

*Deaf Australia’s Submission into the Getting Back on Track NDIS (National Disability Insurance Scheme) Bill 2024*

May 2024

About Deaf Australia:

Deaf Australia acknowledges the Traditional Owners and Custodians of the lands on which we work and pay our respects to Indigenous Elders past and present. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

We recognise the past atrocities against Aboriginal and Torres Strait Islander peoples of this land and that Australia was founded on the genocide and dispossession of First Nations people. We acknowledge that colonial structures and policies remain in place today and recognise the ongoing struggles of First Nations people in dismantling those structures; and especially that of Deaf, Deafblind and hard of hearing First Nations peoples.

Deaf Australia was founded in 1986 as a not-for-profit organisation that represents all Deaf, Deafblind, and hard of hearing people, and others who are fluent and knowledgeable about Auslan. The focus has and continues to be on developing access to information and accessible communication. We work with Australian governments and collaborate with key stakeholders to make sure that Australia complies with the United Nations Convention on the Rights of Persons with Disabilities. The UN Convention and the National Disability Strategy guides our work; we aspire to achieve equity for Deaf people across all areas of life.

Deaf Australia advises that this document may be publicly distributed, including by placing a copy on our website.

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May 2024

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**Introduction:**

Deaf Australia has considerable experience with the NDIA and NDIS, having worked to advocate on behalf of the Deaf community and families with deaf children, with positive outcomes such as funding families to learn Auslan. Deaf Australia therefore welcomes yet another opportunity to provide a submission into the Getting Back on Track NDIS Bill, which was released earlier this year for review and feedback.

MP Mr. Shorten’s media release dated 27th March 2024 announced the intention of introducing the Getting Back on Track NDIS Bill into Parliament with statements such as:

*The Bill will usher in a new era of NDIS reforms that ensure the Scheme can continue to provide life-changing outcomes for future generation of Australians with disability and to make sure every dollar in the Scheme gets to the participants for whom the Scheme was designed.*

And:

*It will also bolster the powers of the NDIS Quality and Safeguards Commission to protect participants from illegal and unethical conduct.[[1]](#footnote-1)*

While the intent of the Getting Back on Track NDIS bill reads as initially positive, as always, the devil is in the detail of the bill. The government has not been shy about the intention behind the NDIS Review and the subsequent bill which is to prevent future cost overruns of the NDIS. In the media release as mentioned above, the use of ‘dollar’ was emphasised. Deaf Australia’s perspective is that the NDIS Review obliged the government by recommending the enlarging of the role of the NDIA in reducing the budget costs plans in the NDIS – all under the clever phrasing of ‘reform.’

The original intention of the NDIS was to operate as the ‘I’ in the acronym – an insurance scheme whereby babies, children and adults would go onto the NDIS for a brief period, supported by intervention services to catch up with age-appropriate developmental growth and receive support for a brief period of time. Then, in theory, they would be transitioned off the NDIS.

However, this didn’t happen, as gleefully reported by mainstream media reports, with the architects, the politicians and the mainstream media having little to no understanding of what disability is, what deafness is, what impairment is – three vastly different things. There was no realisation or foresight that other services previously provided pre-NDIS would be either made significantly underfunded or disappear altogether due to being defunded. As a result, what did happen? Children who entered the NDIS stayed within the NDIS, those with lifelong disabilities and deaf people stayed, and *they were/are blamed for the underestimation of costs* of the scheme.

There is a continuing narrative in the public domain that reinforces this misallocation of blame. However, as any respectable economist will detail, what the NDIS spends in dollar amounts enables a return of twice that amount – much more than people who put their savings into deposit accounts in recent years![[2]](#footnote-2) Deaf Australia is aware of the remarkably high incident of fraud that operates or did operate within the NDIS. We acknowledge the initiative to attempt to address this and safeguard participants, as outlined in the Explanatory Memorandum:

*‘Enabling the Agency to change the plan management type as well as imposing shorter funding periods to safeguard participants where others may seek to exploit or coerce the participant to use their package in a way that is not consistent with their best interests.’ (pp. 2)[[3]](#footnote-3).*

Deaf Australia has seen too many examples of this highlighted at the Disability Royal Commission and the NDIS Review.

**The Dollar Factor:**

Good intentions notwithstanding, again, Deaf Australia is aware that the overall intention of the bill is to save money. In terms of financial sustainability in the short term the proposed changes are not going to have any impact, if at all. While it is commendable that some flexibility and creative use of funds to meet participant needs are acknowledged – it is frustrating to see that there is a significant emphasis on health in the outlay of supports.

For example, under item 14, after Section 9A:

*A support can only be* *an NDIS support if the support:*

*• is necessary to support the person to live and be included in the community, and to prevent isolation or segregation of the person from the community*

*• will facilitate personal mobility of the person in the manner and at the time of the person’s choice*

*• is a mobility aid or device, or assistive technology, live assistance or intermediaries that will facilitate personal mobility of the person*

*• is a health service that the person needs because of the person’s impairment or because of the interaction of the person’s impairment with various barriers*

*• is a habilitation or rehabilitation service*

*• is a service that will assist the person to access a support covered by subparagraph (iv) or (v)*

*• will minimise the prospects of the person acquiring a further impairment or prevent the person from acquiring a further impairment*

*• is provided by way of sickness benefits.[[4]](#footnote-4)*

Five of these listed above focus on health. This is a continuation of the medical model that is frankly outdated and is not accepted by deaf people or the disability communities. There is a real risk too, that these support categories will end up being far too restrictive, limiting choice and control. It was also puzzling to see phrasing such as the specifying of total amounts and sticking within the limits – how is this any different to the current process we have now? How is this any more helpful to ensuring budgets are more than adequate, reasonable, and necessary?

The language of ‘overspending’ and ‘intraplan inflation’ is frankly infuriating and ignores the underlying causes of why the NDIS is so expensive to fund. The Getting Back on Track NDIS Bill argues that intraplan inflation is a key driver of Scheme costs (*pp. 25*). This ignores the reality that inflation has had a severe impact on the cost of living, paying for equipment and services; it also ignores the reality of businesses overcharging and invoicing for non-existent services.

The phrasing of ‘overspending’ is misleading and puts the onus of fiscal responsibility completely onto the participants. For one thing, participants do not overspend, they run down their funds trying to get the reasonable and necessary supports they need. Intraplan inflation refers to where funds are run down more quickly than was agreed to and a top up is required. The NDIA has admitted and often that these plans are underfunded upon appeal at the AAT. It is a worry that the allocation of funds will continue to be underfunded and participants falling through the cracks due to the ending top-ups of funds.

The following details an example that most deaf people within the NDIS will be familiar with in the context of running down funds.

*There are interpreters who are newly graduated and have worked for one or two years at the most. One recent invoice from said newly graduated interpreter for a 2-hour booking – video relay interpreting (VRI), not face to face – charged me $200. The tandem interpreter, with many years ahead in the context of experience, skill and knowledge and professional status only charged $240. Given that the interpreting workforce has narrowed significantly in recent years and the demand is huge at present, it has become an interpreting market, at the expense of choice and control for deaf people. This is a classic example of how funds run down so quickly; it is not because deaf people ‘overspend.’ Some Auslan interpreters charge significant dollars that does not always reflect their commensurate skills, experience, and knowledge because of this severe unbalance of demand and supply.*

So: why are we focusing on participants’ fiscal abilities in the NDIS? Why are we not focusing more on poor operations of businesses who charge a ridiculous amount for mediocre quality services that are so subpar it is appalling they are allowed to exist in the first place? These businesses continue to operate because they are being funded by the taxpayer, which demonstrates that, without taxpayer funds these businesses would collapse. Why aren’t we placing the onus of overseeing and getting those cost overruns investigated onto the NDIS’ Quality and Safeguarding Commissioner? Why are we not focusing on arming the Commission with actual teeth and quality staff to act immediately on complaints? Given that people with disabilities and deaf people are often assumed guilty then proved innocent later, why this double standard?[[5]](#footnote-5)

**Planning Frameworks:**

The NDIS bill proposes to replace current NDIS plans with what they call framework plans. The intention is to provide a budget to fund supports based on ‘needs assessment.’ The needs assessment is intended to be limited to impairments that meets the disability or early intervention requirements as outlined in subclause 32L(3) of the original bill.

However, because the Getting Back on Track NDIS bill does not clearly state WHO will be doing the assessments, it does give rise to concern. While the current government explicitly stated their commitment not to introduce independent assessments, this needs assessment approach where it is vague as to WHO will do it, makes possible that the NDIA will appoint a so-called expert to assess one’s needs, which is independent assessment by another name. The NDIS Review did state that ‘*The Needs Assessor should be a representative of the National Disability Insurance Agency*’ (*pp.93*) so this concern is not without foundation. Because this assessor would be representing the NDIA, not the NDIS participant, how is it possible to achieve a fair and just framework plan that fulfils the goal of living as a fully functioning citizen in one’s own communities?

The new bill also outlines the use of an assessment tool, which will ‘*be highly technical and developed in consultation with the disability sector and medical and professional experts*.’ Consultation is not co-design. This ignores the NDIS Review which emphasises designing with people with disabilities and other experts in a transparent manner, for example, testing of functional and needs assessment must ‘...*include involving people with disability and independent experts and conducting transparent trials with participants*.’[[6]](#footnote-6)

**Communication:**

The most accurate way of assessing a deaf person’s needs is to have chosen people who are experts in the field of deafness. People who deaf people feel best represent understanding and experience of deaf lives. Not hearing people with no contact or lived experience with deafness (having relatives with age related deafness does not even count and is indeed insulting to list as knowing what a deaf life with Auslan is). It is often the experience of the deaf community that inappropriate, unqualified, and offensive assessments are conducted on them at their expense. How then, does the bill propose to avoid this with deaf people? It does not - as stated above the needs assessor will be representative of the NDIA and the NDIA is not deaf friendly at all.

There is no provision in the bill to consider opportunities to best communicate with deaf people if they need to be contacted. The bill specifically states that the CEO will suspend framework plans and budgets if requested information is not received within a specific time limit. If there is no response at all then the framework plans and budgets are revoked. It is the deaf community’s experience that when they liaise with governmental offices such as Services Australia their request for alternative ways to contact them are ignored, resulting in severe consequences for the deaf person. Despite technological advances that are ubiquitous, such as emails and text messages, video relay interpreting services, governmental bodies will ignore these easy opportunities to contact the deaf person. How is the deaf community to feel confident that the CEO will contact them using appropriate and easily available methods?

**Other Concerns:**

Deaf Australia is unsatisfied with the Bill as it stands because it does not answer the following questions:

1. How do you measure success in early intervention of deaf babies and children? If a cochlear implant clinic drafts a report that says a deaf child can hear all the 7 Ling sounds and can produce spoken language is that deemed a success? Contrary to widespread belief a deaf child with a cochlear does not necessarily have age-appropriate language skills, particularly pragmatic skills each year they age.[[7]](#footnote-7)
2. Who decides what is evidence-based with deaf children? Evidence is not fact.
3. CEOs are hired because of their business skills and ruthless decision-making processes. One would argue that this is not the best skill set for the NDIA. How can a CEO assess processes accurately if they do not have lived experiences of deafness and/or disability?
4. The Bill does not outline how and when functional capacity changes over time. Deafness does not change over a person’s lifespan – this only happens in a fantasy realm. The only possibility of functional capacity changing over time is if all Australians knew Auslan fluently. What are the chances of that?

**Conclusion:**

Deaf Australia is concerned about the focus on the NDIS being prohibitively expensive and the misallocation of blame onto participants ‘overspending’ and because of ‘intra-inflation’ rather than acknowledging the impact of broad and far-reaching inflation, the overcharging from businesses and services, and the level of fraud occurring in the NDIS. There is also an overemphasis on health-based supports, which raises concern that the NDIS is becoming more medical-model based rather than shifting to a social and human rights model that is underpinned by the United Nations’ Convention on the Rights of Persons with Disabilities. While there is acknowledgement that safeguarding of participants takes a more prominent place in the Bill, it means nothing if the NDIS Quality and Safeguarding Commission are not adequately funded and armed with teeth to follow through with protecting participants[[8]](#footnote-8).

Deaf Australia is also concerned with establishment of need assessors due to extensive experience of having assessment conducted on deaf people at their expense, resulting in inappropriate and inaccurate reports made about them. Communication with deaf people in their language which is Auslan, is essential. While the CEO will follow the letter of the law in complying with the set period of contact and response, it is concerning they make no specific allowance for those with other communication needs.

It is Deaf Australia’s hope that the Getting Back on Track Bill will take seriously the concerns outlined in this submission. It also hoped that co-design will be the chosen means to achieving fair and just outcomes for deaf people who use Auslan as their primary language to communicate in.

1. <https://ministers.dss.gov.au/media-releases/14256> [↑](#footnote-ref-1)
2. See Per Capita’s Report here: <https://percapita.org.au/blog/our_work/false-economy-the-economic-benefits-of-the-ndis-and-the-consequences-of-government-cost-cutting/> [↑](#footnote-ref-2)
3. <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7181> [↑](#footnote-ref-3)
4. See Explanatory Memorandum: <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7181> [↑](#footnote-ref-4)
5. An example is where Services Australia automatically assume the worse of its clients and cut them off immediately. Only when investigations discover that it was Services Australia and not the client who made the mistake, then will restart payments or other means of support. It is so common that people with disabilities and deaf people are often judged guilty before being found innocent. [↑](#footnote-ref-5)
6. See here: <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis> [↑](#footnote-ref-6)
7. See, for example, Crowe, K. & Dammeyer, J. (2021). A review of the conversational pragmatic skills of children with cochlear implants. *The Journal of Deaf Studies and Deaf Education*, Vol. 26 (2): 171-186 [↑](#footnote-ref-7)
8. See here for the most recent example at the time of submission: <https://www.abc.net.au/news/2024-05-09/ndis-provider-evoloution-support-services-under-scrutiny/103814678> [↑](#footnote-ref-8)