

Vision Australia Submission: NDIS Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

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Submission approved by: Chris Edwards, Director Government Relations, Advocacy, NDIS and Aged Care

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# Introduction

Vision Australia appreciates the opportunity to provide this submission to the Community Affairs Legislation Committee regarding the National Disability Insurance Scheme Amendment (Getting the NDIS Back On Track No. 1) Bill, which was introduced to Parliament on 27 March. This legislation represents fundamental changes to the operationalisation of the Scheme. Vision Australia appreciates the need to ensure future sustainability of the NDIS and we are broadly supportive of changes that will ensure that people with permanent and significant disability can access the supports they need to live, work and participate in their communities for many decades to come. Our support for the passage of the Bill is to improve total scheme cost control arising from more people entering the Scheme than it was originally designed for. It is imperative, however, that the changes proposed in this legislation are co-designed with people with disability, their supporters and service providers across the sector. The impacts of change must be carefully considered to ensure that they do not unreasonably curtail participant choice and control, timely access to supports or innovation within the provider market. It is noted that the draft rules and determinations that are pivotal to the implementation of this Bill have not yet been released. Given that these documents will largely dictate the operational impact of the proposed changes on participants and providers, there is insufficient detail at present to enable us to comment fully on all aspects of the Bill.

# Recommendations

* Reforms to the Scheme of this scope and magnitude should be based on a legislated commitment to co-design, involving people with disability, their families, service providers and representative bodies.
* The definition of NDIS Supports in Section 10 of the Bill is inadequate in its current form and requires further development and consultation.
* Use of the Applied Principles and Tables of Support is not appropriate as an interim measure to determine the scope and funding of NDIS supports. The relevant rules underpinning this Bill should be developed and consulted upon before any changes are made to the supports that the NDIS will fund.
* Vision Australia is broadly supportive of the proposed changes in this Bill that would obviate the need to assess each individual participant support, instead creating an overall plan budget that can be spent flexibly across various service types. We also support the dissolution of rigid funding categories within plans, as we believe this will result in both fewer plan reviews and more timely access to supports for participants.
* The additional powers created in the Bill to allow for monitoring and modification of plans are too broad and unbalanced in operation. It is our view that the scope of these powers should be narrowed, such that plans and management of funds can only be modified where inappropriate spending is material and deliberate, or where significant risks around noncompliance are present.
* Given the supply and demand constraints on allied health and therapy providers within the disability sector, we submit that 28 days is not a reasonable timeframe for participants to acquire requested assessments or information for the purposes of building a new plan, as specified in Section 36 of the Bill. If implemented, these terms will potentially disadvantage low incidence cohorts such as people with blindness or low vision, who often rely on reports and assessments from specialist providers.
* Due to the number of decisions that are incorporated into the Statement of Supports, it is our view that more targeted rights of appeal should be contemplated as part of this Bill. Participants should, for example, be able to request a change to their plan management type, without triggering a review of their plan budget or quantum of funding.
* A stated commitment to ensuring that needs assessments are delivered in a way that is fully accessible to participants should be included in the Bill.
* Needs assessments must be subject to clearly legislated rights of review and appeal. Without this commitment, choice and control will be undermined, participants will be disempowered and trust and confidence in the fairness and equity of the Scheme will be further eroded.
* There must be clear and transparent monitoring around the implementation of needs assessments to ensure that quality standards are met, and appropriate funding outcomes are achieved.

# Definition of NDIS Supports

The definition of NDIS Supports within Section 10 of the draft Bill will have far reaching impacts with regard to NDIS access, planning, quantum of funding and plan spending. It is therefore crucial to ensure that this section of the proposed legislation is clear and operationally feasible. One of the current challenges regarding the definition of reasonable and necessary supports under the NDIS Act is that its definition is unclear and has therefore been interpreted inconsistently. It is respectfully suggested that this problem has not been remedied in the proposed definition of a NDIS support which is included in Section 10 of the Bill. While the technical detail of specific inclusions and exclusions can be set out in accompanying rules, the overarching definition must be comprehensible to everyone and not dependent on a thorough understanding of international law. Vision Australia recognises that one objective of this definition is to allow for foundational supports and manage responsibility for these across Commonwealth, State and Territory Governments. However, Section 10 in its current form is opaque and inaccessible to the majority of people.

Beyond its lack of clarity, Vision Australia considers that there are several shortcomings of the proposed definition of NDIS supports. In particular, the eight categories of supports listed in section 10(a) are too restrictive. For example, Section 10(a)(i) states that a support may be funded by the NDIS if it is necessary to support the person to live in the community and prevents their isolation or segregation. At a minimum, the word “or” should be used here, given it would seldom be possible to satisfy both elements of this test. In its current form, there is the potential for this section to significantly limit the range of supports that a participant could access to support their social and economic participation. Similarly, Section 10(a)(iii) refers to assistive technologies that will facilitate personal mobility, however, there is no reference to assistive technologies used for other purposes such as access to information. This is a key way in which people who are blind or have low vision utilise NDIS supports, and we would have grave concerns were this not to be funded in future.

It is noted that much of the detail around funding of specific supports will not be available until the draft rules accompanying the bill are circulated. The Bill states that the Applied Principles and Tables of Support will be utilised as an interim measure to determine the supports that will be funded by the NDIS. We believe this creates a risk that participants will be left without support if the NDIS and State/Territory Governments do not agree on how these tables should be applied. The relevant rules underpinning this bill should be developed and consulted upon before any changes are made to the supports that the NDIS will fund.

# Planning Process

Vision Australia is broadly supportive of the proposed changes in this Bill that would obviate the need to assess each individual participant support, instead creating an overall plan budget that can be spent flexibly across various service types. We also support the dissolution of rigid funding categories within plans, as we believe this will result in both fewer plan reviews and more timely access to supports for participants. We are also in agreement with the proposal to increase the length of plans where this is appropriate. This may be a particularly beneficial option for participants whose needs are unlikely to change significantly during the life of a plan. While we recognise that release of funds periodically throughout a NDIS plan is intended to support a reduction in overspending, care must be taken to ensure that this does not unreasonably curtail access to products and services. For example, certain stated supports, such as purchase of dog guides and other high cost assistive technology items, should not be subject to funding periods as this would prove impractical to administer. Additionally, some specialised therapy supports may be accessed intensively over a short period of time, rather than spread evenly across the life of a plan. Examples of this for people who are blind or have low vision include dog guide or orientation and mobility training. Participants must retain the flexibility to access these supports either episodically or on an ongoing basis as needed.

# Information Gathering Powers

Vision Australia does have concerns over the new powers provided in the Bill that enable the NDIA to monitor and modify plans and funding management types where overspending or underspending has occurred. These powers are much too broad and unbalanced in operation, particularly given that there is no legislated requirement in the Bill for the NDIA to build capacity or put supported decision-making measures in place where a misuse or misunderstanding of funds has been identified. There is also little if any structure to these legislated powers, with nearly all salient details being contingent on rules that are yet to be drafted. At a minimum, the Bill itself should clearly state the purpose of these powers and how and when they are to be used. It is our view that the scope of these powers should be narrowed, such that plans and management of funds can only be modified where inappropriate spending is material and deliberate, or where significant risks around noncompliance are present.

Section 36 of the Bill also enables the NDIA to request information that is “reasonably necessary” for the purposes of building a new plan within 28 days. If participants do not or cannot comply within this timeframe, indications are that current or future plans can be suspended. Given the supply and demand constraints on allied health and therapy providers within the disability sector, we submit that 28 days is not a reasonable timeframe for participants to acquire requested assessments or information. This may particularly disadvantage low incidence cohorts such as those with vision impairment, who rely on specialised therapies that are seldom well understood by the Agency, meaning that a readily available assessment from a generalised allied health provider may not be sufficient to demonstrate need or level of functioning.

# Needs Assessments

Vision Australia recognises that there is a growing need for more consistent planning and funding outcomes within the Scheme, and that a needs assessment in some form will likely be instrumental in achieving this. It is understood that much of the detail surrounding needs assessments is intended to be legislated in rules and not in the draft Bill that is currently under consultation. We acknowledge that the needs assessment process contemplated in the legislation could prove effective if it is well-informed and if the requisite commitments to genuine consultation and co-design are made. The Bill states that an assessment tool will be used to establish a participant’s need for supports, with a yet to be determined method then applied to quantify a reasonable and necessary budget. Pursuant to Sections 32L and 32K respectively, the assessment tool and subsequently applied method will be determined by the Minister. Vision Australia has some concern that the use of a Ministerial determination in this context may not provide adequate oversight by Parliament. While Section 19 of the Bill states that the Minister “should” consult where appropriate and practicable before making a legislative instrument, we do not feel that this is a sufficiently robust commitment. Given the significant impact that the assessment tool and quantification method will have on all NDIS participants, we feel there should be a legislated obligation to engage in co-design and consultation with the disability community included within this Bill.

The Bill does not indicate who will conduct a needs assessment, and while we recognise this is likely to be a matter dealt with in accompanying rules, it is nonetheless important to note that such assessments must be undertaken by practitioners who understand the participant’s history and circumstances. If needs assessors are to have generalist knowledge only, participants must also be able to include evidence from assessment reports by therapists that specialise in the person’s disability. This will be particularly relevant for low incidence cohorts such as blindness and low vision, or where participants have multiple impairments with compounding effects on their level of functioning. Specialist therapists not only have high levels of expertise, but commonly have in-depth knowledge about a participant’s functional capacity formed over multiple years.

It is also crucial that all aspects of the needs assessment process are accessible. This includes access to information in the participant’s preferred format, accessibility of the environment and a clear understanding about the level of control the participant has over the process. We would like to see a stated commitment to accessibility included in this Bill.

# Reviewable Decisions

The Bill provides that the Statement of Participant Supports is reviewable. Assuming that the existing structure of plans is largely maintained, this would mean that decisions regarding funding periods, plan length, funding amount or plan management option could be reevaluated where needed. Concerningly, however, the Bill indicates that the whole Statement of Participant supports will be reviewable, with no indication that there will be mechanisms in place to consider its individual components. Due to the number of decisions that are incorporated into the Statement of Supports, it is our view that more targeted rights of appeal should be contemplated as part of this bill. Participants should, for example, be able to request a change to their plan management type, without triggering a review of their plan budget or quantum of funding. Care must also be taken to ensure that these provisions do not unreasonably prevent participants from accessing a light-touch review of their plan in instances where only minor changes are needed.

It is also concerning to see that the Bill does not include a right of review with regard to needs assessments. The consequences of this are significant. If participants do not have a clear pathway to challenge an inappropriate needs assessment, they will also have no way of preventing an inadequate budget from being set based on that information. The Bill also provides no assurance that participants will have an opportunity to see their own needs assessment report before it is provided to the CEO. Provisions to this effect must be included in the Bill, in line with the recommendations of the NDIS Review. Additionally, the Bill is unclear as to the circumstances when a replacement needs assessment can be requested. For example, it is not clear as to whether a participant could request a new assessment, or whether a refusal by the NDIA to grant such a request would be a reviewable decision. Without a clearly stated right to challenge the needs assessment process and its results, participants are subject to a significant risk that errors in judgment of their needs and circumstances will adversely impact their funding and planning outcomes, potentially for years to come. If the Government and the NDIA wish to build participant confidence and trust in these reforms, the Bill must commit to fair processes and clear rights of review.

# Conclusion

Vision Australia thanks the Community Legislation Affairs Committee for its consideration of this paper. We wish you well in your deliberations and would be happy to provide additional information about any of the matters discussed in this submission.

# About Vision Australia

Vision Australia is the largest national provider of services to people who are blind, deafblind, or have low vision. We are formed through the merger of several of Australia’s most respected and experienced blindness and low vision agencies, celebrating our 150th year of operation in 2017.

Our vision is that people who are blind, deafblind, or have low vision will increasingly be able to choose to participate fully in every facet of community life. To help realise this goal, we provide high-quality services to the community of people who are blind, have low vision, are deafblind or have a print disability, and their families.

Vision Australia service delivery areas include:

* Allied Health and Therapy services, and registered provider of specialist supports for the NDIS and My Aged Care
* Aids and Equipment, and Assistive/Adaptive Technology training and support
* Seeing Eye Dogs
* National Library Services
* Early childhood and education services, and Felix Library for 0-7 year olds
* Employment services, including National Disability Employment Services
* Accessible information, and Alternate Format Production
* Vision Australia Radio network, and national partnership with Radio for the Print Handicapped
* Spectacles Program for the NSW Government
* Advocacy and Engagement, working collaboratively with Government, business and the community to eliminate the barriers our clients face in making life choices and fully exercising rights as Australian citizens.

Vision Australia has gained unrivalled knowledge and experience through constant interaction with clients and their families. We provide services to more than 26,000 people each year, and also through the direct involvement of people who are blind or have low vision at all levels of the Organisation. Vision Australia is therefore well placed to provide advice to governments, business and the community on the challenges faced by people who are blind or have low vision fully participating in community life.

We have a vibrant Client Reference Group, with people who are blind or have low vision representing the voice and needs of clients of the Organisation to the Board and Management. Vision Australia is also a significant employer of people who are blind or have low vision, with 15% of total staff having vision impairment.

We also operate Memorandums of Understanding with Australian Hearing, and the Aboriginal & Torres Strait Islander Community Health Service.