the-ndia-to-follow-the-law-when-funding-supports/>

“It’s limiting options for people whose situation may change or fluctuate over the course of their life or condition. It assumes everyone’s goal is recovery based or focused and is not necessarily addressing the individuals goals.”⁵⁴

In the proposed section 32L(3), the Bill states that assessments “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”. This approach remains focussed on supporting the ‘primary’ and ‘secondary’ disabilities of the participant and does not consider a whole of person approach to supporting NDIS participants.

Once a person is granted access into the NDIS, the NDIA should apply a ‘whole of person’ approach to their disability support needs, this will improve the disability and daily living outcomes for participants of the NDIS.

3.1 Recommendations:

Recommendation 3A: the Australian Government should amend Section 32L(3) to reflect that the assessment must assess the participant’s needs for supports in respect of all impairments, not solely the impairments that meet the disability or early intervention requirements.

⁵⁴ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

4. Broader reforms of the NDIS and their impact on participants with psychosocial disability

The final report of the Independent Review ‘Working together to deliver the NDIS’ identified that “approaches to eligibility, planning and plan reviews are traumatising, and that the NDIA and partners do not have a good understanding of psychosocial disability”⁵⁵. This lack of understanding of psychosocial disability means that many of the broader reforms proposed in the recently tabled National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024⁵⁶ (the Bill) have implications for NDIS participants with psychosocial disability.

*“It just seems like more layers of hit & miss bureaucracy for vulnerable people to have to navigate exhaustively, at the mercy of people who are incentivised to deny us what we need.”*⁵⁷

4.1 Introduction of a Needs Assessment Tool without proper understanding of psychosocial disability will harm NDIS participants.

*“This sounds to me like there will be even more hoops to jump through for people who are struggling just to be alive. Why are they making it HARDER for people with mental illness/psychosocial disability?”*⁵⁸

The Bill introduces the concept of a needs assessment tool in Section 32L, which will be used to assess a participant’s need for funded disability supports. The methodology of this needs assessment tool is outlined in Section 32K.

It is critical for participants with psychosocial disability that needs assessments are conducted by practitioners with relevant expertise, given the lack of understanding of psychosocial disability the Scheme has demonstrated to date.

The final report of the NDIS Review recommended that any needs assessment tools “should be completed by a skilled and qualified Needs Assessor who is a trained allied health practitioner or social worker, or similar, with disability expertise”⁵⁹. However, the Bill leaves this to be determined by the Minister through a legislative instrument (32L(8)). It is not clear from the Bill what powers, if any, participants

⁵⁵ NDIS review (2023, 7 December). Recovery-focused psychosocial supports in the NDIS and the broader mental health system.

<https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/part-one-unified-system-support-people-disability-6>

⁵⁶Parliament of the Commonwealth of Australia (2023, 7 December). National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024. https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7181

⁵⁷ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

⁵⁸ Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

⁵⁹ NDIS review (2023, 7 December). A fair, consistent and empowering NDIS experience.

<https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/part-one-unified-system-support-people-disability-2>

may have to view the outcome of the Needs Assessment Tool, if the outcome can be challenged, or if it can be changed or re-taken.

Recommendation 4A: the Australian Government should amend the legislation to ensure that the NDIS participant is provided with the needs assessment report to ensure the NDIA and NDIS participant have equal access to the same information.

Recommendation 4B: the Australian Government should amend the legislation to ensure that the needs assessment is a reviewable decision by NDIS participants who do not agree with the assessment outcome.

Recommendation 4C: the Australian Government should amend the legislation to provide the participant with the right to request an alternative reassessment if they disagree with the outcome.

Recommendation 4D: the Australian Government should amend the legislation to provide that any needs assessment should be completed by a skilled and qualified needs assessor who is a trained allied health practitioner or social worker, or similar, with disability expertise that is relevant to the needs assessment being completed. For example, a NDIS participant with psychosocial disability should have their needs assessment completed by a needs assessor who has specific knowledge of the needs and experiences of psychosocial disability.

4.2 Changes around ‘supports’ in Section 10

The Bill makes significant changes to the supports which can be funded under the Scheme with the introduction of the new ‘Definition of NDIS support’. The introduction of restrictive definitions and exhaustive lists of services in these sections will go against the NDIS core principles of ‘choice and control’⁶⁰. For example, small providers are often essential supports for people with psychosocial disability and provide a sense of connection and community to people who engage them. Limiting access to these providers due to restrictive definitions and exclusions of services is against the NDIS principles of ‘choice and control’ and psychosocial principles of ‘recovery’.

Section 10(b) and 10(c) of the Bill rely on the drafting of the rules, which have not yet been designed and no information released to the community. This lack of clarity is concerning given the discussions around the transition of foundational supports from federal to state budgets⁶¹, there is a significant risk that the development of foundational supports will not keep pace with the NDIS reforms.

Section 10 also employs selective inclusion of parts of the *Convention on the Rights of Persons with Disabilities* (CRPD). For example, employment supports are not included which is of particular concern for participants with psychosocial disability, given the NDIS Review identified that “participants with psychosocial disability continue to experience lower community participation, employment and carer employment than other participants in the scheme”. This selective inclusion is likely to be interpreted as a purposeful exclusion of the parts of the CRPD not specifically included.

⁶⁰ NDIS (2022, 16 May). Your rights and responsibilities. <https://www.ndis.gov.au/participants/your-rights-and-responsibilities>

⁶¹ NDIS review (2023, 7 December). Foundational disability supports for every Australian with disability <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/part-one-unified-system-support-people-disability-0>

“Provide better support for people with disability to make decisions about their lives”⁶²

Recommendation 4D: the Australian Government should ensure the current system of supports remains in place until the NDIS Rules have been negotiated and agreed by the States and Territories; and that the system of foundational supports is adequately funded and fully operational.

4.3 The enhanced information-gathering powers are onerous on participants, many of whom are already vulnerable.

The proposed Section 30 and 30A of the Bill introduces powers for the NDIA to revoke a participant’s access if they have requested information or reports from a participant and these are not within a 90-day timeframe. The sections do include provisions that revocation must not occur where it was ‘reasonable’ for the participant not to comply with the request within the timeframe, but there is no clarification on what ‘reasonable’ would include. There is also no requirement for the NDIA to ensure that the participant has received the request or that they are supported to respond to it.

The episodic and fluctuating nature of psychosocial disability could result in significant delays in circumstances where the participant’s capacity to undertake assessments or gather information is significantly reduced.

The administrative burden on vulnerable and marginalised participants can already be significantly overwhelming. Through VMIAC’s individual advocacy work, we have first-hand knowledge of how difficult it can already be for participants with psychosocial disability to comply with the administrative requirements of the Scheme. Communication and information to participants from the NDIA is frequently not shared in an accessible way and often directs people to contact the National Call Centre rather than providing a NDIA contact. These provisions increase both the burden on participants and the distress they will experience, given the risk of losing access to supports if they aren’t able to comply.

Recommendation 4E: the Australian Government should ensure that the provisions around participant status revocation need to be restricted to clearly intentional and repetitive non-compliance only.

Recommendation 4F: The Australian Government should review the structure of the NDIA so that there is a clearly defined and outlined responsibility on the part of the NDIA to investigate whether the participant has the necessary support to comply with the Act. To avoid a repeat of the current adversarial relationship between the NDIA and participants, any reforms in this area should be focused on guidance for participants and an assumption of good faith.

4.4 There is a risk of harm to participants with psychosocial disability in the proposed approaches to funding ‘Reasonable and Necessary Budget’.

⁶² Participant response to VMIAC member survey, ‘NDIS changes for people with psychosocial disability’, 8 March 2024

The proposed Sections 32F and 32G cover the flexible and stated support funding in a participant's 'reasonable and necessary budget'. Section 32H provides that a participant's funding will only be provided for specific supports if certain requirements are complied with in relation to those supports.

The Bill's proposed Section 32F(6) and (7) provide that the flexible funding portion of a reasonable and necessary budget may be restricted in certain circumstances, including non-compliance with Section 46 which covers how a participant may spend their funds. The increased flexibility is also impacted by the new plan management provisions in proposed section 43(2) of the Bill.

The Bill's move away from line-by-line funding to a more flexible funding approach is welcomed and aligns with the recommendations of the NDIS Review. However, the framing of these sections allows the NDIA to intervene in service provision, which may impact a participant's choice and control. Section 32H provides that these requirements may be specified in the NDIS Rules, which are not yet available for review.

Instead of aligning with the recommendation to provide guidance and support to participants in the use of their plans, this section employs punitive measures, in the form of reducing flexibility. Concerningly, accidental non-compliance will be dealt with in the same manner as intentional misuse of NDIS funds. This is problematic as it is counter to the NDIS Review recommendations⁶³ that the NDIA should employ a trust-based approach with respect to how participants spend their funds.

Recommendation 4G: Given the impact of non-compliance, there are not enough safeguards in place to protect participants. The Australian Government should redraft the legislation so that it outline the limits to these powers in terms of the information that can be requested, and the consequences that flow from non-compliance.

⁶³NDIS review (2023, 7 December). Part one: A unified system of support for people with disability.
<https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis/part-one-unified-system-support-people-disability>

Conclusion and Recommendations

VMIAC recognises the longstanding need for substantial reforms to disability support, both within and beyond the NDIS. However, it is essential that any reforms benefit all people with disability. We are concerned that people with psychosocial disability have not been adequately considered or consulted in the drafting of the Bill which forms the first step in the critical reform process.

The concerns listed in this submission reflect areas where the Bill does not align with the views of VMIAC members as well as areas in which the Bill has not followed the recommendations of the NDIS Review. VMIAC urges the Australian Government to reconsider the proposed changes in line with our recommendations below.

Our primary concern is that the proposed legislation, as it currently stands, could harm current and prospective people with psychosocial disability. It is clear from the final report of the NDIS Review that the approach to psychosocial disability may change substantially. Given the significant impact this will have, any further revisions to the Bill and the development of the legislative instruments must be carried out in collaboration with people with psychosocial disability.

VMIAC members and the prospective and current NDIS participants we support are passionate about their rights. The Australian Government should engage this valuable resource to ensure that the NDIS reforms provide a system of support that adequately and appropriately meets the needs of people with psychosocial disability.

List of all Recommendations:

Recommendation 1A: The current Bill does not define the term ‘recovery’ and as such there is significant confusion around how it is defined and applied to NDIS participants who access the ‘early intervention’ pathway. The Australian Government should review the language of this section and consider replacing the term ‘recovery’ with a more appropriate term that centralises choice and control and reflects the experiences of NDIS participants who will be placed on this pathway.

Recommendation 1B: If the Australian Government elects to retain the term ‘recovery’ in the legislation, it should clearly define what recovery means in the context of the ‘early intervention’ pathway and the Bill more broadly, so that it is clear how ‘recovery’ will apply in the context of the fluctuations of psychosocial disability. This will require deep engagement with people with psychosocial disability, and NDIS participants with psychosocial disability, to ensure it reflects the diverse range of presentations psychosocial disability.

Recommendation 1C: As currently drafted, the Bill does not include protections for NDIS participants on the ‘early intervention’ pathway to ensure that they are adequately supported; and that they will not be penalised if they apply for access to the Section 25 pathway. Given that the Explanatory Memorandum describes people with psychosocial disability as the users of the ‘early intervention’ pathway, any legislation drafted that impacts people with psychosocial disability should include specific protections so that their rights, as per the NDIS legislation and the CRPD, are upheld within and across the services and systems they engage with. The Australian Government should redraft all sections of the Bill around the

‘early intervention’ pathway to include a section on protections for people who may be placed on this pathway.

Recommendation 1D: The Australian Government should revise the NDIA’s default assumption on how to best support NDIS participants with psychosocial disability and should instead instigate an impartial and individualised case-by-case approach to the review of each current and future participants to ensure that participants are funded and supported based on their individual needs and functional impact.

Recommendation 2A: The Australian Government should work to re-establish trust in the sector and with NDIS participants by engaging deeply with these stakeholders when drafting the second part of this legislation reform – the rules and determinations that will accompany the Bill. Drafting these rules and determinations through collaboration and engagement with the diverse range of NDIS participants is essential to rebuilding the relationship between participants and the NDIA.

Recommendation 3A: the Australian Government should amend Section 32L(3) to reflect that the assessment must assess the participant’s needs for supports in respect of all impairments, not solely the impairments that meet the disability or early intervention requirements.

Recommendation 4A: the Australian Government should amend the legislation to ensure that the NDIA participant is provided with the needs assessment report to ensure the NDIA and NDIS participant have equal access to the same information.

Recommendation 4B: the Australian Government should amend the legislation to ensure that the needs assessment is a reviewable decision by NDIS participants who do not agree with the assessment outcome.

Recommendation 4C: the Australian Government should amend the legislation to provide the participant with the right to request an alternative reassessment if they disagree with the outcome.

Recommendation 4D: the Australian Government should amend the legislation to provide that any needs assessment should be completed by a skilled and qualified needs assessor who is a trained allied health practitioner or social worker, or similar, with disability expertise that is relevant to the needs assessment being completed. For example, a NDIS participant with psychosocial disability should have their needs assessment completed by a needs assessor who has specific knowledge of the needs and experiences of psychosocial disability.

Recommendation 4E: the Australian Government should ensure that the provisions around participant status revocation need to be restricted to clearly intentional and repetitive non-compliance only.

Recommendation 4F: The Australian Government should review the structure of the NDIA so that there is a clearly defined and outlined responsibility on the part of the NDIA to investigate whether the participant has the necessary support to comply with the Act. To avoid a repeat of the current adversarial relationship between the NDIA and participants, any reforms in this area should be focused on guidance for participants and an assumption of good faith.

Recommendation 4G: Given the impact of non-compliance, there are not enough safeguards in place to protect participants. The Australian Government should redraft the legislation so that it outline the limits to these powers in terms of the information that can be requested, and the consequences that flow from non-compliance.

