

17 June 2024

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

Inquiry into National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions] - response to invitation to comment

We refer to the above Inquiry and the invitation to provide further comment extended to us at the public hearing held on 14 June 2024.¹ We note our previous submissions to the Inquiry dated 17 May 2024 ('First Submission') and 14 June 2024 ('Supplementary Submission').

The invitation to comment concerned powers to make Ministerial determinations, and potential consequences if the Senate were to disallow instruments made pursuant to these powers.

Transitional rules for defining 'NDIS supports'

We understand the combined effect of items 124(2) and 138 of Schedule 1 of the Bill is to allow the Minister to make transitional rules defining 'NDIS supports' until category A NDIS Rules can be developed for this purpose. We expect the Senate would be reluctant to disallow transitional rules made for this purpose as to do so would risk disrupting plans for all participants.²

This process for transitional rules is a result of amendments made by the House of Representatives on 5 June 2024, and is therefore not addressed by recommendations made in our First Submission to the Committee. Our Supplementary Submission stated:

The Minister should make public a draft of this transitional rule as soon as possible, in the interests of transparency and promoting genuine engagement with the disability community.

This remains our view.

Ministerial determinations relating to 'new framework plans'

The transition of participants to new framework plans relies on the exercise of powers conferred on the Minister by proposed sections 32B(1) (determining classes of participants who are to have new framework plans), 32K(2) (establishing a method for working out total funding amounts in NDIS plans) and 32L(8) (establishing how needs assessments will be

¹ *Committee Hansard*, Evidence to Senate Community Affairs Legislation Committee, Parliament of Australia, Canberra, 14 June 2024, 21 (Senator Steele-John).

² By virtue, in particular, of the amendments made to section 34(1)(f) of the *NDIS Act* by item 47 of the Bill.

conducted). Until instruments are made for the purpose of section 32B(1), all participants will continue to receive old framework plans.

We understand legislative instruments under sections 32K(2) and 32L(8) will be essential to the preparation of 'new framework plans' and must be in place before a Ministerial determination is made for the purpose of proposed section 32B(1). As such, if the Senate were to disallow instruments made under sections 32K(2) and/or 32L(8), it follows that it would also need to disallow any determinations under section 32B(1).

Accordingly, we consider Recommendation 2 from our First Submission to the Committee would support Senate oversight of the specific Ministerial determinations to be made under proposed sections 32K(2) and 32L(8).

We would be pleased to provide any additional information to assist the Committee's consideration of the Bill.

Yours sincerely,

**Mitchell Skipsey and
Senior Solicitors**

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