Committee Secretary
Senate Standing Committees on Community Affairs

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

via email – community.affairs.sen@aph.gov.au

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

Thank you for the opportunity to make a submission to the Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions].

Advocacy for Inclusion (AFI) is an independent organisation delivering systemic advocacy informed by our experience in individual advocacy and community and government consultation. We provide dedicated individual and self-advocacy services, training, information and resources in the ACT.

As a Disabled People’s Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. AFI speaks with the authority of lived experience. We are strongly committed to advancing opportunities for the insights, experiences and opinions of people with disabilities to be heard and acknowledged.

AFI operates under a human rights framework. We uphold the principles of the United Nations Convention on the Rights of Persons with Disabilities and strive to promote and advance the human rights and inclusion of people with disabilities in the community. AFI is a declared public authority under the Human Rights Act 2004.

AFI believes that there are substantial issues with the NDIS Amendment Bill.

Our concerns centre around functional assessments to determine supports; exclusion of some support types; and five-year plans.

**Needs assessments to determine supports**

As we understand it, the changes outlined in the bill will move the NDIS towards a needs-based assessment. Under *Subdivision B – Content of new framework plans* and the corresponding *subsection 32*, there is a particular focus on the assessment of participant’s need for supports. See, for example Subsection 32 D, F and L which cover matters that must be included in a participant’s plan, reasonable and necessary budget, and the assessment of participant’s needs for supports, respectively.

AFI was opposed to the previous governments independent assessments proposal and remains opposed to this regime of needs assessments.

We are concerned that these effectively mirror the previous government’s regime of independent assessments but by another name and that functional point in time assessments pose risks especially to people with psychosocial and cognitive disabilities.

Supports should be framed by goals and aspirations not just people's impairments, as stated in Section 32L(3).

Depending on how they are arranged assessments done by NDIA staff may actually be worse than ‘independent’ assessments which at least had some distance from the funders.

We have not seen the proposed tool for assessments and we understand it is still being developed. We remain concerned that unproven and oversimplistic standardised assessment tools may not accurately and comprehensively capture the wide diversity of experiences of people with disability, particularly those with complex needs and multiple disabilities. The use of standardised assessment tools is also likely to be more inaccessible and disadvantageous to people with certain disabilities.

Requiring a person with disability to be ‘observed’ in the manner required by an assessment model - by an unknown person who is not of the individual’s choosing, in order to justify support needs - does not align with the principle of dignity of the individual. Further, to have their disability supports hanging in the balance dependent on the outcome of this limited interaction can be extremely stressful. An imbalance of power inherently occurs in such an interaction, which can leave a person with disability feeling depersonalised and disembodied. The potential for distress is likely to be heightened by the enforced nature of mandatory assessments, and the lack of choice and control an individual will have in choosing the assessor.

The intrusion of having an unknown assessor come to an individual’s home and observe them in their environment raises concerns regarding the privacy and security of home for people with disabilities, especially for those who may not have control over the decision of the assessor attending (such as those in group homes, or those whose carer will make this decision). Further concerns are held for individuals who have additional limitations in choice and control regarding who enters their residence and who is present for the assessment, including those in custody or mental health facilities.

Point in time assessments are particularly problematic for some people with disabilities and may lead to outcomes that reduce peoples supports lower than what they need to actually cope and thrive. For instance, people in some congregate settings can adopt learned behaviours which work against accurate assessments. For instance masking or minimising levels of impairment for an assessor because this is rewarded by greater freedom and autonomy in a congregate setting. Sadly there is a well-established phenomenon of people with some disabilities ‘performing’ for assessments because appearing compliant or more able bodied is rewarded.

**Exclusion of some support types**

The Bill incorporates a proposed new section 10 which provides a definition for NDIS support. The proposed paragraphs (b) and (c) facilitate NDIS rules to be made that narrow the scope of valid supports to those that are appropriately funded by the NDIS.

Proposed new paragraph 10(c) of the Bill seeks to exclude some specific items of support and we are concerned about unintended consequences.

While these seem defensible on first view, cracks emerge on deeper analysis and may lead to harm and unindented consequences.

For instance excluding household appliances, as discussed in the Explanatory Memorandum and conveyed in section 10(b) and (c), seems reasonable, yet becomes less clear cut when we consider than technological convergence means some mainstream ‘household equipment’ items have accessibility features that enable them to be converted into disability support items.

There is also a thin line between a non-fundable item like holidays and a fundable item like respite.

We think these need to be tested against real world scenarios.

**Five-year plans**

AFI is concerned about moves which would see many plans reviewed every five years, see Section 32C(c)(i).

While we agree that annual plan reviews are problematic, we hold concerns that 5 years is too long a period and could mean that plans fray and degrade while people undergo significant changes to their health and disability status and other circumstances.

We also hold concerns about other flagged NDIS reforms outside of the BIll including changed accommodation ratios and requirements to register all providers.

Please feel free to contact Craig Wallace, Head of Policy at Craig@advocacyforinclusion.org to discuss this submission further.

Regards



Craig Wallace

Head of Policy

Advocacy for Inclusion

17 May 2024