



Joint Submission

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

Submission to the Community Affairs Legislation Committee

17 May 2024

Table of Contents

<i>Publishing Information</i>	3
<i>Language note</i>	3
<i>Acknowledgment of Country</i>	3
<i>Submission Contacts</i>	3
<i>About the authors</i>	4
<i>Signatories to this submission</i>	5
<i>Introduction</i>	6
Key amendments and provisions this submission responds to:	6
Summary of recommendations:	7
<i>Co-design of NDIS reforms</i>	11
Government commitment to co-design and consumer involvement must be legislated.....	11
<i>‘NDIS support’</i>	12
The definition of ‘NDIS support’ must support people with disability to realise their full range of human rights.....	12
<i>Transition from old framework plan to new framework plan</i>	13
A person must not be required to undergo reassessment for NDIS eligibility during the transition process.....	13
<i>Needs assessment framework</i>	14
Needs assessment report must be provided to the person and the person must be able to request amendment	14
The decision to rely on a person’s needs assessment report in preparing a person’s statement of participant supports must be a reviewable decision	14
Clarity is needed on who performs the needs assessment	15
Needs Assessors require specific qualifications.....	15
Needs assessment tool must be designed through a human-rights lens.....	16
More detail is needed about under what circumstances the CEO can override a person’s plan management preference and what non-compliance with section 46 looks like.....	18
<i>Reasonable and necessary budgets</i>	20
Further consultation with people with disabilities is needed about funding periods	20

Publishing Information

The moral rights of the authors have been asserted.

Author(s): Women with Disabilities Australia, Women with Disabilities Victoria and Women with Disabilities ACT.

Title: Joint Submission to the Community Affairs Legislative Committee on the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions].

Language note

We recognise the limitations of using binary language and use language throughout with the deliberate intention of acknowledging a shared *political identification* between the people we represent. We therefore use the term ‘women’ to refer to transgender women, ciswomen, girls, gender diverse and non-binary people. This submission also uses ‘person first’ language (women with disabilities). We however acknowledge people describe their experience of disability in different ways, and for many people, ‘identity first’ language is a source of pride and resistance.

Acknowledgment of Country

The authors acknowledge the traditional owners of the land on which this publication was produced. We acknowledge First Nations people’s deep spiritual connection to this land. We extend our respects to community members and Elders past, present and emerging.

Submission Contacts

Sophie Cusworth

Acting Chief Executive Officer

Women With Disabilities Australia (WWDA)

E:

Kat Reed

Chief Executive Officer

Women with Disabilities ACT (WWDACT)

E:

Nadia Mattiazzo

Chief Executive Officer

Women With Disabilities Victoria (WDV)

E:

About the authors

The following organisations worked together to produce this joint submission:

Women with Disabilities Australia (WWDA) is the National Disabled People's Organisation (DPO) and National Women's Alliance (NWA) for women, girls, feminine identifying, and non-binary people with disabilities in Australia. As a DPO and an NWA, WWDA is governed, run, led, staffed by, and constituted of, women, girls, feminine identifying, and non-binary people with disabilities. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends beyond Australia. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

Women with Disabilities Victoria (WDV) is a not-for-profit Disabled People's Organisation (DPO) representing women with disabilities in Victoria. The organisation is operated *by* and *for* women and non-binary people with varied disability experiences. WDV has a diverse membership of people from different backgrounds. Women with disabilities face intersecting forms of structural gender and disability discrimination. WDV actively advocates for our rights to safety and respect, with particular emphasis on disability policy, health services, violence prevention, workforce development and leadership. WDV envisions a world where all women are respected and can fully experience life.

Women with Disabilities ACT (WWDACT) is a Disabled Person's Organisation (DPO) that practices systemic advocacy on behalf of women, girls, and gender diverse people with disabilities in the ACT. We follow a human rights philosophy, based on the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). WWDACT has won several awards for our work, including a Commendation at the 2019 Inclusion Awards for Excellence in Championing Human Rights and Equality, the 2015 Chief Minister's Inclusion Award for Excellence in Championing Human Rights and the 2012 International Women's Day Award, Community Category.

Signatories to this submission

The following people or organisations contributed to and endorse this joint submission:

- Women with Disabilities Australia (WWDA)
- Women with Disabilities Victoria (WDV)
- Women with Disabilities ACT (WWDACT)
- Dr Chloe Bryant, Lecturer, School of Health and Rehabilitation Sciences, University of Queensland
- Heidi La Paglia Reid, Tasmanian Board Member, Australian Women's Health Alliance (AWHA)
- Molly Saunders, Research Associate, Crawford School of Public Policy, Australian National University
- Dr Linda Steele, A/Prof, Law Health Justice Research Centre, Faculty of Law, University of Technology Sydney
- Dr Sophie Yates, Research Fellow, Crawford School of Public Policy, Australian National University.
- Diana Piantedosi, Honorary Research Fellow, Faculty of Health, Deakin University.

Introduction

Women with Disabilities Australia (WWDA), Women with Disabilities Victoria (WDV) and Women with Disabilities ACT (WWDACT) welcome the opportunity to provide feedback on the exposure draft of the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions].

Article 6 of the *Convention on the Rights of Persons with Disabilities (CRPD)* explicitly recognises the impact of multiple discrimination at the intersection of gender and disability. The Article emphasises the need for State Parties, of which Australia is one, to take focused, gender-specific measures to ensure that women with disabilities experience full and effective enjoyment of their human rights. The Australian Government must consider gendered impacts in designing and implementing reforms to the National Disability Insurance Scheme (NDIS).

We endorse several provisions in the Bill, such as flexible budgets, the elimination of the distinction between primary and secondary disabilities, and a whole of person approach to a person's support needs.

Although there are some provisions proposed that will be beneficial, we believe the Bill has been introduced too soon. We do not want to halt necessary reforms to the NDIS, however we have significant concerns about many aspects of the Bill (as listed below), which we address in this joint submission.

Key amendments and provisions this submission responds to:

- Co-design of NDIS reforms
- 'NDIS support'
- Transition from old framework plan to new framework plan
- Needs assessment framework
- Reasonable and necessary budget

Before significant reforms can be made to the NDIS, it is essential to first engage in comprehensive collaborations with state and territory governments to develop foundational supports, which are crucial for creating a supportive ecosystem for people with disabilities, whether they are involved in the NDIS or not. Without a robust foundation, many

individuals, especially those in marginalised groups, which are often women, will remain without the vital support they need.

Additionally, any reforms to the NDIS must build on and be informed by the significant contributions of people with lived experience of disability, particularly women with disabilities, who are currently underrepresented within the NDIS. Engagement and consultation with representative organisations, including WWDA, WDV and WWDACT, throughout the NDIS Review and the Disability Royal Commission should also be incorporated throughout. We note the NDIS Review Co-Group called for the NDIS Review Panel to support the development of an NDIS Gender Strategy. Unfortunately, the final recommendations of the Review remain largely silent on gender, despite the overwhelming gender inequality in the NDIS.¹ We therefore propose several further recommendations within this submission.

Summary of recommendations:

Recommendation 1: Amend Section 4 to mandate the involvement of people with disabilities in a leadership capacity throughout the design and implementation phases of NDIS reforms and any associated legal and regulatory frameworks. This should include:

- Active participation from people with disabilities and their representative organisations in leadership roles;
- Genuine co-design and consultation processes with people with disabilities, featuring clear communication of engagement strategies and schedules;
- Engagements specifically targeted at those most affected by these reforms, particularly people with disabilities residing in rural, regional, and remote areas;
- Specific consultation with women, girls, feminine identifying, non-binary people with disabilities, and carers of women with disabilities.
- Targeted discussions with First Nations, Culturally and Linguistically Diverse (CALD), LGBTQIA+SB people, and other multiply marginalised groups (such as people with disabilities in the criminal justice system); and

¹ <https://theconversation.com/there-is-overwhelming-gender-bias-in-the-ndis-and-the-review-doesnt-address-it-220042>.

- Sufficient resources and time allocation to ensure a comprehensive and broadly accessible consultation process.

Recommendation 2: Proposed subsection 10(a) is amended to include supports that are necessary to support a person to access work and employment, access justice, support a person's right to liberty, and support a person to be free from exploitation, violence, and abuse, and free from torture.

Recommendation 3: Proposed subsection 10(c) is amended to state that a support that promotes isolation or segregation, or has the potential to, cannot be an NDIS Support (this supports Article 19 of the CRPD).²

Recommendation 4: Insert a legislative requirement that a person who is to transition from an old framework plan to a new framework plan must not be reassessed for NDIS eligibility.

Recommendation 5: Amend proposed subsection 32L(5) to require the Needs Assessor to provide a draft needs assessment report to the person before it is given to the CEO. This must include a process that allows the person to request amendments to the assessment and provide further information before it is provided to the CEO.

Recommendation 6: Amend section 99 to include the decision to rely on a person's needs assessment report to prepare a person's statement of participant supports as a reviewable decision.

Recommendation 7: Amend proposed subsection 32L to include the requirement for the Needs Assessor to be a suitably qualified person, ideally from the person's current support team. If such a person does not exist, include the requirement for the Needs Assessor to engage with the person's existing support and health professional team and to involve the person in the assessment process.

² Reference to Article 19 of the CRPD can then be included in the Statement of Compatibility with Human Rights.

Recommendation 8: The Needs Assessors must have appropriate formal qualifications in allied health and experience in conducting needs assessments. These requirements must be stated in the Bill.

Recommendation 9: Insert a legislative requirement for the needs assessment tool(s) to be developed:

- using a social-contextual concept of disability and a human-rights approach;
- using evidence from Australian and international peer-reviewed research about best practice needs assessment and the impacts of assessment on people with disability;
- through testing with people with disabilities, including people with disabilities at all life stages and from diverse backgrounds, DROs, academics and health professionals with lived experience, women with disabilities, family and carers, advocates, and service providers;
- in a way that is responsive to the needs of marginalised communities, including people who experience overlapping forms of discrimination at the intersections of disability and other identities, attributes, or life experiences. This requires that the needs assessment tool(s) address, and not reproduce, systemic biases; and
- with an understanding that:
 - that disability can fluctuate over time, and that results may vary based on the different environments, the social, cultural, and economic circumstances in which a person lives³
 - a person's environments and how their various environments can both facilitate and limit their capacity to perform their activities of daily living and to participate in meaningful occupations
 - a person's caring responsibilities can have an impact on their support needs.

Recommendation 10: Section 43 be amended to:

- include details about the test for determining that 'the participant would likely suffer physical, mental or financial harm', and that such an assessment is to involve an examination of the circumstances that means the person is at risk of such harm. In conducting this assessment, the CEO must include the person (with appropriate

³ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p 235.

support such as an advocate and support for decision-making), family and/or carers and other significant people in the person's life;

- include details about what non-compliance with section 46 looks like and the threshold for this non-compliance to then override someone's plan management preference; and
- ensure that NDIS rules regarding this section are codesigned with people with disabilities and the broader disability community and require information about them to be accessible to people with disabilities.

Recommendation 11:

The Government engage in a codesign process with people with about funding period requirements.

Co-design of NDIS reforms

Government commitment to co-design and consumer involvement⁴ must be legislated

We welcome the Australian Government's statements that key elements of the proposed amendments in the Bill and the development of NDIS rules will be developed in collaboration with people with disabilities. Nonetheless, to guarantee the execution of this commitment, it is essential that co-design and ongoing consumer involvement is mandated in the Bill and any forthcoming legislative proposals.

People with disabilities must assume a leadership position in shaping and executing reforms to the NDIS, and in associated legislation, subordinate legislation, and policy frameworks.

Recommendation 1: Amend Section 4 to mandate the involvement of people with disabilities in a leadership capacity throughout the design and implementation phases of NDIS reforms and any associated legal and regulatory frameworks. This should include:

- Active participation from people with disabilities and their representative organisations in leadership roles;
- Genuine co-design and consultation processes with people with disabilities, featuring clear communication of engagement strategies and schedules;
- Engagements specifically targeted at those most affected by these reforms, particularly people with disabilities residing in rural, regional, and remote areas;
- Specific consultation with women, girls, feminine identifying, non-binary people with disabilities, and carers of women with disabilities.
- Targeted discussions with First Nations, Culturally and Linguistically Diverse (CALD), LGBTQIA+SB people, and other multiply marginalised groups (such as people with disabilities in the criminal justice system); and
- Sufficient resources and time allocation to ensure a comprehensive and broadly accessible consultation process.

⁴ 'Consumer involvement' is the term used in the NHMRC and Consumers Health Forum of Australia's Statement of Consumer and Community Participation in Health and Medical Research – 2016.

‘NDIS support’

The definition of ‘NDIS support’ must support people with disability to realise their full range of human rights

Subsection 10(a) proposes a definition of an ‘NDIS support’. Note 1 refers to the *CRPD* broadly, presumably to demonstrate the *CRPD* was considered in drafting the definition. The Explanatory Memorandum simply states the ‘NDIS support’ definition ‘engages’ with Australia’s obligations under the *CRPD*.⁵ There are several rights under the *CRPD* the definition does not address.

The definition does not include supports that facilitate the full and intended realisation of a person’s rights, for example, work and employment (Article 27), freedom from exploitation, violence and abuse (Article 16), freedom from torture (Article 15) and right to liberty (Article 14) and access to justice (Article 13). We raise these specific rights as they are the ones women with disabilities commonly face barriers to.

Recommendation 2: Proposed subsection 10(a) is amended to include supports that are necessary to support a person to access work and employment, access justice, support a person’s right to liberty, and support a person to be free from exploitation, violence, and abuse, and free from torture.

Recommendation 3: Proposed subsection 10(c) is amended to state that a support that promotes isolation or segregation, or has the potential to, cannot be an NDIS Support (this supports Article 19 of the *CRPD*).⁶

We note that while the Bill itself does not mention specific types of items that will not be considered as NDIS supports under proposed subsection 10(c), the Explanatory Memorandum lists some things that will not qualify as NDIS supports.⁷ We are concerned about the intention to exclude standard household appliances and white goods, as these things can be important, innovative, and cost-effective disability supports. This issue has a gendered dimension as we know that household labour and childcare disproportionately

⁵ The Parliament of the Commonwealth of Australia, House of Representatives, National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Bill 2024, Explanatory Memorandum, p.12.

⁶ Reference to Article 19 of the *CRPD* can then be included in the Statement of Compatibility with Human Rights.

⁷ The Parliament of the Commonwealth of Australia, House of Representatives, National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Bill 2024, Explanatory Memorandum, p 4.

fall on women. Household appliances and whitegoods can be an important way to assist women with disabilities to care for their homes and families in a way that is consistent with the aims of the Scheme.

Transition from old framework plan to new framework plan

A person must not be required to undergo reassessment for NDIS eligibility during the transition process

We understand that current NDIS participants (including participants within the 'Early Intervention' stream) will transition from their current plan ('old framework plan') to a 'new framework' plan over the next five years. The overarching transition plan is to be worked out between the Commonwealth, States and Territories.⁸

We acknowledge that for a person's new framework plan to be developed, the new needs assessment will have to be completed. The needs assessment will inform the person's new statement of participant supports (including the reasonable and necessary budget which will specify the flexible and stated budget amounts). We note the proposed section 49B states that a person who has been given notice by the CEO under proposed subsection 32B(2) that they are to transition to a new framework plan must not have their old framework plan reassessed. However, it is unclear what 'reassessment' means in this context, and we are concerned that a person on an old framework plan may be required to undergo reassessment of their NDIS eligibility in the 'transition to new framework' process. We are also concerned about the lack of clarity as to whether participants under the Early Intervention stream will be required to be reassessed for eligibility. We make these comments in the context that constant assessment and reassessment can have a negative impact on a person's health and wellbeing.⁹

Recommendation 4: Insert a legislative requirement that a person who is to transition from an old framework plan (including participants within the 'Early Intervention' stream) to a new framework plan must **not** be reassessed for NDIS eligibility.

⁸ The Parliament of the Commonwealth of Australia, House of Representatives, National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Bill 2024, Explanatory Memorandum, p.22.

⁹ See for example, Barr B, Taylor-Robinson D, Stuckler D, *et al*, 'First, do no harm': are disability assessments associated with adverse trends in mental health? *A longitudinal ecological study J Epidemiol Community Health* 2016;70:339-345.

Needs assessment framework

Needs assessment report must be provided to the person and the person must be able to request amendment

The Bill specifies that following the completion of a person's needs assessment, the document should be promptly submitted to the CEO (per proposed subsection 23L(5)). It does not, however, mandate that the assessor provide the individual with either a draft or a final copy of the needs assessment. Consequently, individuals are deprived of the opportunity to verify the assessment for any errors, inaccuracies, or unsuitable content before it is forwarded to the CEO. There is also no opportunity to provide additional information where the individual believes the assessment has not adequately identified their needs. This lack of oversight compromises the individual's autonomy and is contradictory to the intention of the NDIS which is to enable 'choice and control'. Additionally, this lack of opportunity for participants to review the assessment also poses a risk for systemic bias to occur which may impact needs assessment processes. Further, allowing individuals to review their assessments could potentially decrease the number of subsequent requests for reviews or external appeals needed to correct mistakes once the plan is received.

Recommendation 5: Amend proposed subsection 32L(5) to require the Needs Assessor to provide a draft needs assessment report to the person before it is given to the CEO. This must include a process that allows the person to request amendments to the assessment and provide further information before it is provided to the CEO.

The decision to rely on a person's needs assessment report in preparing a person's statement of participant supports must be a reviewable decision

The Bill does not list the decision of the Agency to rely on a needs assessment report to prepare a person's statement of participant supports as a reviewable decision under section 99. This means there is no mechanism for the decision to be internally reviewed, with the implication that it is not a decision that can be referred to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for external review.

Recommendation 6: Amend section 99 to include the decision to rely on a person's needs assessment report to prepare a person's statement of participant supports as a reviewable decision.

Clarity is needed on who performs the needs assessment

For many people with disabilities, particularly women, it takes years to develop a trusted relationship with the health and other professionals in their lives. Further, it can take considerable time for health professionals to develop a comprehensive understanding of the person's condition and needs. For these reasons, it is critical that the NDIS Needs Assessor is suitably qualified person, ideally from the person's existing support team. If such a person does not exist, then the Needs Assessor must engage with the person, existing health and allied professionals, and anyone else the person requests.

Recommendation 7: Amend proposed subsection 32L to include the requirement for the Needs Assessor to be a suitably qualified person, ideally from the person's current support team. If such a person does not exist, include the requirement for the Needs Assessor to engage with the person's existing support and health professional team and to involve the person in the assessment process.

Needs Assessors require specific qualifications

We know that women undergoing assessment are statistically more likely to have experienced medical gaslighting¹⁰, delayed diagnosis, misdiagnosis and/or re-diagnosis.¹¹ Further, women are more likely to have experienced diagnostic overshadowing and are more likely to have co-occurring conditions/disabilities. Practitioners conducting assessments must have an intersectional focus that recognises that history to avoid re-traumatising the person or overlooking or undermining their needs.

Therefore, the person conducting the needs assessment (the 'Needs Assessor') must have specific qualifications, skills and training to fulfil the role. This must include the skills to conduct assessments that are gender-specific, culturally sensitive, trauma-informed, disability specific (if appropriate) and rooted in human rights principles of dignity, equality and mutual respect. The NDIS Review discusses the requirements of the Needs Assessors in detail.¹²

¹⁰ Medical gaslighting describes when health care professionals seem to invalidate or ignore a person's concerns. It can be linked to missed diagnoses, delayed treatment, and poor health outcomes. It might damage the person's trust in the health care system and make them less likely to seek care - <https://www.health.harvard.edu/staying-healthy/what-to-do-about-medical-gaslighting>.

¹¹ Merone, L, Tsey, K, Russell, D and Nagle, C, "I Just Want to Feel Safe Going to a Doctor": Experiences of Female Patients with Chronic Conditions in Australia, *Women's Health Reports* (2022), 3.1, pp 1016-1028.

¹² Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, pp 287-288.

The recruitment process for Needs Assessors should prioritise people who themselves identify as disabled/ living with disability. Furthermore, the NDIA should actively seek and facilitate the inclusion of people with direct lived experience in Needs Assessor positions. The Needs Assessment must be carried out by a skilled and well-trained professional who can build and demonstrate mutual trust with the person.¹³ The person must be able to request that the Needs Assessor have specific characteristics related to factors such as gender and cultural background.

Recommendation 8: The Needs Assessors must have appropriate formal qualifications in allied health and experience in conducting needs assessments. These requirements must be stated in the Bill.

Needs assessment tool must be designed through a human-rights lens

According to the Explanatory Memorandum, the needs assessment tool (or tools) will be developed in consultation with people with disabilities, medical and professional experts, and international learning and best practice.¹⁴ We welcome this approach.

More specifically, we advocate for the needs assessment to be underpinned by both a social-contextual concept of disability and a human rights approach, in line with the CRPD:¹⁵

- the design of the assessment should be based on a social and human rights model of disability and incorporate this approach into the practical implementation of such assessments;
- it should incorporate an understanding of fluctuating and episodic disability disproportionately experienced by women;
- it should support the active participation of the person, and their nominated representative where appropriate, in generating the evidence on which their needs assessments are made, for example, through the availability of peer-supported self-assessment;

¹³ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p 1194.

¹⁴ The Parliament of the Commonwealth of Australia, House of Representatives, National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Bill 2024, Explanatory Memorandum, p 23.

¹⁵ Waddington, L and Priestly, M; 'A human rights approach to disability assessment', *Journal of International Comparative Social Policy* (2021), 37:1, pp 1-15.

- the design should involve multidisciplinary expertise (allied health professionals from a range of disciplines) including and understanding of the Social Model of Disability; and
- the NDIA should provide accessible and user-friendly information about the needs assessment and the processes surrounding it.

*‘...the design and conduct of disability assessments should be guided by the eight general principles that “animate” the CRPD in Article 3. These include equality of opportunity and non-discrimination... dignity; individual autonomy; full and active participation and inclusion; respect for difference; and accessibility. Equality between men and women, and “respect for the evolving capacities of children with disabilities,” are also addressed in Article 3 CRPD’.*¹⁶

Recommendation 9: Insert a legislative requirement for the needs assessment tool(s) to be developed:

- using a social-contextual concept of disability and a human-rights approach;
- using evidence from Australian and international peer-reviewed research about best practice needs assessment and the impacts of assessment on people with disability;
- through testing with people with disabilities, including people with disabilities at all life stages and from diverse backgrounds, DROs, academics and health professionals with lived experience, women with disabilities, family and carers, advocates, and service providers;
- in a way that is responsive to the needs of marginalised communities, including people who experience overlapping forms of discrimination at the intersections of disability and other identities, attributes, or life experiences. This requires that the needs assessment tool(s) address, and not reproduce, systemic biases; and
- with an understanding that:

¹⁶ Waddington, L and Priestly, M; ‘A human rights approach to disability assessment’, *Journal of International Comparative Social Policy* (2021), 37:1, p 10.

- that disability can fluctuate over time, and that results may vary based on the different environments, the social, cultural, and economic circumstances in which a person lives¹⁷
- a person's environments and how their various environments can both facilitate and limit their capacity to perform their activities of daily living and to participate in meaningful occupations
- a person's caring responsibilities can have an impact on their support needs.

Plan management

More detail is needed about under what circumstances the CEO can override a person's plan management preference and what non-compliance with section 46 looks like

The Bill proposes subsections 43(2A), (2B), (2C) and (2D). These subsections deal with situations in which the CEO may not comply with a participant's plan management requests about new framework plans.

The circumstances in which the CEO *may* make such a decision are (proposed subsection 43 (2C)):

- the participant would be likely to suffer physical, mental or financial harm if the CEO were not to make the decision;
- section 46 (dealing with the acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant's previous plans; and
- a circumstance prescribed by Category A NDIS rules.

We are concerned the CEO has significant discretion to override a person's plan management preference, without this authority having clearly defined conditions and parameters. There are multiple gender-specific situations, for example, intimate partner, family or gender-based violence, that may place a woman in a situation where the ability to self-manage their plan is compromised and places them at risk of experiencing financial harm. In these situations, the CEO must consider what supports (either informal or formal) they can have access to that will reduce or mitigate the risk, without taking away the autonomy of the participant (including through use of guardianship and financial

¹⁷ Commonwealth of Australia, NDIS Review – Supporting Analysis, 2023, p 235.

administration orders) and therefore support the participant continue to self-manage if that is their preference. See case study below that demonstrates how the implementation of proposed subsection 43(2C) could result in a person having their choice and control removed if the CEO does not consider what support the person could have to be able to continue to manage their plan. Given the potential for the CEO to remove a person's choice and control over who manages their plan, we strongly advocate that the conditions and parameters be included in the Bill as outlined in our recommendation. These decisions by the CEO must be made within the context of the person having access to an independent disability advocate and being empowered to have control over decisions.

Recommendation 10: Section 43 be amended to:

- include details about the test for determining that 'the participant would likely suffer physical, mental or financial harm', and that such an assessment is to involve an examination of the circumstances that means the person is at risk of such harm. In conducting this assessment, the CEO must include the person (with appropriate support such as an advocate and support for decision-making), family and/or carers and other significant people in the person's life;
- include details about what non-compliance with section 46 looks like and the threshold for this non-compliance to then override someone's plan management preference; and
- ensure that NDIS rules regarding this section are codesigned with people with disabilities and the broader disability community and require information about them to be accessible to people with disabilities.

Case study: Proposed subsection 43(2C) – potential for denial of choice and control

A participant who has opted to self-manage her NDIS plan is experiencing family violence perpetrated by her intimate partner. Her partner accesses and misuses her NDIS funds for support and services that are not related to her support needs. The CEO has the power to determine, under subsection 43(para 2C) that the participant can no longer self-manage her plan because of the risk of her experiencing financial harm and/or non-compliance with section 46. The CEO makes a unilateral decision, based on risk, that does not involve consultation with the participant and her independent advocate. The participant is denied the opportunity to consider and receive supports that would enable her to continue to self-manage her plan, which is her preference. Ultimately, she is denied choice and control.

Reasonable and necessary budgets

Further consultation with people with disabilities is needed about funding periods

We are concerned that the proposed funding period (for flexible and stated supports) cannot exceed 12 months (unless Category A Rules prescribe certain supports are not required to have funding periods).¹⁸ This takes a one-size-fits-all approach to funding periods which does not support a person's autonomy, choice, or control over their NDIS plan – particularly if someone is self-managing their plan. Further consultation with people with disabilities is needed to ensure that funding periods can be set that are suitable to a person's situation.

Recommendation 11:

The Government engage in a codesign process with people with about funding period requirements.

¹⁸ Subsections 32F(3) and 32G(5).