



Community Affairs Legislation Committee

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

Occupational Therapy Australia  
submission

July 2024

## Introduction

Occupational Therapy Australia (OTA) is the professional association and peak representative body for occupational therapists in Australia. There are over 30,000 registered occupational therapists working across government, non-government, private and community sectors in Australia, including more than 8,600 occupational therapy providers who deliver services to participants under the National Disability Insurance Scheme (NDIS).

OTA previously provided a [submission](#) to the Committee in April 2024 regarding the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (the Bill), prior to its amendment in the House of Representatives. We thank the Committee for the opportunity to provide an additional submission.

OTA has examined the Bill amendments adopted in the House of Representatives and proposed in the Senate. We have also examined the Committee's Final Report, published on 20 June 2024. Following this examination, OTA continues to oppose the passage of the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (the Bill), even with recent amendments. The key points OTA outlined in our initial submission have not been addressed. We continue to hold concerns about the Bill as amended and restate some of our key issues below.

### **Uncertain NDIS reform pathway**

OTA remains concerned that there has not been provision of adequate information by Government on their proposed disability reform agenda, and in response to the recent Independent Review of the NDIS, and the Disability Royal Commission. This includes information on proposed Foundational Supports, which Government has indicated will provide supports for persons who do not qualify for an individual NDIS plan. We are concerned that Government is yet to provide detail on the quality or extent of these supports which are anticipated to replace, in some cases, the supports provided by the NDIS, particularly for children. We look forward to the Committee's examination of the positions of states and territories on this important issue.

**Recommendation 1: That passage of the NDIS Bill is paused until the Federal Government provides a fulsome response to the NDIS Review and Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, so that participants, their families, advocates, and support providers can understand the proposed reforms as an entire reform proposal, and understand how these legislative changes will actually impact participants in terms of the services and supports they can access under new reforms.**

### **Provision of economic modelling**

OTA also believes that the Bill's passage through Parliament should be supported by provision of sufficient information on the economic modelling that underpins the stated budgetary savings that are proposed through these legislative changes. It is critical that Parliament and key stakeholders have access to this key information to understand how the new NDIS processes and Rules proposed within the Bill will impact the provision of future NDIS services, and the effects this will have both on participants and the provider market.

**Recommendation 2: Before progressing the NDIS Bill, that Government provides the Committee and stakeholders with detail of the projected impacts of the proposed reforms, including:**

- **Estimated impact on participants including:**
  - **projected changes in NDIS plan value (averaged per participant) due to introduction of new needs assessment process, changes to plan management type, plan length, and definition of NDIS Supports;**
  - **projected number of participants who will be diverted into early intervention pathways or foundational supports and the estimated efficacy of these supports in assisting people to build personal capacity, including social and economic participation.**
- **Estimated impact on the NDIS provider market.**

### **High quality and appropriate needs assessments**

OTA maintains that our previously stated concerns about the new needs assessment process have not been adequately addressed. We remain concerned that the Bill, even as amended, does not provide adequate legislative protection to ensure a fit-for-purpose needs assessment that will appropriately identify a participant's disability support needs. The proposed needs assessments will be used by the NDIA to make critical decisions about a participant's NDIS supports and must ensure it is conducted by an appropriately skilled assessor, in a manner that is suitable to appropriately assess the impact of disability on a person's function and identify their disability support needs. It must also be a reviewable process and the outcome of an assessment must be communicated to a participant in a way that is accessible.

OTA is concerned that the Bill proposes to devolve key elements of the needs assessment, including its format and process, to the NDIS Rules, which we believe may see the adoption of low cost and non-specialised approaches that meet the needs of the NDIA bureaucracy, but are not best practice. We are also concerned that devolvement of this detail to NDIS Rules may see changes made over time that do not undergo appropriate stakeholder or parliamentary scrutiny.

OTA submits that the NDIS Bill should be amended to explicitly require key elements of the needs assessment in the primary legislation to ensure that it is a core requirement that must be followed to support a high quality and appropriate needs assessment report. This should include a legislative definition for the term 'assessment of support need' to ensure this is defined and can be referred to by the NDIA when implementing the legislation. The legislation should also require that the assessment consider the whole-of-person, is appropriate for their life and circumstances, is appropriate for their specific type of disability/disabilities and accurately assesses their disability support needs.

The legislation should also include an explicit requirement that the needs assessment is conducted by an appropriately qualified person. OTA agrees with the guidance provided by the NDIS Independent Review<sup>1</sup> that this is an allied health practitioner, and the assessor must have appropriate skills and experience in disability support and be working within their scope of practice. Without legislative protection through mandating minimum skills and qualifications, we are concerned that unskilled staff will undertake cookie-cutter assessments that are potentially inappropriate for an individual's disability type/s, or specific needs, with potentially catastrophic consequences where assessments are inadequate, are inappropriate, or result in inadequate levels of disability support that present a risk to a person's safety and wellbeing.

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<sup>1</sup> *"The assessment should be completed by a skilled and qualified Needs Assessor who is a trained allied health practitioner or social worker, or similar, with disability expertise."* Page 88 of the Independent Review of the NDIS 2023 Final Report: <https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>

To provide protection to participants, we also contend that assessors should be independent of the NDIA in the performance of their functions. This would ensure that the assessment is conducted in line with the NDIS legislation, and is not constrained or impacted by direction from the NDIS that may have implications on the types of levels of support that are recommended due to budgetary or other constraints.

We also believe it is important that the legislation requires that a person will receive a copy of their full assessment report in an accessible format as soon as practicable after it is produced. The assessment should clearly state all of the person's required supports, and where the assessment finds identified supports to be the responsibility of another system (for example health, education or other source), this should be clearly stated. It should also enable the participant to seek correction or amendment of the needs assessment, including the ability to request a new needs assessment, where it is identified that the assessment was not conducted in line with the correct process, where it was inappropriate for the participant and their circumstances, or where it resulted in inaccurate or inappropriate outcomes.

**Recommendation 3: The Committee recommends amendments to the Bill as outlined above, and particularly to:**

- **Provide a definition of 'assessment of support need'.**
- **Require that needs assessments consider the whole-of-person, are appropriate for the participant's life and circumstances, and appropriate for their specific type of disability/disabilities.**
- **Specifically require that needs assessments are undertaken by appropriately skilled and qualified persons (for example an allied health professional), independent of the NDIA.**
- **Specifically require provision of a copy of a full assessment report to be provided to a participant in an accessible format, that outlines all identified supports, and including specific review rights.**

### **Broader NDIS market impacts**

OTA remains concerned that the Bill enacts a range of changes to the NDIS that will result in wide scale impacts on the NDIS provider market, through restriction of specific NDIS supports, and creation of pathways to divert persons to early intervention services or Foundational Supports which will be engaged via Government block funding or tender arrangements.

This will be a significant departure from the individual choice and control model that the NDIS market has adapted to over the past 10 years and has the potential to massively disrupt the NDIS provider market, which is facing significant financial pressures. These pressures have been compounded through the NDIA's recent Pricing Review Decision outcome, which saw a continuing freeze on the price cap for therapy supports. OTA's members have advised that many are contemplating exiting from the NDIS service provision due to significant financial pressures, with almost one in four surveyed occupational therapists advising they are contemplating exiting NDIS service provision in the next three years due to financial pressures. The potential disruption proposed by this Bill, and the lack of clarity from Government regarding its reform agenda, compounds this pressure and we hold serious concerns for the NDIS provider market over the longer term.

## **Contact**

Occupational Therapy Australia  
policy@otaus.com.au