**Submission about the proposed changes to the National Disability Insurance Scheme (Getting the NDIS Back on track) Bill 2024**

**About Us**

The Physical Disability Council of New South Wales (PDCN) is the peak disability advocacy organisation in NSW. We stand up for the rights of people with physical disabilities, advocate for disability inclusion across Government and business and drive systemic reform around accessibility.

The PDCN is the sector coordinator for the NSW Disability Advocacy Network (NDAN). The NDAN is a consortium of disability advocacy organisations based in NSW. As a collective we represent the rights of all people with disabilities residing in NSW.

PDCN is closely monitoring reforms to the NDIS. We acknowledge that the success of the NDIS is dependent on the implementation of a system of foundational supports and enhanced mainstream disability supports. We also understand that the Government’s response to NDIS review will be a step-by-step approach. In saying this, we would have preferred more time to understand the changes to the NDIS bill. We are pleased to be given this second opportunity.

After reviewing the NDIS Bill, it is clear the objectives of the proposed reforms are well intentioned. PDCN’s primary focus is balancing the sustainability of the NDIS with the need for people with disabilities to be treated fairly and reasonably.

This submission outlines our key questions and concerns about the NDIS Bill that were formulated mainly from the Revised Explanatory Memorandum.

**Question 1 – NDIS Category A Rules**

It is not clear from the revised explanatory memorandum if Category A NDIS Rules need to be approved by the Commonwealth Government. It only states that they must be approved by state and territory governments.

We are seeking clarification about the number of rules to be implemented, which category the NDIS rules will be allocated to and the procedural requirements for all categories of rules.

**Question 2 – Spending flexible funding**

It states that flexible funding can be used by a participant to acquire a range of supports that they need provided those supports are appropriately funded by the NDIS.

We are seeking clarification around what this rule means in practice. For the purpose of flexible funding does a NDIS support constitute what is written in legislation or the category A rules?

**Question 3 – Navigators**

The Bill does not address the role of Navigators. The disability community has raised several issues around the qualifications, skills and experience of local area coordinators and other similar roles.

We are seeking clarification around the rules for Navigators. Will their role be constituted in NDIS category rules?

**Concern 1 – The NDIS Rules will be legislated before they have been drafted.**

The Bill proposes a series of NDIS rules and gives legislative power to those rules. There is concern that these rules will not be meaningfully co-designed with people with disabilities.

Subsection 4(9A) provides that people with disability are central to the Scheme and should be included in a co-design capacity. Co-design and consultation with people with disabilities is a principle of the Bill, but not a legally mandated requirement for the drafting all NDIS rules.

***Recommendation 1***

The Bill should define the term co-design and mandate that a co-design advisory group be established to oversee the drafting and implementation of the rules, as well as review the rules on an ongoing basis.

The advisory group should be comprised of people from disability representative organisations, state-based disability advocacy organisations, disability service providers, health professionals, social workers, NDIS participants and data analysist.

**Concern 2 - The NDIS Rules Category A might unfairly restrict what constitutes a NDIS Support.**

A key concern is that Government has the potential to unfairly restrict what constitutes a NDIS support through the NDIS rules. A co-design advisory group could help government understand the most common types of supports acquired through the NDIS, what specialists’ services are needed for people with severe and profound disability and what supports are most useful and valuable.

Leading on from this, the rules will proscribe many of the NDIS processes including access criteria (disability requirements and early intervention requirements), the needs assessment and the methods to be applied to make an assessment, the allocation of a reasonable and necessary budget. The rules basically outline the entire operation of the NDIS.

As a side note, the Bill also proposed that NDIS rules be used to clarify functions the Commissioner of the NDIS Safety and Quality Commission. It is important these rules do not interfere with the independence of the Commissioner.

***Recommendation 2***

These rules have the potential to drive sustainability of the scheme while making sure people with severe and profound disability get the support they need. The most suitable solution is to legislate that all rules are co-designed with people with disabilities.

**Concern 3 – the Debt Recovery might unfairly impact people who have difficulty making decisions.**

It states on page 17 that “where a participant spends funding on supports that are not NDIS supports, or not in accordance with the plan, a debt may arise”.

This clause does not take account of the fact that the NDIS is used by people who have intellectual disability and might make a genuine mistake in spending.

Procedural unfairness in debt collection and the unnecessary hardship of social welfare recipients was highlighted in the Royal Commission into the Robodebt Scheme.

***Recommendation 3***

This provision should be tightened. If a participant, supported decision maker or disability support provider deliberately spends NDIS funds on services and goods outside the NDIS they must reimburse the NDIS for that money spent (which is spent fraudulently).

In the instance of a genuine mistake, on the part of the NDIA or NDIS participant, a person with disability should not be legally required to return the funds if it would cause hardship to that person.

This understanding should be extended to Item 134 - Garnishee orders.

**Concern 4 – Privacy of personal and medical information during the revocation or suspension process**

Subsections 30(2) to 30(8) allow the CEO to request information from a participant or other person if the CEO is considering revoking a person’s status as a participant in the NDIS. This includes medical and health examinations.

From a human rights perspective this provision could lead to an encroachment on a participant’s privacy. The risk of losing NDIS funding interferes with a person ability to make a free decision as to whether to undertake the examination. This provision requires additional explanation and monitoring by an external agency.

We note that Subsection 30(3A) provides the CEO cannot request that a participant undergo an assessment under subparagraph 30(3)(b)(i) or an examination under subparagraph 30(3)(b)(ii) unless the CEO is satisfied that the report of the assessment or examination would provide information that the CEO cannot otherwise reasonably obtain.

This limitation will require the CEO to have regard to other reasonable alternatives before making the request for an assessment or examination. However, it is not clear if the CEO can delegate this power. If they can, it requires the delegated authorities to have the skills to make reasonable judgements and decisions about this provision.

***Recommendation 4***

The Bill provides examples of where it would be reasonable for the CEO to request this type of assessment or examination.

The power to request assessment and examinations should be delegated to senior officials only.

**Concern 5 – Sunsetting Clause**

It states that the sunsetting regime set out in the Legislation Act does not apply to this instrument. This is a consequence of the amendments made by item 123 which amends the e Legislation (Exemptions and Other Measures) Regulation 2015 to clarify that instruments made under the Act are exempt from sunsetting.

On one hand this provision provides stability for the NDIS Bill, on the other hand there needs to be a requirement that the NDIS rules will be reviewed routinely to ensure they remain useful, and up to date.

***Recommendation 5***

Procedural rules for the NDIS rules should state that the NDIS rules must be reviewed and updated when suitable.

**Concern 6 – There are no times frames for the review of a revocation.**

It states at 19(2)(b) that a person who has had their status as a participant revoked cannot make another access request until a decision has been made on review.

***Recommendation 6***

There needs to be clear timeframes for the finalisation of a review to provide some certainty to participants about when they can re-apply.

**Concern 7 – There are provisions for revocation, suspension and reassessment and check-in processes which seem to be unclear and at time conflated.**

The new section 30A sets out the CEO’s ability to consider the status of certain participants. Category A NDIS rules must be made before this provision can operate. This power will operate in a similar way to existing section 30, allowing the CEO to revoke a person’s status as a participant, however it will be subject to strict rules around when and how the power can be used.

These provisions give the CEO extensive powers and the rules around this power is not defined. This creates anxiety.

***Recommendation 7***

The bill should mandate that the NDIS rules outlining the CEO powers and delegated authority for amending NDIS plans is co-designed with people with disabilities.

**Concern 8 – registration of NDIS providers**

On 12 February 2024, the Minister announced a new Taskforce will work with people living with disability to ensure provider and worker registrations lead to better outcomes for NDIS participants. This Taskforce will provide expert advice to Government on the best approach to overhaul the current registration system for those who deliver supports while, crucially, maintaining choice and control for participants, as recommended by the NDIS Review.

The concern is that registration cannot guarantee a quality service. Though we hope the risk model will assist with this process. It is important to note that smaller disability support providers cannot afford registration.

***Recommendation 8***

The NDIA should take account of the size and revenue of a disability support business before setting the price for registration.

NDIS participants should be able to choose to use any disability service provider for a legitimate reason but the public should be made aware that an NDIS registered provider is subject to more oversight.

Thank you for the opportunity to provide a response to the proposed amendments to the NDIS (Getting the NDIS back on Track) Bill 2024.