

## Attachment A – IQ24-000122

### Summary of recommendations made by the Council for the Australian Federation in their submission to the Senate Community Affairs Legislation Committee Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

No	Recommendation	Comment
1	<ul style="list-style-type: none"> <li>• The Commonwealth Government should undertake genuine and meaningful consultation with the disability community, service providers, and state and territory governments on the reforms outlined in the Bill, including in particular, the list of authorised and unauthorised NDIS supports and the design of new budget setting assessment tools, as well as any future tranches of legislative amendments.</li> </ul>	<ul style="list-style-type: none"> <li>• The National Disability Insurance Agency (NDIA) is doing genuine and meaningful consultation with people with disability. This includes working with disability and carer peak bodies and the NDIA’s codesign groups.</li> <li>• Co-design is a legislative requirement under the <i>National Disability Insurance Scheme Act 2013</i>. Subsection 4(9A), which is one of the general principles guiding actions under the Act, provides that ‘people with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity’.</li> <li>• To make this requirement more explicit, amendments made in the House of Representatives specifically require the Minister to have regard to subsection 4(9A) when making legislative instruments under sections 32K (reasonable and necessary budget) and 32L (needs assessments and reports).</li> <li>• Under the <i>Legislation Act 2003</i>, the Minister is also required to provide an explanation of the nature of the consultation that has occurred in the making of all instruments. This obligation is strengthened by a proposed Senate amendment to provide a consultation statement with all legislative instruments made under the Act that must describe:               <ul style="list-style-type: none"> <li>○ the nature of consultation</li> <li>○ in general terms, who was consulted</li> <li>○ a summary of the views expressed</li> </ul> </li> </ul>
2	<ul style="list-style-type: none"> <li>• Schedule 1 to the NDIS Bill (Main Amendments) should commence on proclamation:               <ul style="list-style-type: none"> <li>○ on a date after new Category A NDIS Rules envisaged by the Bill are agreed;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Schedule 1 of the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (Bill) will have effect 28 days after Royal Assent so that immediate measures can take effect.</li> <li>• The majority of Schedule 1 changes will not take effect until new legislative instruments are made, and the majority are Category A requiring unanimous agreement by States and Territories.</li> </ul>

## Attachment A – IQ24-000122

No	Recommendation	Comment
	<ul style="list-style-type: none"> <li>○ only if the NDIS Bill is amended to make new legislative instruments Category A NDIS Rules, as per recommendation 8; and</li> <li>○ on a date after the scope, design and implementation of the new Foundational Supports has been agreed between the Commonwealth and the states and territories.</li> <li>● Schedule 2 to the NDIS Bill (Quality and Safeguards Amendments) should commence 28 days after the Act receives Royal assent, in line with the current intent of the Bill.</li> </ul>	
3	<ul style="list-style-type: none"> <li>● The Commonwealth should provide clear and detailed explanation of the decisions made in the drafting of proposed subsection 10(a) (definition of NDIS support) and how this will impact access to the NDIS.</li> </ul>	<ul style="list-style-type: none"> <li>● NDIS Supports are goods and services required to support a participant’s disability needs, which are appropriately funded by the NDIS.</li> <li>● The definition of NDIS support serves two primary purposes: <ul style="list-style-type: none"> <li>○ It clarifies the constitutional basis for the new budget setting framework recommended by the NDIS Review.</li> <li>○ It assist participants to understand what is capable of being funded by the NDIS to enable the new flexible budget setting framework.</li> </ul> </li> <li>● The definition has been adopted in key areas of the Bill, particularly where references to supports being appropriately funded by the NDIS already exist.</li> </ul>
4	<ul style="list-style-type: none"> <li>● The NDIS Bill should require NDIS Rules made pursuant to proposed sections 10(b) and (c) to be periodically reviewed and revised, to accommodate the phased implementation of complementary Foundational Supports.</li> </ul>	<ul style="list-style-type: none"> <li>● Parliamentary amendments to the Bill agreed in the House of Representatives embed an independent review of the operation of the Bill in 5 years of receiving Royal Assent.</li> </ul>

## Attachment A – IQ24-000122

No	Recommendation	Comment
5	<ul style="list-style-type: none"> <li>The Applied Principles Tables of Supports (APTOS) should not be used as part of the transition mechanisms of the NDIS Bill. This would be addressed by implementing recommendations 2 and 4.</li> </ul>	<ul style="list-style-type: none"> <li>Amendments have been made to item 124 of the Bill to remove reference to APTOS as the basis for what a transitional instrument would have to consider for section 10 NDIS Supports.</li> </ul>
6	<ul style="list-style-type: none"> <li>Subitem 138(2) of the NDIS Bill should be removed.</li> </ul>	<ul style="list-style-type: none"> <li>The rules can only deal with matters of a transitional nature.</li> </ul>
7	<ul style="list-style-type: none"> <li>The NDIS Act should be amended to include a legislated requirement to seek agreement of all states and territories for amendments to the NDIS Act:               <ul style="list-style-type: none"> <li>that categorise any new NDIS Rule, and</li> <li>that re-categorise or remove any existing NDIS Rules.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>It would not be appropriate for the Commonwealth Parliament to constrain executive authority to make amendments to primary legislation.</li> </ul>
8	<ul style="list-style-type: none"> <li>The power to make legislative instruments in proposed subsections 32B(1), 32C(2), 32K(2), 32L(8) and 33(2E), and the transitional rules under item 138(1) of the Bill, should be amended to instead require Category A NDIS Rules.</li> </ul>	<ul style="list-style-type: none"> <li>These matters (setting funding amounts, needs assessments and transitional arrangements) relate to NDIA operational responsibilities and are not currently subject to rules.</li> <li>These instruments will be developed in close consultation with the disability community and States and Territories.</li> </ul>
9	<ul style="list-style-type: none"> <li>Item 123 of the Bill should be removed. No NDIS Rules or legislative instruments under the NDIS Act should be exempt from sunseting.</li> </ul>	<ul style="list-style-type: none"> <li>Applying the sunseting regime to NDIS rules would allow Commonwealth legislation to unilaterally sunset instruments that have been the subject of consultation and agreement between States and Territories.</li> </ul>
10	<ul style="list-style-type: none"> <li>Category A NDIS Rules should be developed as a check and balance to regulate the use of the NDIA's powers provided for in proposed subsections 30(2)-(6), proposed subsections</li> </ul>	<ul style="list-style-type: none"> <li>Category A Rules are proposed for section 30A, section 32H and section 44 to operate.</li> <li>The Bill provides criteria the CEO must follow when making decisions which are subject to review under the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</li> </ul>

## Attachment A – IQ24-000122

No	Recommendation	Comment
	<p>30A(4)-(7), proposed section 32H, proposed subsection 44(1)(c) and proposed section 46.</p> <ul style="list-style-type: none"> <li>As per recommendation 2, all Category A NDIS Rules should be developed and agreed prior to commencement of these amendments.</li> </ul>	<ul style="list-style-type: none"> <li>Section 46 deals with requirements to spend money on NDIS supports in accordance with a plan and does not include any rule making powers apart from requirements relating to the retention of records which are Category D rules.</li> </ul>
11	<ul style="list-style-type: none"> <li>The Bill should be amended to specify that any new assessment, or examination, required of participants as a result of this Bill, will be paid for by the NDIA, and will not increase costs for the individual.</li> </ul>	<ul style="list-style-type: none"> <li>This is a matter for Government.</li> </ul>
12	<ul style="list-style-type: none"> <li>The NDIS Bill should be amended to strengthen quality, safeguarding, fraud and compliance measures.</li> </ul>	<ul style="list-style-type: none"> <li>Safeguards contained in the current Bill include: the ability to change plan management type based on fraud and financial decisions, enabling effective management of funding within existing budgets through a more transparent and equitable needs assessment and planning process and audit banning powers of the Commission.</li> <li>The Government is undertaking work outside the legislative process that will strengthen quality and safeguarding and address fraud and compliance, including through the cross-agency Fraud Fusion Taskforce. In addition, the Government is considering the report by the NDIS Provider and Worker Registration Taskforce that provides advice on the implementation of Recommendation 17 of the NDIS Review.</li> </ul>

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

Public Hearing – 25 July 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

**Topic:** National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

**Question reference number:** IQ24-000122

**Question asked by:** Linda Reynolds

**Type of Question:** Spoken.      **Hansard Page/s:** 16

**Date set by the Committee for the return of answer:** 31 July 2024

**Question:**

Senator REYNOLDS: ... The states and territories have 12 recommendations and they are quite sensible recommendations. Could you please come back on notice with a detailed explanation of which of these 12 have already been adapted and which ones you are not proposing to do, which I think will be quite helpful for the Senate's deliberations on the bill. Could you take that on notice?

Ms Shannon: Certainly, I can. I would just like to clarify that the reference to some but not all was actually a quote from the cover letter from CAF. It is not my characterisation; it is actually their characterisation. We are very happy to take it on notice because we can identify where we have actually taken on board comments or feedback and it is not the Commonwealth's position to take that on board.

**Answer:**

A table has been provided at **Attachment A** which summarises recommendations made by the Council for the Australian Federation in their submission to the Senate Community Affairs Legislation Committee Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024. The table also provides comment in response.