

**SUPPORT
DISABILITY** 

SUPPORT

WORKERS

Health Services Union

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

May 2024

About the HSU

The Health Services Union (HSU) is one of Australia's fastest growing unions with over 95,000 members working in the health and community services sectors across the country.

Our members work in aged care, disability services, community health, mental health, alcohol and other drugs services, private practices and hospitals. Members are health professionals, paramedics, scientists, disability support workers, aged care workers, nurses, technicians, doctors, medical librarians, clerical and administrative staff, managers and other support staff.

HSU Disability Coverage

The HSU is the primary disability services union in Victoria and Tasmania, representing support workers at the front-line of service delivery. Furthermore, the HSU represents allied health professionals in every jurisdiction, including those engaged in providing services to National Disability Insurance Scheme (NDIS) participants.

Additionally, we represent a number of disability support workers in New South Wales (NSW), Western Australia, South Australia, Queensland and the Australian Capital Territory (ACT); however, the HSU is not the primary union for direct disability support workers in those jurisdictions.

Our broad disability membership across a range of professions gives us a unique insight into the rollout of the NDIS, how the Scheme is interfacing with other mainstream services and the market and workforce issues critical to the Scheme's success.

This submission has been authorised by:

Lloyd Williams, National Secretary, Health Services Union

For questions regarding this submission, please contact:

Andie Moore, National Policy and Projects Officer, Health Services Union
m. 0488 576 342; e. andiem@hsu.net.au

Overview

The Health Services Union (HSU) welcomes the opportunity to respond to the National Disability Insurance Scheme Amendment (*Getting the NDIS Back on Track No. 1*) Bill 2024 (hereafter referred to as “the bill”). Over the last decade, the HSU has vocally advocated for a full, independent review of the NDIS to ensure it is sustainable and delivers on its promises to participants by funding, attracting and retaining a well-skilled support workforce. Years of pressure led to the announcement of the NDIS Review, which heard over 10,000 people and through just under 4,000 submissions across 2023.¹

This Bill is the first step in implementing NDIS review’s Vision: a unified ecosystem of supports, a fairer planning process, quality and safety, and sustainability of the scheme and its workforce. Workers want to see supports also resourced outside the scheme, a planning system that is less disruptive to rosters and continuity of supports, an end to unfair “planning lotteries”, and better safeguarding.

Scheme longevity requires scheme sustainability

Unless spending growth in the NDIS is moderated, the NDIS will not be able to continue delivering for thousands of participants across the country. The Review and Bill both seek to stamp out unfair conduct and pricing, remove unnecessary spending and overcharging, and stop the treatment of the scheme as a “magic pudding” by states and territories. Participants would continue to receive reasonable and genuinely necessary supports at fairer prices.

As a union, we are inherently opposed to limiting spending growth through austerity measures. NDIS expenditure will continue to grow into the near future for good reason: more Australians with disabilities are accessing supports to participate fully in the community on their own terms. Beyond forming a part of the social contract, investment in disability supports pays a social and economic dividend.²

The 2024-25 Budget papers showed that \$14.4 billion will be saved over four years through the bill’s measures. Two measures alone will account for 95% of the savings—roughly two-thirds of that 95% will be saved by limiting intra-plan inflation, the other third saved by changing the way budgets are set.³

We support this Bill because it seeks to ensure the scheme’s longevity without making trade-offs. It simply reduces unnecessary bureaucracy, ensures that supports add value to participants’ lives, are evidence-based and are funded with a whole-of-person perspective. It unifies, rather than reducing, the ecosystem of supports, and seeks to return the scheme to its original intent: supporting people with permanent and significant disabilities

With any change comes uncertainty. Many HSU members have lived through major sector transformations multiple times over, from deinstitutionalisation to the NDIS roll-out to the privatisation and transfer of public sector disability services and COVID-19.

When change is coordinated without genuine co-design, it leaves people behind. We urge the government to listen closely to people with disability and advocates as it sculpts these changes to ensure it gets the details right, as it has done in moving quickly on the NDIS Review’s recommendations.

But no change is not an option. We cannot afford to subsidise models of service delivery that do not have participants’ or workers’ best interests at heart, particularly when they come at the expense of helping others. This bill is a welcome start in ensuring the scheme’s sustainability and longevity.

¹ NDIS Review, *Working Together to Deliver the NDIS - Final Report* (Department of the Prime Minister and Cabinet, 2023), p. 5.

² Per Capita, *False Economy: The Economic Benefits of the National Disability Insurance Scheme and the Consequences of Government Cost-Cutting* (2021).

³ Hon. Bill Shorten, Afternoon Briefing, Wednesday 15 May, 2024.

Foundational and evidence-based supports

The bill provides the scaffolding for a new network of foundational supports by allowing NDIS supports to be defined. The definition proposed after Section 9A lists conditions (in paragraph 10(a)) that a support must meet to be funded in line with the Constitution's social welfare power. In addition to fulfilling one of those conditions, NDIS rules may be made around what is and is not delivered under the NDIS. Changes to Section 209 would deem them "Category A" rules that require "the Commonwealth and each host jurisdiction" to agree "to the making of the rules".⁴

Until new rules are made, an NDIS support will need to satisfy the new paragraph 10(a) conditions, and meet the criteria of "reasonable and necessary NDIS supports for eligible people" in APTOS (proposed through the new Part 3, "Application and transitional provisions"). We believe that these requirements, along with the new early intervention pathway, will ensure that NDIS expenditure is put to best use.

We need to take a good, hard look at what the NDIS is funding. \$50/hr support workers taking 18 yr olds with social anxiety out for milkshakes, we have 40 yr old women who live in their cars, and profoundly disabled young SIL residents who have to wait a half hour for a second staff member to come on shift so they can be moved in bed when they're very uncomfortable. We can do better than what we're doing right now. – SIL worker, TAS

Although we broadly agree with the conditions listed in paragraph 10(a), we are concerned that the explanatory memorandum suggests whitegoods and appliances would not qualify as NDIS supports. It does not follow that a participant can engage a worker every week to clean their house, but cannot buy an affordable dishwasher, robot vacuum or washing machine on a one-off basis to do the same job. While we appreciate that guardrails must be put around funding these supports, ruling them out entirely may exacerbate workforce shortages and inadvertently increase NDIS spending.

New rules will enable the Federal Government to create a new agreement that ensures state governments assume some responsibility over disability services. HSU members have been calling for this for years, having seen state governments transfer services to the NGO sector or drop workforce development measures on the basis that the NDIS is a federal scheme.

As Governments work to better share responsibilities for the sector, continuity of support for clients and workforce is critical. By making the new definition of NDIS supports subject to Category A rules, we are confident that the Federal Government is taking a collaborative approach that avoids the risks of state governments leaving gaps in support. Utilising APTOS in the interim will ensure a smooth transition from the passing of legislation to the effectuation of a new intergovernmental agreement.

Early intervention pathway

Changes to Section 21 which allow the NDIA to identify which participants qualify for the NDIS through the disability or early intervention pathway will provide the basis for the future early intervention pathway and more tailored support for participants. This will help the NDIA identify developmental delays earlier in a participant's life and reduce the intensity of longer-term support.

The proposed, inserted paragraph in subsection 25(1), and the substituted paragraph 27 would ensure that when participants are eligible for early intervention supports but those supports are delivered outside the NDIS, they are directed towards those systems instead.

⁴ National Disability Insurance Scheme Act 2013, (s) 209 (4).

The HSU supports these provisions which prevent states and territories from pushing mainstreamed allied and mental health services under the NDIS, under which services cost more for participants and administrative workloads are much higher for workers.

The HSU covers allied health professionals in every state and territory. We routinely hear from allied health members that while they appreciate that the NDIS has granted funding for their service, they would prefer to deliver them under social services systems with more reliable funding and less red tape attached. Better utilisation of the early intervention pathway will begin to address this.

NDIS packages are more often than not spent on extensive administration and reporting requirements. Allied health professionals are spending more time writing reports, justifying their therapy approaches and requesting more funding to complete these approaches than they do actually completing the approaches. I am burnt out, broken and no longer enjoying my career because I spend more time writing reports and arguing with the NDIS about my knowledge and expertise than helping the clients. – Allied Health Professional, NSW

As a therapist I spend excessive amounts of time completing reports and supporting families through the process. Planners rarely read reports or show an understanding of the complex clients' needs. I have attended meetings where the planner has stated the client won't get what is required and they will need to appeal and go to the Tribunal. They have also told clients the therapist is "charging too much and ripping you off, just get a Uni student who can do it cheaper". The families I work with now all end up at Tribunal which increases the hours spent on justifying every hour recommended. – Allied health professional, NSW

Changes proposed around section 30 requires the CEO to check if supports under the early intervention pathway are working and seek information to revoke a participant's status. We agree with these changes to the extent that they will ensure that expensive NDIS supports add value to a participant's development instead of being encouraged to spend plan funding purely because it is there.

We would want to ensure, however, that as "NDIS support" is redefined through new rules (subsection 24(1)(e)), participants with an ongoing disability who are removed from either the early intervention pathway or disability pathway, because they no longer require supports under the NDIS, are guaranteed continuity onto foundational supports and do not fall through the gaps.

Whole of person budgets and flexible funding

The bill's introduction of "new framework plans" is a welcome development and gives effect to the whole-of-person budgets in line with Action 3.4 of the NDIS Review. Under the "new framework plans", participants will be funded for stated supports (similar to the current regime of funding by line items) for high-cost items, but most participants will have access to flexible funding budgets.

The lack of flexibility attached to participants' funding has been a significant concern for union members across the country. Disaggregating funding into individual line items has had destabilised providers across the country, causing funding for rosters, supervision, and activities to constantly fluctuate in line with plan reviews and imposing artificial constraints on how a provider pools funds to fund a service.

Individualised funding has created a fragmented system where established and respected institutions struggle to support clients. – NDIS sole trader, VIC

Rosters change regularly depending on funding and staff basically have to take whatever hours they can get. We are a strong team in my workplace (I have been with same clients for 13 years) but are often reminded that we are "only a number" and could be moved to another group home if it suited management's roster requirements... Plan reviews usually seem to

result in hours lost/cut, and we seem to always be in the process of a “review of a reviewable decision “ to restore hours. – Residential worker, NSW

As the Review highlighted, “reasonable and necessary” supports refer to what a participant requires to live a full and meaningful life with their disability in a much broader sense than individual line items funded from the NDIA supports catalogue.

These changes are critical and will lead to more certainty and continuity of supports in providers across the country. They will increase choice and control, and we hope, will start to lay the foundations for reducing the casualisation and precariousness that result from the NDIS pricing model. We believe that defining “reasonable and necessary” at the budget, not the plan level, will also reduce the frequency of plan reviews, which often result in support workers taking on additional unpaid work:

My main problem here is there is no time to spend on Plan Reviews. I am pushed to the limit to ensure our clients daily needs are met. – Group home worker, NSW

A 5-year transition, as provided in the bill, will allow for the intensive co-design to get the details right and adjust for different groups of participants. A flexible approach with guardrails - such as a total funding amount and provisions to transfer at-risk participants towards stated supports, and limits around topping up plans – are a much better approach than the status quo.

The explanatory memorandum suggests that under new rules, SIL is likely to be a “stated support” as a high-cost item. While it is reasonable for a participant to have an allocation for housing and living, currently, there are 13 line items for SIL supports differentiated by intensity, time and day of services delivered. It is unclear whether SIL, as a stated support, would allow flexibility for changes in routine and rosters of care. In cases of sleepover shifts, union members want the new flexible funding model to enable providers to resource active supports when a participant experiences repeated disturbances without having to endure a full plan review process.

We are also pleased to see changes in subsection 32F that allow for excess flexible funds to be rolled over between plans. Members are incredibly concerned about the pressure they see from plan managers to “spend down” funding left over in plans on items participants do not want on the basis that the funding would cease at the end of the plan, particularly when other participants they work with struggle to obtain increased funding through plan reviews. Allowing for funding to be carried over will decrease anxiety for participants and workers and cut down on waste.

I see clients use all their funds even if not needed so they don't lose the funds, rather than just using what is needed. This means unnecessary amounts are spent on supports. Why catch a train when you can book a support worker to drive you? It also means people miss out on building skills and independence. – Disability support worker, NSW

Fairer needs assessments

We welcome the bill’s introduction of new needs assessment processes that address unfair inconsistencies in assessments by different planners. This has been major a concern of members for years:

The plan review process is inconsistent. Some review meetings the NDIS planners don't even attend, other participants have plan review meetings, but they don't get new plans. Some planners will give information that is in direct contrast to information given by other planners. E.g., some planners agree dietetics and podiatry can be paid for by the NDIS, while others are adamant that dietetics and podiatry should be accessed through a GP. Some planners listen,

and some planners do not. People never know what to expect when their plans are due for review. – Disability support worker, NSW

Plan reviews are arbitrary and shift the goalposts for participants and services; it depends on the planner as to the outcomes often participants wait for reviews for too long, are told different things by different members of NDIA, and can be “potluck” changes to policy can affect current plans, and then reviews are not timely. Goals are hard to achieve due to roller coaster review process. Always very stressful and intimidating for participants who feel quite powerless in the process. – Operations manager, VIC

I don't understand how you can have two people with the same disability, and one will get so much funding and the other next to nothing. Participants are missing out on high-quality support, and their families are left out to dry. – Disability support worker, NSW

The changes proposed provide a clear framework for what is reasonable and necessary, support a more consistent approach by planners, and go some way to eliminating the “plan lottery” we often hear about.

Self-management

Changes in the bill that allow a participant to be transferred from self-management to agency management after repeated breaches of NDIA directions are welcome. We hear anecdotally about instances where funds are misused, but the NDIA has limited ability to prevent funds from being misused again because a participant is self-managed. These changes will have a significant impact on controlling spending growth and ensure fairness for all NDIS participants.

We would also encourage a positive approach to addressing these issues. The Disability Royal Commission stressed the need for supported decision-making, which we welcome. We encourage the Government to consider access to advocacy when assessing issues related to the misuse of funds.

Other changes to sections 43 and 44 ensure the safety of those requesting the ability to self-manage and ensure appropriate safeguarding oversight where possible.

Quality and Safeguards

The HSU supports Schedule 2's Quality and safeguards amendments. HSU members have been calling for a responsive regulator, empowered to take decisive action on safeguarding issues. These changes strengthen the Minister and NDIS Quality and Safeguards Commission's ability to address and resolve safeguarding in line with action 17.6 of the NDIS Review. Other provisions around banning orders and who can be “approved” to audit providers ensure the Commission has appropriate oversight and enforcement of standards across the entire scheme.

Conclusion

The changes proposed in the bill are sensible changes that give effect to the NDIS Review's recommendations, which came from years of broad consultation. We believe these changes avoid trade-offs between access to disability supports and limiting spending growth, ensure states and territories get back into the business of service provision, and ensure appropriate regulatory powers.

However, these changes are just the scaffolding for future NDIS changes. We call on the government to work closely with participants and unions to ensure that ensure people with disability are front and centre of the scheme, and workers have adequate resources and conditions to support them.