



Mental Health Australia

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

To the Senate Community Affairs Legislation Committee

10 May 2024

Mentally healthy people,
mentally healthy communities

About Mental Health Australia

Mental Health Australia is the national peak for mental health. We unite the mental health sector to present a cohesive voice to government, and provide practical policy solutions to influence decision-making, which in turn, improve the mental health system and mental health of people in Australia. Mental Health Australia has over 130 members, including service providers, professional bodies, organisations representing people with mental ill-health, family, carers and supporters, researchers and state and territory mental health peak bodies.

Summary of this submission

Mental Health Australia supports the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024*, to enable implementation of recommendations of the NDIS Review, with amendment to ensure the views of disability and carer representative organisations are considered in Parliamentary deliberation of future legislative instruments and to prevent unintended consequences of the proposed changes.

Recommendations

Recommendation 1: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should require the tabling in Parliament of significant stakeholder organisations' views alongside legislative instruments.

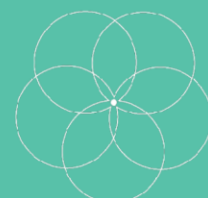
Recommendation 2: Governments should prioritise development of legislative instruments about what are and are not NDIS Supports.

Recommendation 3: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should be amended to state that the accrual of debt should be a last resort after assistance has been provided to a person (which could include supported decision making and/or legal assistance) to identify what is and is not a NDIS support.

Recommendation 4: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should be amended so that the decisions to revoke a person's NDIS participant status or to suspend development of a new framework plan would only be taken as a last resort, and after support is provided to assist the person to comply with the request for information.

Recommendation 5: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should include a section that enables the provision of the needs assessment report to the NDIS participant, and or family, carer or supporter, where this is the participant's preference, for review prior to it being submitted to the National Disability Insurance Agency CEO.

Recommendation 6: The Australian Government should take into consideration existing alternative commissioning models related to psychosocial services when developing Rules related to Section 32H of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024*.



Introduction

Mental Health Australia welcomes the Australian Government's quick action to progress the National Disability Insurance Scheme (NDIS) Review's recommendations. Mental Health Australia and other advocates have long called for changes to improve the experience of people with lived experience of psychosocial disability in the NDIS. The NDIS Review has acknowledged the need for change and made significant recommendations to improve participants' experiences.

However, there is a lot more work to be done in collaboration between governments and people with lived experience of psychosocial disability, family, carers and supporters, service providers and other key stakeholders to design implementation of these recommendations. Mental Health Australia welcomes the Australian Government's first step to lay the foundation for this collaborative design through development of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill* ("the NDIS Bill").

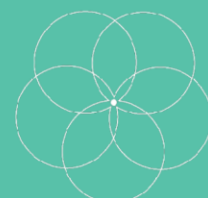
This submission makes recommendations about how to improve the NDIS Bill across two key components:

- 1) Ensuring robust engagement with relevant stakeholders in the development of the legislative instruments foreshadowed by the NDIS Bill
- 2) Prevention of potential unintended consequences which could result from implementation of the NDIS Bill in its current form.

Engagement on legislative instruments

Acknowledging the enabling nature of the NDIS Bill, Mental Health Australia notes that the detail of its implementation is largely left to the development of the many legislative instruments foreshadowed in the Bill. It follows that a critical success factor for the practical implementation of the Bill will be genuine engagement with all relevant stakeholders in development of the legislative instruments.

Mental Health Australia appreciates acknowledgement throughout the related Explanatory Memorandum of the requirement for "appropriate consultation" in development of legislative instruments under the *Legislation Act 2003*. However, given that choice and control remains the central policy imperative of the NDIS and that engagement with significant stakeholder organisations is a critical success factor for implementation of this legislation, the Bill should provide greater assurance as to what constitutes appropriate consultation. Significant stakeholder organisations could include, for example, disability and carer representative organisations and peak bodies spanning across the disability and other related sectors such as health, mental health and education.



Recommendation 1: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should require the tabling in Parliament of significant stakeholder organisations' views alongside the legislative instrument.

Such significant stakeholder organisations' views should be developed by those stakeholders at the culmination of a consultation and/or co-design processes to develop each legislative instrument. Including these views in the tabling of a legislative instrument should provide contextual information for parliamentarians considering the legislative instrument. It would also provide an avenue for stakeholder views to be heard first hand in parliament and it would operate as a final check to ensure legislative instruments were in line with participant and family, carer and supporters' needs. A critical success factor for implementation of this recommendation is appropriate resourcing of significant stakeholder organisations to undertake this co-design work. This could occur through extension of the National Disability Insurance Agency (NDIA's) current Reform for Outcomes Program funding.

Preventing unintended consequences

This section highlights three issues which could result in unintended consequences for NDIS participants, family, carers and supporters:

- Lack of clarity around what is and is not a NDIS support, potentially leading to people unwittingly accruing a debt
- Overly punitive action for failing to comply with an information request
- Needs assessment processes that do not prioritise provision of key documentation to the participant, family, carers and supporters.

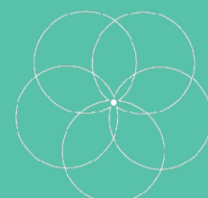
This section also outlines an opportunity to improve the delivery of psychosocial support through the NDIS potentially enabled by the NDIS Bill, in the form of alternative commissioning.

Lack of clarity on what is and is not a NDIS support

Section 10 of the NDIS Bill outlines those supports which are and are not NDIS supports and enables rules to be made on this matter. The Explanatory Memorandum states that, as an interim measure, until rules are made the Applied Principles and Tables of Support to Determine Responsibilities of the NDIS and Other Service Systems (APTOS) principles will apply.¹

This approach creates some confusion in relation to psychosocial supports. For example, the Bill's new subsection 10(a)(v) states that "a rehabilitation service" is considered to be a NDIS support. However, the APTOS states "rehabilitation" to be a service provided by the health

¹ Minister for the National Disability Insurance Scheme, the Hon Bill Shorten MP, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Explanatory Memorandum (2024)*, 3-4, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7181.



system and not the NDIS.² This is particularly concerning given Section 182(3) of the *National Disability Insurance Scheme Act 2013* would still apply, which states a person could accrue a debt to the agency if they spend NDIS plan funding on supports that are not NDIS supports or not in line with the participant's plan. Given the lack of clarity around what is and is not a NDIS support provided by the Bill and APTOS, this is an overly punitive response and risks further disadvantaging people who already experience multiple barriers to social and economic participation.

Recommendation 2: Governments should prioritise development of legislative instruments about what are and are not NDIS Supports.

Recommendation 3: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should be amended to state that the accrual of debt should be a last resort after assistance has been provided to a person (which could include supported decision making and/or legal assistance) to identify what is and is not a NDIS support.

Overly punitive action for failing to comply with a request for information

Subsection 30(2) of the NDIS Bill enables the CEO to request information from a participant or another person when considering revoking a person's status as a participant of the NDIS. The Explanatory Memorandum states that "Where a participant fails to comply with a request for information within the timeframe prescribed, the CEO may revoke the participant's status."³ However, Mental Health Australia also notes that subsection 30(2)(6) states that the CEO must not revoke a person's status as a participant in the NDIS if the CEO is satisfied that it was reasonable for the person not to have complied with the request made by the CEO.

In addition, subsection 36(3)(b)(i) of the Bill enables the CEO to suspend preparation of a new framework plan if information or reports requested for the purposes of undertaking a needs assessment are not received. Subsection 36(4)(b) states that any other plan in effect is also suspended. Subsection 36(3)(b)(ii) gives the CEO the option of making a further request if they are satisfied that it was reasonable that the first request for information was not complied with.

People with psychosocial disability can face multiple barriers to complying with information requests. For example, there are long wait times for services across the mental health sector,⁴ which could significantly delay the provision of mental health-related information to the NDIA. In addition, people with psychosocial disability are also subject to structural stigma, which, in the health system, can result in inequitable distribution of resources, undertreatment of health problems, withholding of services, and fragmented care,⁵ which can in turn impede a person's ability to obtain the requested information from health professionals in a timely manner. People with lived experience of psychosocial disability can also require support to overcome barriers they face that may restrict their ability to concentrate, have enough

² Department of Social Services, *The Applied Principles and Tables of Support to Determine the Responsibilities of the NDIS and other Service Systems* (2015), 6, <https://www.dss.gov.au/disability-and-carers-programs-services-government-international-disability-reform-ministerial-council-reports-and-publications/the-applied-principles-and-tables-of-support-to-determine-the-responsibilities-of-the-ndis-and-other-service-systems>.

³ Minister for the National Disability Insurance Scheme, the Hon Bill Shorten MP, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Explanatory Memorandum* (2024), 9, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7181.

⁴ Productivity Commission, *Mental Health* (2020), 8, 34,35, <https://www.pc.gov.au/inquiries/completed/mental-health/report>.

⁵ Professor Nicola Reavley and Dr Amy Morgan, *Structural stigma and discrimination: Evidence review* (2021), 4, <https://haveyoursay.mentalhealthcommission.gov.au/stigma-strategy-resources>.



stamina to complete tasks, cope with pressures and multiple tasks, interact with others and manage stress.⁶ These functions are all critical to complying with information requests within a specific timeframe.

Mental Health Australia acknowledges there may be very limited situations in which it is necessary for the NDIA to revoke a person's status as a NDIS participant or suspend preparation of a plan. However, we are concerned that, as subsections 30(2) and 36(3)(b) stand, they represent overly punitive compliance conditions for non-completion of a task, for which people with psychosocial disability face multiple barriers to completing.

Recommendation 4: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should be amended so that the decisions to revoke a person's NDIS participant status or to suspend development of a new framework plan would only be taken as a last resort and after support is provided to assist the person to comply with the request for information.

Provision of Needs Assessment Report to the person

Subsection 32L(1) proposed by the Bill, enables the development of a needs assessment to be undertaken as soon as practicable after the CEO commences preparation of a plan for a NDIS participant. Subsection 32L(5) requires that the assessment report must be prepared and given to the CEO as soon as practicable after the assessment is complete. However, there is no legislative requirement for the assessor to offer to provide the needs assessment report to the NDIS participant or family, carers or supporters.

The central policy imperative of the NDIS is choice and control. In relation to psychosocial disability in particular, it is good practice for assessments to be undertaken using a recovery oriented approach. The recovery oriented approach also emphasises self determination.⁷ In this way choice and control is aligned with good practice in psychosocial disability support.

It would be more aligned with this central policy imperative of the NDIS of choice and control and with recovery oriented practice to offer the participant and family, carers and supporters (where this is the preference of the participant) the opportunity to not only receive, but also review, their needs assessment before it is provided to the NDIA.

Recommendation 5: The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* should include a section that enables the provision of the needs assessment report to the NDIS participant, and or family, carer or supporter, where this is the participant's preference, for review prior to it being submitted to the NDIA CEO.

⁶ National Mental Health Consumer and Carer Forum, *Unravelling Psychosocial Disability: Position Statement on Psychosocial Disability Associated with Mental Health Conditions* (2021), 2, <https://nmhccf.org.au/our-work/position-statements/psychosocial-disability-associated-with-mental-health-conditions?highlight=WyJwc3ljaG9zb2NpYWwiClncHN5Y2hvc29jaWFsliwiZGlyYWJpbG10eSIsImRpc2FiaWxpdkhknliwiZGlyYWJpbG10eSculiwicHN5Y2hvc29jaWFsIGRpc2FiaWxpdkhkiXQ==>.

⁷ Australian Health Ministers Advisory Council, *A national Framework for recovery-oriented mental health services: guide for practitioners and providers* (2013), 19, <https://www.health.gov.au/sites/default/files/documents/2021/04/a-national-framework-for-recovery-oriented-mental-health-services-guide-for-practitioners-and-providers.pdf>.



Alternative commissioning

Mental Health Australia understands that the new subsections 32H(1) and (2) enable the “reasonable and necessary budget” to specify that funding will only be provided where certain requirements are met. The Explanatory Memorandum states in relation to section 32H that “these provisions are intended to support future reforms to the NDIS, including a new early intervention pathway and alternative commissioning.”⁸ Mental Health Australia welcomes the acknowledgement of the need for alternative commissioning models through the NDIS. Mental Health Australia is aware that the Australian Psychosocial Alliance has undertaken significant work to develop a potential alternative commissioning model for delivery of early intervention psychosocial services through the NDIS. The Australian Government should have this significant work front of mind when developing NDIS rules related to Section 32H. The development of such rules is enabled under section 32J.

Recommendation 6: The Australian Government should take into consideration existing work on alternative commissioning models related to psychosocial services when developing Rules related to Section 32H of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024*.

Conclusion

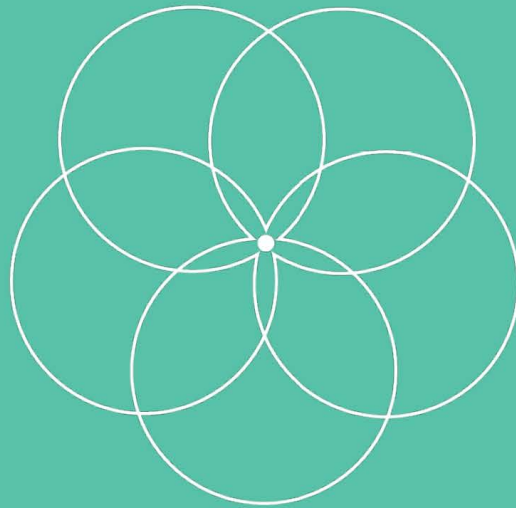
Mental Health Australia welcomes the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024*, which establishes the structures necessary to start development of Governments’ response to the NDIS Review. It does this by leaving the detail around implementation to the development of a number of future legislative instruments, which are yet to be developed. While the government is required to undertake appropriate consultation under the *Legislation Act 2003* on the development of these legislative instruments, there is a need to set a baseline for what this consultation should include. There are also some issues with the current Bill which should be resolved before it is passed in the Australian Parliament. This includes:

- providing assurance that people will be provided appropriate support to determine what is an NDIS support to avoid accrual of unnecessary debt, while governments prioritise further work to clarify what is and is not an NDIS support
- introducing a more balanced approach to consequences for not providing information requested by the NDIA CEO
- adjustment to the needs assessment process to ensure it is more in line with the central NDIS policy imperative of choice and control and a recovery oriented approach.

Mental Health Australia looks forward to continuing to work with the NDIA and the Department of Social Services on progressing reforms to implement the recommendations of the NDIS Review.

⁸ Minister for the National Disability Insurance Scheme, the Hon Bill Shorten MP, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Explanatory Memorandum (2024)*, 20, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7181.





Mental Health Australia

Mentally healthy people,
mentally healthy communities

mhaustralia.org

Mental Health Australia is the peak independent national representative body of the mental health sector in Australia.

Mental Health Australia Ltd

9-11 Napier Close
Deakin ACT 2600
ABN 57 600 066 635

P 02 6285 3100
F 02 6285 2166
E info@mhaustralia.org