



**Submission to the Senate Committees on Community Affairs
Inquiry into National Disability Insurance Scheme
Amendment (Getting the NDIS Back on Track No1) Bill
2024 [Provisions]**

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Who is the Assistive Technology Suppliers Australia?

ATSA is a national organisation representing assistive technology suppliers, including manufacturers, importers, distributors, retailers, tradespeople and technicians.

Our 170 members comprise businesses and not-for-profit organisations and range from small family-owned concerns to multinational organisations throughout Australia. It is estimated that, excluding AT for communication and sensory disabilities, approximately 80% of the AT in Australia passes through the hands of ATSA members.

ATSA is a registered not-for-profit charity with the Australian Charities and Not for Profits Commission (ACNC) and requires its members to adhere to a comprehensive Code of Practice on the provision, sales and servicing of AT. We are also a member of the Australian Ethical Health Alliance.

The objects of ATSA are

- (a) funding and promoting:
 - i) research into Assistive Technology;
 - ii) the education of the public as to the availability of Assistive Technology to meet the needs of persons with a disability;
 - iii) “Best practice” in the way Assistive Technology is supplied; and
 - iv) community accessible Assistive Technology events;
- (b) giving the Assistive Technology users and suppliers a voice that:
 - i) provides positive influence on Government policy;
 - ii) educates Governments and other stake holders about Assistive Technology;
 - iii) promotes a robust competitive and commercially viable marketplace with the aim that Assistive Technology is available to users at a reasonable cost;
 - iv) advocates to achieve excellence, quality, value and positive outcomes for suppliers, Assistive Technology users, stakeholders and the broader community;
 - v) works with governments at all levels to ensure the viability of the Assistive Technology industry for the sake of those who use Assistive Technology; and
 - vi) delivers quality and value in Assistive Technology solutions for people with a disability and their carers;
- (c) improving the quality of Assistive Technology provision by:
 - i) supporting the ongoing training and education of health care professionals;
 - ii) promoting ethical business practices that safeguard the interests of users of Assistive Technology;
 - iii) participating in the development of appropriate and cost-effective product standards; and
 - iv) maintaining and enhancing services standards, quality and reputation of the Members for the collective mutual benefit and interests of the Members and the public;
- (d) developing alliances with all industry stakeholders to:
 - i) drive continued improvement in outcomes for Assistive Technology users;
 - ii) minimise the total lifetime costs of Assistive Technology on society and Assistive Technology users;
 - iii) ensure an open, fair and competitive market; and
 - iv) promote the services, activities and events of the Company; and

undertaking such other actions or activities that are necessary, incidental or conducive to advance this Object.

Recommendations

Recommendation 1

The Definition of NDIS Support be redrafted so that all existing supports which provide outcomes such as, but not limited to, communication, education and employment are included.

Recommendation 2

Without the documentation on the assessment process, information on the Rules and the opportunity for co-design; the proposed legislation changes in Sections 32 and 33 should not be supported by the Senate Committee.

Recommendation 3

A definition of 'framework plan' should be included in the Bill.

Recommendation 4

Without the Rules on the decision criteria for the NDIA to assume control of a person's plan, the addition of Section 43(2C) should not be supported by the Senate Committee.

Recommendation 5:

The 28-day period in regard to a request for information requires more context and should be flexible to allow for the fact participants may have to rely on third parties for the information (and doing so may take longer than the 28 days allowed).

Recommendation 6:

The draft Bill should include a reference to the timing and deliverables from the NDIA to the participant. This could be either in the Bill or in the Rules - the location should be the same as for the requirements on participants.

Introduction

The Assistive Technology Suppliers Australia (ATSA) thank the Federal Senate Standing Committees on Community Affairs for the opportunity to respond to the proposed changes to the NDIS Act in the Amendment (Getting the NDIS Back on Track No1) Bill 2024 [Provisions].

ATSA believe the proposed amendments in this Bill have moved away from the concept of 'person centred' in the National Disability Insurance Scheme. There are elements within this Bill which create a trade-off between 'choice and control' and 'savings within the NDIS'. As an example, the move away from the wording of 'reasonable and necessary support' to 'reasonable and necessary budgets' suggests a shift away from participant focus to cost savings.

Given the Rules and other instruments have not been released in parallel with the proposed changes to the Act, it is difficult to fully understand the impact that changes such as these may have, as much of the detail will be in the Rules. ATSA would caution the Committee on accepting or proceeding with this legislative change without at least having had draft Rules to review in line with the draft Bill.

In regard to the comments in the Explanatory Memorandum around the co-design for the Act having already taken place during the NDIS Review, we would suggest these are two very different contexts. The proposed amendments to the Act are complex and not focussed on all of the Recommendations from the NDIS Review.

Comments

Definition of NDIS Support

The definition of NDIS Support in Section 10 of the draft Bill raises a number of concerns and is too narrow in its categories as it currently stands.

- The language used appears to be outcome focused, however, the categories of support in Section 10 reduces the range of outcomes for participants from those available under the current service offerings in the NDIS. For example, the draft Bill excludes mention of communication, employment, social activities and educational outcomes.
- Assistive technology is only mentioned in Section 10(a) (iii) in reference to mobility. It does not address the use of AT for -
 - independence and safety in the home (e.g., systems for people with cognitive issues, electronic pill dispensers, shower chairs, commodes, adaptive kitchenware)
 - safety (pressure mattresses, hoists, adjustable beds and chairs, pressure cushions)
 - communication (alternative and augmentative communication devices),
 - home environment controls
 - trials, training participants and carers and other services rather than product outcomes.

ATSA is concerned the wording in Section 10(a) will prevent participants accessing the types of assistive technology listed above as well as other services or supports not covered by the proposed wording in Section 10(a) of this Bill. The NDIS currently defers to the World Health Organisation definition for assistive technology which states:

“Assistive technology is an umbrella term for assistive products and their related systems and services.

Assistive products help maintain or improve an individual’s functioning related to cognition, communication, hearing, mobility, self-care and vision, thus enabling their health, well-being, inclusion and participation.”

Source: Overview in [Assistive technology \(who.int\)](https://www.who.int/assisted)

As an active WHO member state, it would seem a backward step for Australia to provide less assistive technology than recommended by the WHO to developed and developing countries. Additionally, the ISO Standard 9999:2011 is a globally recognised source of information/list of assistive technology products/systems and ATS suggest this should also be referenced in the Bill.

Neither of these internationally recognised sources have been referred to in this draft of the Act.

- The Explanatory Memorandum, also refers to the application of the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD) in the drafting of these revisions to the Act, however the restricted definition of supports in Section 10 is not in keeping with Articles 24 and 27:

Article 24 2(e) states “Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion”.

Article 27 Work and Employment 1 states “Parties recognize the right of persons with disabilities to work on an equal basis with others.....”

- The inclusion of the term rehabilitation in the proposed changes in Section 10 is confusing as there is no clarification on whether 10(a) (v), includes both the recovery element of rehabilitation (health services) and the maintenance element (NDIS).
- Based on the draft Bill and Explanatory Memorandum, it seems agreement on the division of services within the Commonwealth is not expected to be achieved prior to the revised Act being enacted. This could result in confusion, delays, adverse health events and frustration for participants.

Recommendation:

The Definition of NDIS Support be redrafted so that all existing supports which provide outcomes such as, but not limited to, communication, education and employment are also included.

Assessment Tools

- We have serious concerns regarding Section 32 noting the level of control being transferred to the Minister and the absence of consultation on changes to the assessment tool to be used to develop a person’s plan. In the current Act this power is deferred to the Rules:

32(2A) The National Disability Insurance Scheme Rules may provide for:

- (a) the CEO to specify assessment tools

The wording in Section 32L of the draft Bill is at odds with the Explanatory Memorandum. For example, the Memorandum states on page 17 “The support needs assessment (which will be co-designed with the disability community) ensures Kirra’s needs are assessed in a holistic and sensitive way”.

Section 32L of the proposed legislation, allows for the Minister to make the determination of the supports needs assessment:

“(8) The Minister may, by legislative instrument, determine the following:

- (a) assessment tools to be used in undertaking assessments under subsection (1);
- (b) requirements for undertaking assessments under subsection (1);
- (c) information that must be included in a report prepared under subsection (5);”

Section 32(K)(2) also gives the Minister additional authority in that the “Minister may, by legislative instrument, determine methods for working out an amount mentioned in paragraph (1)(a) or (b).”

While the Explanatory Memorandum states on p24 that “The instrument will also be subject to Commonwealth parliamentary scrutiny and disallowance”, the reality is that in the Legislation Act Part 1 19, there is no consequence of failure to consult:

“Legislation Act Part 1 19 Consequence of failure to consult

The fact that consultation does not occur does not affect the validity or enforceability of a legislative instrument.”

In regard to Subsection 32L (8), ATSA does not support the transfer of power for the Minister to determine the assessment tool, from the Rules to a legislative instrument. ATSA supports the existing legislation which ensures there is a consultation process with States and Territories and which states:

209 “(2A)The National Disability Insurance Scheme Rules may provide for:

- (a) the CEO to specify assessment tools; and
- (b) the circumstances in which the CEO is to use the tools; and
- (c) matters relating to how the Agency, the CEO and other specified persons are to engage with participants or prospective participants; and
- (d) matters relating to how participants or prospective participants are to engage with the Agency, the CEO and other specified persons.”

- Finally, the requirements the needs assessment report must satisfy should be considered in consultation with all stakeholders utilising the report. Once again, the importance of Section

118 Functions of the Agency of the existing Act (2023) which states “enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;” is paramount.

- ATSA does not support the proposal that participants do not have the right to seek a review of their assessment either by the NDIA or externally. This suggests that the NDIA will never make a mistake, which is not backed by current evidence or practice. It is also contrary to the NDIS Practice Standard on Feedback and Complaints Management “Each participant is provided with information on how to give feedback or make a complaint, including avenues external to the provider, and their right to access advocates. There is a supportive environment for any person who provides feedback and/or makes complaints.”

Source: p9 [NDIS practice standards | NDIS Quality and Safeguards Commission \(ndiscommission.gov.au\)](https://www.ndiscommission.gov.au/ndis-practice-standards).

Recommendation:

Without the documentation on the assessment process, information on the Rules and the opportunity for co-design; the proposed legislation changes in Sections 32 and 33 should not be supported by the Senate Committee.

Framework Plan

The term “framework plan” has been introduced in this draft Bill and is mentioned at least 69 times in the draft but is not defined.

Recommendation:

A definition of ‘framework plan’ should be included in the draft Bill.

Plans

In Section 43 (2C) of the draft Act it states the NDIA can assume control of a person’s new framework plan if

- “(a) the participant would be likely to suffer physical, mental or financial harm were the CEO to not make the decision;
- (b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant’s previous plans;
- (c) a circumstance prescribed by the National Disability Insurance Scheme Rules for the purposes of this paragraph.”

As the process on how such decisions are to be made will be in the Rules, it is difficult to know whether the proposed changes to Section 43 (2C) are acceptable.

Recommendation:

Without the Rules on the decision criteria for the NDIA to assume control of a person’s plan, the addition of Section 43(2C) should not be supported by the Senate Committee.

Flexible Funding

In section 32 of the draft Bill, there are a number of items that will be “specified” such as in 32(H) (2) specified requirements, specified class and specified process. The process for specifying these items is not clear as the Note at the end of this part states that Rules **may** be made in relations to this section -

“Note: National Disability Insurance Scheme Rules may be made in relation to this section under section 32J.”

ATSA question how will this work if Rules are not made?

Unrealistic expectations on participants and their families

The introduction of the at least 28-day period for participants to respond to a request for information in regard to

“the undertaking of an assessment under section 32L for a participant;

(b) preparing a statement of participant supports for a participant;

(c) deciding whether to approve a statement of participant supports for a participant”

is setting an unrealistic expectation. 28 days does not allow for the time it takes for participants to secure and undertake any necessary appointments, receive reports from health professionals and other specialists & is particularly problematic for the families of children who have a disability, people living in regional and remote areas and First Nations peoples.

What is also interesting is that there is a time frame set on participants but not on responses from the NDIS to approve a participant’s plan. Will this be in the Rules?

Recommendation:

The 28-day period in regard to a request for information requires more context and should be flexible to allow for the fact that participants may have to rely on third parties for the information.

Recommendation:

The draft Bill should include a reference to the timing and deliverables from the NDIA to the participant. This could be either in the Bill or in the Rules - the location (either the Rules or the Act) should be the same as for the requirements on participants.

Choice and Control

As it stands, ATSA’s view is that the proposed amendments in the draft Bill increase the authority of the Minister and the NDIA and reduce the amount of choice and control for participants. This does not appear to align with Section 118 Functions of the Agency of the existing Act (2023) which states “enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;” and ATSA would not support amendments that reduce participants’ choice and control.

One area where participants have no control is when delays in services and products originate from the NDIA as a result of internal systems or staff issues. For example, in 2023-24, the NDIA approvals for assistive technology (AT) have, in many cases, taken **over 250 days** instead of the maximum Participant Guarantee time from the NDIA of 10 – 15 days (for simple AT) and up to **30 days for complex AT**.

Will either the revised Act or Rules give consideration to the requirement for the NDIA to meet their own Participant Service Guarantees, and what consequences or rectification should be expected by participants in cases where the Guarantee is not met?

Conclusion

The impact of the Bill is difficult to determine and understand without referring to the proposed Rules. ATSA recommends the Senate Committee not accept this Bill without access to the Rules, or draft rules for consideration.

The lack of clarity in the draft Act in regard to the supports that will be provided will make the implementation of Section 10 exceedingly difficult for the NDIA, providers and most importantly for participants and their families.

ATSA is concerned by the absence of co-design within the wording of the proposed changes to the NDIS Act. This makes the level of authority being given to the Minister excessive, particularly in areas where participants and providers are key stakeholders, such as the assessment tool and reasonable and necessary budgets.

Additionally, the fact there is no consequence under the Legislation Act if the Minister chooses not to consult with State, Territories and Federal government means participants are relying on the goodwill of the Minister of the day to consult at both government and participant level. This must be addressed in both the NDIS Act and the Rules.