



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

Here to Stay

Working to future proof the NDIS

**Submission to the Senate Community Affairs Legislation
Committee's Second Inquiry into the *NDIS Amendment
(Getting the NDIS Back on Track No. 1) Bill 2024***

**JULY
2024**

Copyright information

Here to Stay – Working to future proof the NDIS

First published in 2024 by People with Disability Australia
Suite 10.01, Level 10, Centennial Plaza, 300 Elizabeth St, Surry Hills, NSW 2010
Head office also in Sydney
Email: pwd@pwd.org.au
Phone: +61 2 9370 3100 Fax: +61 2 9318 1372
URL: www.pwd.org.au

Typeset in Arial 12 and 14 pt and VAG Rounded 16, 22 and 26 pt

© People with Disability Australia 2024

The moral rights of the authors have been asserted

National Library of Australia Cataloguing-in-Publication data:

Creator(s): People with Disability Australia

Title: Here to Stay – Working to future proof the NDIS

All rights reserved. Except as permitted with the *Australian Copyright Act 1968* (for example, a fair dealing for the purposes of study, research, criticism or review), no part of this book may be reproduced, stored in a retrieval system, communication or transmitted in any form or by any means without prior written permission. All inquiries should be made to the publisher at the address above.

People with Disability Australia, *Here to Stay – Working to future proof the NDIS*, 19 July 2024, People with Disability Australia, Sydney

ISBN: 978-1-7635915-0-9



About PWDA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability are not only recognised and respected but also celebrated.

PWDA was established in 1981, during the International Year of Disabled Persons.

We are a peak, non-profit, non-government organisation that represents the interests of people with all kinds of disability.

We also represent people with disability at the United Nations, particularly in relation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Our work is grounded in a human rights framework that recognises the CRPD and related mechanisms as fundamental tools for advancing the rights of people with disability.

PWDA is a member of Disabled People's Organisations Australia (DPO Australia), along with the First People's Disability Network, National Ethnic Disability Alliance and Women with Disabilities Australia.

DPOs collectively form a disability rights movement that places people with disability at the centre of decision-making in all aspects of our lives.

'Nothing About Us, Without Us' is the motto of Disabled Peoples' International.



Contents

Introduction	5
Areas of Concern	7
1. Co-design must be a requirement	7
2. The core 'choice and control' principle must be upheld	9
3. Access and assessment processes must consider 'whole of person'	12
4. Changes must coincide with accessible mainstream services	15
5. Retain and strengthen the right to appeal	18
6. Proposed timeframes must be flexible	21
7. Protection from misuse of CEO and NDIA powers	23

Introduction

PWDA welcomes the opportunity to make this submission to the second inquiry of the Senate Community Affairs Legislation Committee Inquiry into the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024* (referred to herein as the NDIS Amendment Bill).

This submission is intended to be read alongside our submission([submission 63](#)) to the Committee's first inquiry into the NDIS Amendment Bill and our supplementary submission ([submission 63.1](#)). Both submissions contain direct feedback and recommendations from our national membership of people with disability, that remain directly relevant to the Committee's consideration of recently proposed amendments made by Government to the NDIS Amendment Bill (refer to Amendment Sheet PA110).

This submission does not aim to directly comment on the proposed Government amendments. PWDA remain steadfast in its resolve to represent the views of our diverse national membership. Instead, this submission aims to highlight the most pressing areas of concern that our members still hold, based on our ongoing consultation with our national membership since the first inquiry into the NDIS Amendment Bill.

PWDA members believe the proposed NDIS Amendment Bill still confers too much power in the National Disability Insurance Agency (NDIA) Chief Executive Officer (CEO) and NDIS Minister to determine supports that can be accessed by individuals and are concerned about the Government making decisions without the adequate involvement of people with disability.

Since the Committee's first inquiry into this Bill, there has been much promise of co-design. To date, we have yet to see a clear plan for how people with disability and their representative organisations will co-design changes to the NDIS. Thus, we reiterate our call for co-design to be a requirement, in line with Recommendations 2 and 3 of our previous submission 63.

As this submission highlights, PWDA members still hold significant areas of concerns about the NDIS Amendment Bill and its ability to effectively advance the rights of people with disability in seven (7) key areas.

PWDA members need these areas of concern addressed before PWDA can support the NDIS Amendment Bill. We trust highlighting these areas of concern will support the amendment process, as well as the deliberations of the Committee.

Areas of Concern

The below seven (7) number of areas of concern must be addressed before PWDA's member can support the NDIS Amendment Bill.

All reference to quantitative and qualitative data referred to below comes from survey of our national membership. This survey was released on 11 July 2024 and remains live at the time of submission.

As of 19 July 2024, when this submission was made, the survey received 639 responses.

1. Co-design must be a requirement

Key Insight – Members expressed a strong sentiment that people with disability should be heavily involved in shaping NDIS rules and processes.

- 92% said that it was extremely important for people with disability to be involved in shaping the new NDIS rules and processes.
- Only two respondents said that they would trust Government to design the NDIS without input from people with disability.

In prior submissions and broader sector statements, PWDA and other DPOs and DROs have consistently called on the Australian Government to work in partnership with people with disability and representative organisations in designing and implementing any NDIS changes.

In line with these calls, many respondents to PWDA's recent survey when asked about how the NDIS changes could be 'improved to better respect the rights of people with disability' said:

*“Co-development, the NDIS must be co-designed by the people who use it.
Taking away our autonomy is destabilising and dehumanising.*

“Make it clear what the changes are Make co-design mandatory.”

“Actively listen to disabled people we have such knowledge and wisdom. If you need to find ways to curb expenditure we can help, we can see the wastage and know where it primarily lies.”

“True co-design working groups not just consultation at the end of the process. Not targeting individual participants in fraud measures, no debt claw back.”

While we acknowledge that recent Government amendments propose a requirement on the Minister to outline how they undertook consultation when lodging NDIS legislative instruments,¹ PWDA believes the way people with disability are engaged must be made more explicit in the legislation. Additionally, this involvement must include genuine co-design of NDIS rules and processes, not just tokenistic consultation.

Member also raised concerns regarding the current lack of transparency linked with the proposed assessment tools, with a high level of concern regarding the potential impacts on participants access to needed supports, when it is unclear how the legislation will be implemented through assessment processes.

The current lack of clarity and understanding around accountability linked with the NDIA's proposed assessment tools and processes, is creating misunderstanding as to how these will be developed, reviewed and implemented.

Assessment tools and processes need to be co-produced with people with disability.

"The NDIA wants to use an assessment to work out your funding. They have refused to say what it is but want the law to let them do it. They say they will work it out later and listen to disabled people then. But they want the law now, and it doesn't force them to listen to disabled people later."

Recommendation 1 – Amend the Bill to ensure that the Minister is required to co-design NDIS rules and processes with people with disability and representative organisations.

Recommendation 2 – Amend the Bill to clearly ensure that all assessment tools are co-designed with people with disability and subject to transparent and independent evaluation that ensures participants rights are upheld in line with the UNCRPD. This will require

¹ Government, Amendment Sheet PA110 in House to *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*, cl 1.

comprehensive consultation and ongoing transparency on the development and implementation of assessment processes.

2. The core ‘choice and control’ principle must be upheld

Key Insight – The majority (82%) of respondents believed the proposed changes will reduce their choice and control over supports.

- 88% expressed concern about the proposed rules for the usage of flexible supports
- 79% said that the inclusion of ‘stated supports’ was unnecessary.

In line with the original intent and with core principles of the NDIS, PWDA members believe that it is essential that the NDIS Amendment Bill does not, intentionally or invertedly, undermine or decrease participants’ choice and control over supports they use.

The proposed ability for the NDIA to determine supported impairments or “primary disability” without transparency, oversight or a clear appeal process will directly impact a participant’s choice, control, and self-determination.

As indicated in the survey insights above, many people with disability are concerned that the proposed restrictions on the use of funds will decrease choice and control for individuals.

In particular, people with disability are concerned about being restricted to accessing supports that are disability specific and provided by a NDIS registered service

“If registration is restricted, I would lose funding for half of my team. Many of whom have supported me for over 10 years.”

“Compulsory registration for all providers will severely limit our ability to purchase from our local community. It will increase costs because of travel time and mileage. It will eat into budgets unnecessarily. E.g. I won’t be able to buy food for my Seeing Eye Dog from the local pet shop. Or use the local Vet.”

While limiting supports to those that are disability specific may appear logical, disability-related supports will vary greatly between individuals and often are interdependent on other factors such as cultural background, sexuality and gender.

Referencing the need to access culturally appropriate and trauma-informed services, PWDA members raised concern that restrictions will further entrench disadvantage faced by multiply marginalised individual and have the potential to create breaches of anti-discrimination laws.

Additionally, this approach does not recognise the interactions and environmental impacts for participants with complex, less 'visible' or poorly understood conditions and their individual interlinked support requirements.

“Reducing flexibility (e.g. enforcing provider registration) and increasing documentation requirements would both potentially have greater impact on some from marginalised groups”

“Choice and control are the two keywords that are what the NDIS is based around. These changes and the tactics used to gain support for implementing them, are paternalistic, and restrict the places where people with disability can go to receive their services. The cost of registration particularly, means that a lot of businesses won't have the financial means to pay for the registration fee, which means that participants then will miss out on continuity of care and managing their health and or disability, because they are then not able to access that particular service any longer due to mandatory registration. This is particularly concerning for a number of reasons but also as someone who is a person of colour and from a multicultural background, it is difficult to find culturally appropriate and culturally sensitive care. And this will further restrict the ability to find Care that meets these criteria. So in short when answering this question and getting the NDIS right.”

"The NDIA can decide what your 'primary disability' is. They won't have to tell you what they decided, and you can't challenge that decision... You might disagree with it, but you can't challenge it."

Further, the proposed power to ensure that participants are only able to access approved providers, not only limits choice and control, but also will directly impact on social inclusion and participant safety. There is deep concern among people with disability that the power to mandate specific providers, without consideration or integration of individual needs, preferences and context will have the potential for participants to have to rely on unsafe, inappropriate, isolated and inaccessible supports.

"The NDIA can decide what provider you have to use. Your experience with that provider has been terrible, you have made complaints against them, and their CEO shouted at you in the supermarket about those complaints. Thinking about having to speak to them again makes you feel sick and afraid."

"I have disabilities that don't present in the way most expect (hence invisible disabilities) and so things that are often suggested to be "everyday" items are actually disability items for me (and people like me) and with the changes I feel like I will not be able to get what I need/deserve I also have c-PTSD from a history of trauma and I struggle to have strangers in my home because I feel unsafe and the changes will give me less control about who supports me"

Recognition that access to support through mainstream systems strengthens social inclusion and reduces segregation of people with disability, as recommended through the Disability Royal Commission. This will ensure a participant's right to dignity of risk and freedom of choice in their support arrangements. By limiting the capacity of the NDIA to restrict access to only NDIS registered providers, it will limit the potential for unsafe or inappropriate supports, that are not culturally safe, identity-affirming services.

Recommendation 3 – Ensure that NDIS participants are not restricted to using funding on disability specific supports or NDIS registered providers, by removal of this requirement.

Recommendation 4 – Amend the Bill to include a mandatory requirement to co-design NDIS support rules with people with disability and representative organisations, with a strong focus on ensuring full representation of multiply marginalised people with disability.

Recommendation 5 – Any determination regarding supported impairments or "primary disability" made by the NDIA should be provided transparently, in close consultation with participants and their treating health professionals, and subject to independent review to ensure that the underpinning principles of choice, control and self-determination are upheld.

3. Access and assessment processes must consider ‘whole of person’

Key Insight – Many respondents raised concern about the proposed needs assessments process.

- There was a strong sentiment that assessments should take a whole of person approach.
- Respondents expressed reservations about the ability of assessors to understand complex, invisible and overlapping disabilities.

In the PWDA survey, respondents expressed strong concerns about the ability of the proposed needs assessments to address the needs of people with complex, invisible overlapping disabilities.

While PWDA acknowledges that one of the recent amendments to the Bill included adding a requirement for the CEO to consider ‘environmental factors’ and additional disabilities,² it is still of concern that assessment processes and participant plans focus on a primary disability or medical ‘impairment.’

“The overall impact of multiple conditions occurring together needs consideration (all aspects need addressing in supports).”

“There would be 4 conditions and multiple impairments linked to my primary disability which would lose support.” “One disability affects others, so with multiple disabilities in one person, even in one family, the needs can be very different.”

² Government, Amendment Sheet PA112 (Revised) to National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, cl 6-11.

“Entire areas of significant support need are ignored and that the multiplying effect of multiple disabilities stacking together is ignored. And obviously if goals and life circumstances are ignored it would quickly become literally impossible for them to properly assess my needs.”

“The impact of multiple disabilities is often more than $1+1+1+1=4$. It can be more like $1+1+1+1=8$ or 9 .”

“I have multiple disabilities and impairments and they don't just add up, they interact to make everything more complex for me. Trying to chop them up is ridiculous and anyone who tries to do that will only be guessing and it makes no sense at all.”

“If government insist on doing needs assessments, they need to be done by the professionals in the right area of the participants disability and MUST take into account the whole of the person and multiple disabilities.”

“Those with multiple impairments should be funded across all domains of their impairment not just primary disability or an allocated "category".”

The proposed amendments do not ensure a “whole of person”, contextual and environmentally focused approach to disability. This will create disadvantage for those with multiple, complex or less common/widely understood disabilities. Respondents with less “visible” disabilities like psychosocial or cognitive disability have demonstrated a high level of concern regarding losing access to vital supports through a “one-size-fits-all” model based on impairment categories.

The implementation of a generalised approach to disability/impairments risks participant access to essential supports, compromising one’s of quality of life. For any proposed rules, assessment criteria and methodology co-design will provide assurance that the nuances of complex disability and environmental impacts are supported.

“I am very concerned that the proposed changes in this Bill are extremely detrimental to participants. I worry as a result of this Bill people with disability will lose NDIS access, available supports, and participant rights.”

Additionally, PWDA is not convinced that concerns we have raised in previous submissions about the efficacy of one-off standardised assessment has been addressed. As many respondents indicated in PWDA’s survey, the proposed assessment process still seemingly resembles that of the formerly scrapped ‘independent assessments.’

“The independent assessment is a return of the liberals independent assessments in new, and potentially more harmful clothing.”

“Bill Shorten fought against independent assessments three short years ago, and yet he is now proposing to introduce them (while simultaneously saying that he isn’t?!)”

“This is the same as the previously proposed independent assessments that myself and many others fought very hard to stop being implemented.”

“Individual Assessments are a new term for Independent Assessments, the disability community already won this fight and the government is sneaking it back in, not explaining the details transparently and destroying confidence in the Agency, the co-design process and faith in the scheme.”

Recommendation 6 – Ensure that NDIS access and assessment processes embed a “whole of person” approach that *considers* all relevant aspects of an individual, their contextual interdependencies and environment. In doing so, PWDA strongly recommends using the lens of Social and Human Rights Models of Disability which acknowledge that disability emerges not just from impairment, but from the environment, context and culture in which a person lives

Recommendation 7 – Allow participants the option of listing more than one disability or impairment on their NDIS plan.

Recommendation 8 – Allow individuals to use their own therapist or known treating professional/s to undertake NDIA required ‘assessments.’

Recommendation 9 – NDIS processes and recommended supports must include flexibility to allow for the “whole of person” approach, allowing for the interdependent combination of impairments and circumstances to be integrated into the funding process.

4. Changes must coincide with accessible mainstream services

Key Insight – A significant number of respondents raised concern about the ability of mainstream services, via foundational supports to meet the needs of people with disability.

- Many respondents said that mainstream services had failed to support them or their children in the past.
- A number of respondents indicated that states and territories are not ready or equipped to roll out foundational supports.
- 55% of regional, rural and remote participants expressed strong fears that already limited support options will not be able to continue/be sustained as a result of the changes.

In the PWDA survey, respondents expressed concern that the proposed changes to the NDIS would be implemented prematurely, removing access to NDIS supports before states and territories are able to roll out foundational supports through mainstream services.

“Given that the states have all said that it will take them 5 - 10 years to establish functional "foundational supports" I can see a lot of areas of support being dropped from NDIS and allowed to free fall with no "foundational support" safety net below to catch them on the way down.”

“Wait until states/territories have programs running especially in regional rural areas before cutting NDIS funding to participants.”

Reflecting on past experiences with mainstream services, respondents indicated that mainstream services need additional resourcing and upskilling to meet the needs of people with disability.

“I am extremely concerned for my son as one of his disabilities is psychosocial. HE has been through mainstream services and they actually made him worse.”

“I work in the human services area so am 100% certain that these services do not exist and what does exist, is at capacity and not able to take on new people.”

“To defer supports away from NDIS to these support at this time displays either an absolute ignorance of their inefficiencies which anyone would find very difficult to believe, or deliberately dismissing the needs of PWD as they know these needs will not be met outside of the NDIS.”

“This is to big and painful for me to even thin about. I require intense ongoing and specialty support. This is not something mainstream can help with. It would be anti helpful. I’m better off living in a cave then being handed to the public system, they are not equip to deal with my complex psychosocial disability.”

“Mainstream services have never been able to adequately support people with a disability. We will see long wait times and people being excluded.”

“With my supports being reduced the NDIA keep stating I should be accessing mainstream services to get them. However they don't exist currently and the waiting lists to see health services in the state public system are 6-12 months long.”

“Mainstream supports are already struggling to provide supports. Just look at hospitals that are always over budget. Schools can't cope with kids with autism and hidden disabilities. They don't have the knowledge to manage it. My child would basically never attend school again without the NDIS supports that she receives now. Her future would be forever impacted. Don't take away what is working for her.”

“The other mainstream support systems are already overstretched and annoy cope with the increased burden that would be placed on them. This is just shifting the problem, not fixing anything.”

“Mainstream support on not set up to treat neurodiversity and we all know they are over run. This is equal to no support”

“I do agree that there needs to be more mainstream supports, but I think they need to be disabled lead, and need to be what the community wants. I also think that these mainstream supports need to include making more things accessible.”

Current availability and sustainability of support services, particularly in thin markets, may be impacted, without flexibility of mainstream and non-registered accessible supports. There is a risk of reducing available and qualified people in communities that are already struggling to provide support services.

The potential consequences for both access to and the quality of supports require close consideration. Particularly, there is a need to ensure the supply and growth of a disability focused workforce with access to development to support the consistently evolving needs and preferences of participants.

This must be informed by a regional and remote as well as Aboriginal and Torres Strait Islander lens, that interacts directly with the UNCRPD. There must be flexibility, choice and control in managing funding as well as choosing services.

"Listen, understand and be respectful. Please get country people into the country design process too. All these bill changes are gov to disproportionately affect those in country areas where there is already less choice. By increasing competition against registered providers the costs to the NDIS could be substantially reduced."

This has a high potential to impact Aboriginal and Torres Strait Islanders with disability and their communities. Recognising that imposing additional regulatory burdens on local community-controlled organisations will have the potential undermine access to culturally safe services.

Recommendation 10 – Ensure that any changes which decrease access to the NDIS are delayed until Foundational Supports are securely in place and able to meet the needs of people with disability.

Recommendation 11 – Ensure that mechanisms are put in place, through the roll out of foundational supports, which upskill mainstream services to meet the needs of people with disability.

Recommendation 12 – Implementation and development of a strong market stewardship strategy linked with this legislative reform.

5. Retain and strengthen the right to appeal

Key Insight – Most (93%) respondents believe individuals must retain clear rights to challenge NDIA decisions.

- A majority (83%) of respondents were concerned that the proposed changes would make it much harder for people with disability to access justice and defend their rights.
- Many were also very worried that the proposed changes will make it harder to get independent reviews of decisions and access justice.

Given the significant concerns held about the efficacy of the proposed needs assessments, it is essential that individuals retain the right to review assessments and appeal NDIA decisions around participant status and plan funding.

In recent amendments to the NDIS Amendment Bill, it has been indicated that additional needs assessments can be accessed through review processes.³ However, a lack of clarity around this has left significant concern within the community about the ability to individuals to access additional assessments, with many asserting discontent with there being no clear ability in the legislation to appeal NDIA decisions.

“We need to know what the report says and have a right of appeal.”

“There needs to be an appeal mechanism where the assessment tool used is not suitable for your disability type and a mechanism to have a whole of person non tool assessment where the use of the tool doesn't provide adequate support for the person's needs.”

“It's not fair if I can't appeal the assessment if they get it wrong for my very complex needs and multiple disabilities.”

³ Government, Amendment Sheet PA110 in House to *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*, cl 1.

“There needs to be an appeal process and if the assessor does not understand the disability a new assessor should be appointed on request. The assessment should be a reviewable decision.”

“Legislate the right of appeal of all decisions made by the NDIA.”

“The lack of transparency and appeals in this bill for the most vulnerable in our community is shameful.”

“Review and appeal rights for people with disability should remain how they currently are under the NDIS rules.”

“Make it possible for people to be able to appeal every stage of decision-making including access decisions and initial funding allocation.”

“Allowing appeals for ALL decisions by the agency including payment Integrity decisions which are currently not reviewable.”

Additionally, people with disability believe that they should have the ability to review assessment reports before they are finalised and sent to the NDIA CEO.

“We need to know what the report says and have a right of appeal.”

“Reviews and needs assessments should be done transparently with results and documents available on request. The persons professionals should have input into any needs assessment decisions and reports and recommendations not ignored or overruled. Participants should be able to see needs assessment and a draft plan before it is implemented.”

Some respondents also flagged that NDIS plans should include funding for advocacy, including for the purpose of appealing NDIA decisions.

“Participants should be allowed paid advocacy in any appeal, tribunal or legal process, capacity or core funds should be allowed to be used for this purpose.”

“Advocacy funding should also be included in each plan so participants can access the legal expertise needed to appeal decisions in daunting review processes.”

Recommendation 13 – Amend the Bill to specify that NDIS participants (or prospective participants) must have the opportunity to review draft assessment reports and plans before they are finalised and sent to the NDIA CEO.

Recommendation 14 – Ensure that NDIS participants (or prospective participants) are provided with a clear and accessible means to access repeat or subsequent assessments when they are not satisfied that the initial assessment reflects their needs.

Recommendation 15 – Ensure that NDIS participants (or prospective participants) retain the ability to appeal NDIA decisions, by making the right to appeal NDIA decisions explicit in the Act.

Recommendation 16 – Include provisions in the Bill to ensure that funded advocacy is included in the definition of what constitutes a NDIS support. Subject to the previous recommendation, ensure that the Act specifies that participants (and prospective participants) can access NDIS funded advocacy for the purpose of appealing NDIS decisions.

6. Proposed timeframes must be flexible

Key Insight - The majority (89%) said they were worried about losing access to funding.

- These respondents indicated that the proposed 28 and 90-day maximum windows for responding to a request for information to inform planning and participant status are too short.
- This indicated increased anxiety about the proposed 90-day timeframe to provide information, with 75% worried about losing access if they cannot respond to a request within that timeline.

As indicated above, a significant number of people with disability were concerned about losing access to funding or to the NDIS entirely as a result of not having adequate time to respond to a request for additional information.

As we know from our interaction with members, the proposed 28 and 90-day timeframes will likely not be long enough when individuals have complex or multiple conditions, on top of already long wait lists for professional services.

As represented below a specified timeline for response, without contextual flexibility will not ensure a person-centred approach that safeguards ongoing access to essential supports. Without contextual flexibility there may be harmful consequences for participants who are unable to comply due to crisis, incapacity or other complex circumstances.

“Seeing specialists for reports or even just getting onto the books of an allied health practitioner can take months. Then you need numerous appointments to get to the problem then reports need to be written etc. this can take as little as 6 months but normally 12 months. If the NDIA can’t stick to their agreed timeframes why are clients being denied because they didn’t meet the unrealistic timeframes of the NDIA.”

“There are not enough advocates in rural areas too for the NDIS. It is very hard to get adequate help to put paperwork together in that timeframe.”

“ME/CFS is a energy limiting condition meaning that it is not always possible to attend GPs or specialists in person. If the legislation goes ahead and removes access because reports or assessments are not received in the timeframe required, people with ME/CFS will be at severe risk of harm or even death. They will be left without support and unable to care for themselves.”

"You have a bad patch, spend some time in hospital, become homeless, get arrested, have to flee domestic violence, or something else... You don't realise it, but they say they asked you for information and you didn't get back to them. So, you get kicked off the NDIS."

Recommendation 17 – Remove the specified timeframe for participants to respond to the NDIA’s CEO request for information when considering the revocation of a participant’s status. Use the proposed 90 days as a guide to prompt follow-up by the NDIA to re-confirm capacity to respond with consideration of personal context and environment, rather than a hard deadline.

Recommendation 18 – Provide timing ‘holds’ for NDIS participants timeframe allowed for providing a response to requests for information to inform planning decisions. Ensure this flexibility considers wait times for appointments with relevant professionals. Use the proposed 28 days as a guide to confirm if a ‘hold’ is required, and apply flexibility based on individual circumstances, rather than a hard deadline.

Recommendation 19 – Integrate supported decision-making and communication supports at the core of response timeframes. Ensure that there are explicit accommodations and safeguards integrated into the response process, thereby reducing additional barriers to navigating the system.

7. Protection from misuse of CEO and NDIA powers

Key Insight – Most respondents (90%) believed that the NDIS Amendment Bill does not align with the original vision of the NDIS to empower people with disability.

- Many respondents said that they thought the NDIS Amendment Bill indicated a movement towards a NDIA-controlled, top-down model of supports, rather than one that centres people with disability.
- A number of respondents raised concern about the power that the proposed Bill concentrates in the NDIA CEO.
- A high percentage of respondents expressed distress and fear of being placed into a position of unmanageable debt through circumstances outside of their direct control.

In the survey, respondents raised concern about the unchecked power that the NDIS Amendment Bill grants the NDIA CEO.

“The legislation provides for unilateral CEO powers that remove choices. New types of CEO decisions cannot be externally reviewed or contested.”

“The proposed legislation grants the minister and the CEO of NDIA extraordinary powers and not only is there a huge amount of unknowns as the minister has refused to clarify the intent of the rules etc. In legislation, but there is also a complete lack of equally extraordinary protections to protect disabled people falling victim to the extraordinary powers granted by the proposed legislation.”

While it is understood that several of the Government amendments have been proposed for the purpose of safeguarding participants, PWDA assert that clarifications need to be made to prevent misuse of these powers.

In regard to the ability to of the CEO to revoke a participants ability to self-manage their plan for the purpose of protecting a participant from “physical mental or financial harm” for example, the circumstances under when this can occur must be made explicit.

Additionally, any ability for the CEO to restrict an individual's choices about plan management must be made as a last resort, after other safeguarding options which preserve participant agency have been exhausted.

This directly links to the proposed debt recovery powers in which there is currently no clear independent oversight, fair warning periods, or accessible review mechanisms. These should be co-designed with people with disability to ensure egregious Government-led debt recovery processes, e.g. Robodebt, are replicated.

The proposed powers do not currently demonstrate consideration for any debts incurred through provider misconduct, plan manager error or retrospective NDIA decisions. As demonstrated with previous similar programs, there can be devastating consequences on both participants' financial security and wellbeing.

"A company charges you for services you never received. Your plan manager pays the bill... They raise a debt against you personally for the money the company took and change you to agency managed because you make bad choices."

Recommendation 20 – Ensure that the Bill includes safeguards to prevent participants being subject to the misuse of CEO powers regarding access, planning and plan management decisions.

Recommendation 21 – Embed the prioritisation of participant agency, choice and control throughout the Bill. Specify that the NDIA CEO must only intervene in individual plans for the purpose of preventing 'harm' as a last resort, after other safeguarding options which preserve participant agency have been exhausted.

Recommendation 22 – There must be clear safeguards implemented to ensure that inappropriate or punitive debt recovery actions are not possible without independent oversight, fair warning periods, and accessible review mechanisms.

Recommendation 23 – Make explicit in the legislation the circumstances under which the NDIA CEO can restrict a participant's choice around plan management, by ensure that this specifies what constitutes "physical mental or financial harm."



PEOPLE WITH DISABILITY AUSTRALIA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

For individual advocacy support contact PWDA between 9 am and 5 pm (AEST/AEDT) Monday to Friday via phone (toll free) on **1800 843 929** or via email at pwd@pwd.org.au

Submission contact

Giancarlo de Vera
Senior Manager of Policy
E: policy@pwd.org.au

**A voice
of our
own**