

Every Australian Counts Questions On Notice Public Hearing 24th July 2024

Senator Reynolds:

We were talking about intra-plan inflation. In the budget papers, the actuary confirmed that, over the next four years, there is \$14.5 billion worth of savings to be made out of this legislation of the \$6 billion over 10 years, and 60 per cent of that, \$8.5 billion, is coming from intra-plan inflation cuts. You said that there were 50,000 people who were waiting for section 48 reviews. In terms of the maths, if this legislation goes through, one of those 50,000 people will get any supplementation that they've requested in their plan reviews. Does that seem about right to you, Ms Avery?

Senator Reynolds:

Can I ask Ms Avery to take that question on notice and in terms of linking that to her answers about what intraplan inflation is and some of its causes? This is really significant. If 50,000 people are not going to have remedies available because that money has been cut, I think that is an important question.

There are many factors contributing to intra-plan inflation and the backlog of S48 Change of Circumstances Review requests. As stated in our testimony, 'automatic top-ups' of NDIS plans do not exist. Participants must apply for a S44 Change of Circumstances, which the NDIA can refuse. Under the current legislation, the NDIA's decision not to change the participant's plan can be appealed. The Reform For Outcomes Working Group Every Australian Counts participants were informed by the NDIA that in June 2024, almost 50,000 participants waiting for a S48 Change of Circumstances request to be processed. 46% of those requests contained no information about why the request was submitted, and only 6% of the S48 requests had been assigned to a NDIA delegate to process. As participants are able to submit a S48 request via phone to the National Contact Centre (NCC), to NDIS Partners In The Community (PITC) or to frontline NDIA staff, the blame for almost half of the S48 requests lacking information to support the request cannot be placed solely on participants. The lack of information in these S48 requests are due to:

- Failure of NDIS representatives to submit information with the S48 request.
- Failure of NDIS representatives to seek information from participants about the reason for the S48 request.
- Failure of NDIS representatives to attach evidence to the S48 request.
- Failure of NDIS representatives to explain to participants that evidence and information are required for a S48 request, and what the evidence / information should look like.
- NDIS representatives submitting S48 requests before evidence and information have been gathered by the participant.

In 2021 the NDIA introduced auto-extensions and rollover of plans, due to both lack of staffing to manage the volume of plans due for end of plan reassessments and the Covid-19 pandemic. This measure was introduced in order to ensure that participants were not left without funding when our NDIS plans expired, and NDIA had been unable to reassess the plan before the expiry date. An auto-extension is when a participant's NDIS plan is automatically extended for 12 months the day after it was due to end. When the plan is auto-extended, any unspent funding remains available for claiming. A plan rollover occurs when the NDIA issue the participant with a new NDIS plan which is exactly the same as the previous NDIS Plan, only the start date and end date are changed.

Effectively this procedural change introducing auto-extensions and rollovers for most participants has led to a very high number of participants having detailed NDIS plans which have remained unchanged for up to four years or more. These plans are no longer accurate, the goals are often outdated and in many cases the funded supports in the plan are no longer suitable for the participants, who may require different funded supports or more funded supports (eg. participants who have left school, moved out of the family home, lost informal supports, gained additional disability diagnoses or have degenerative disability). The auto-extended and rolled over NDIS plans have not yet been transitioned to the new PACE system, which means that the only option for altering these plans is through the S48 Change of Circumstances review process. This process occurs mid-plan, and where the resulting new plan has more funding than the previous plan did, this would be included in intra-plan inflation statistics. In the NDIA's new operating system, PACE, auto-extensions and plan rollovers have been removed, with participants offered a 'plan continuation' instead.

Another contributing factor to the issue is due to the method used to develop first NDIS plans. Prior to the rollout of PACE in late October 2023, Participants had a planning meeting with the relevant PITC. The PITC would draft the NDIS plan and send it to the NDIA, where a NDIA delegate planner would finalise the plan. This process often resulted in underfunded first NDIS plans requiring participants to seek a Functional Capacity Assessment report from an Occupational Therapist and then submit a S48 Change of Circumstances request. Since the rollout of PACE, this process has changed. Currently new participants typically do not have a planning meeting. Prior to NDIS Access being approved, participants are required by the PITC to develop a Community Connections Plan (a plan without funding listing mainstream and community services which are often unsuitable or have closed / extensive waitlists).

Whilst the NDIA senior executive advise that the Community Connections Plan is optional, the PITC are requiring one to be done before submitting the participants' Access Request. Whilst the Early Childhood Approach (ECA) Coordinators do gather information about impact on function, goals and support needs, the Local Area Coordinators (LAC) are typically only gathering information about goals and if the participant does not have diagnostic eligibility (List A) for NDIS, they will then gather information about impact on function. Collecting this information prior to the Access request being submitted or approved gives the participant no opportunity to learn about or consider what goals are appropriate for them, or to give information about what supports they need funded by the NDIS.

Once NDIS Access is approved, the NDIA Delegate Planner then uses the information in the Community Connections Plan (which is very often incorrect and listing informal or mainstream supports which do not exist or are inaccessible) to develop a draft budget for the participant. Whilst the NDIA Delegate Planner is supposed to then have a planning meeting with the participant, using the draft budget as a starting point for discussion about the supports the participant requires, this rarely occurs. The significant majority of the time the participant is informed that the draft budget is how much funding they will receive in the first plan, and if they are unhappy with that, to get a report from an Occupational Therapist and seek a S48 Change of Circumstances request. Typically this first NDIS plan is grossly underfunded as a result, requiring review and the issuing of a new NDIS plan before the end date of the plan (intra-plan inflation).

Other factors impacting the extensive backlog of almost 50,000 participants include:

- Poor planning and reassessment decisions resulting in underfunded NDIS plans

- Lack of plan implementation support to participants and nominees to explain:
 - What requested supports were approved
 - What requested supports were denied
 - Appeal rights through S100 Internal Review of Decision and AAT
 - How far the funding will stretch
- Failure of NDIA to advise participants which disability/ies were granted access.
- Failure of NDIA to explain decisions made about funded supports.
- Lack of pre-planning and pre-end of plan reassessment support to gather information and evidence of support needs.
- Lack of access to supports during Covid-19 lockdowns resulting in funding cuts to subsequent plans due to funding not being used, and the current funding being insufficient to meet needs.

In addition to the above factors impacting intra-plan inflation and the high volume of pending S48 Change of Circumstances requests, the following issues specifically contribute to intra-plan inflation:

- Poor planning and reassessment decisions resulting in underfunded NDIS plans (eg. funding weekday only support worker rates for people to participate in community activities which occur on weekends and evenings at higher hourly rates)
- Overcharging by providers.
- Lack of plan implementation support provided to participants and nominees to explain:
 - What disability/ies are covered by the NDIS.
 - What supports have been approved in the plan, what supports were declined and why.
 - What the Support Budgets and Support Categories mean and how they can be used.
 - How to appeal the decisions in the plan, and what evidence might be needed (Plan Variation, S100, S48 and AAT).
 - How to use the plan, including how far the funding will stretch.
 - Spending in line with the plan requirements, the participant's responsibilities and who can support them.
 - What is the responsibility of NDIS and what is the responsibility of other systems to pay for.
 - Check-ins, plan continuations and end of plan reassessments, and what is required (eg. progress reports from Capacity Building providers).
 - Role of NDIS Quality and Safeguards Commission and how to lodge a complaint.
- Making sure that relevant support people attend the plan implementation meeting, eg Support Coordinator / Psychosocial Recovery Coach, Nominees etc.
- Lack of investment in supported decision-making for participants who need it.
- Lack of requirement that disability intermediaries (Support Coordinators, Plan Managers and Psychosocial Recovery Coaches) be independent of other service provision.
- Lack of Check-ins with the participant and ongoing monitoring that the participant is safe, providers are charging appropriately and that the participant is receiving supports charged for.
- Insufficient integrity measures at the point of claiming (for providers, plan managers and self-managed participants).

Every Australian Counts are extremely concerned about how the new legislation could impact participants in these circumstances. The Bill emphasises spending funding in

accordance with the plan, which is rarely explained to the participant. The participant is held accountable for overspend, regardless of how the funding is managed, according to the [Using Your NDIS Plan Fact Sheet](#), which states *“Your funding should last for the full length of your NDIS plan. No matter how you choose to manage your funding, you are responsible for making sure your budgets are on track.”* This is unreasonable for participants with disabilities which impact their ability to make decisions and/or manage budgets and finances. Participants with Agency Managed funding have no oversight of how the funding in their plans are spent, with providers claiming direct from the NDIS Portal; and participants with Plan Managed funding may or may not be required to approve claims before they are processed by the Plan Manager.

The debt raising powers in the legislation allow the NDIA to decide that the participant has not spent funding in accordance with the plan. This is not always a fact-based decision, but rather the opinion of the NDIA delegate making the decision – a delegate who may or may not have an understanding of the participant’s disability and relevant supports appropriate to that disability. While participants can appeal the NDIA’s decision not to waive a debt they have decided was incurred by a participant, the debt itself cannot be appealed, resulting in a participant being found guilty with no right of appeal. The legislation in its current phrasing also requires the delegate to ignore the nature of the participant’s disability and financial capacity when determining a debt has been incurred. Waiving of the debt is likewise insufficient, as it enables the NDIA to keep a record that a participant has incurred a debt where they may not be at fault. The record of a debt incurred affects all future decisions made about the participant, especially with regard to how funding is managed and shorter funding periods, both of which may negatively impact the participant long-term. We note that while debt raising is currently a minor focus of the NDIA, there is a lack of protection and appeal rights for participants in the Bill, and the power may be invoked more heavily against participants by future Governments and future NDIA delegates.

It is crucial that all current appeal rights are retained by participants, including the right to appeal a decision not to change the participant’s NDIS plan. New powers to the NDIA must be fully appealable, and participants must be given the right to appeal a debt imposed on them by the NDIA, especially in light of the proposed changes to the Bill placing significantly more responsibility on participants to spend in line with the plan and stay within the funding budget.

Nick Avery
Deputy Chair
Every Australian Counts