Submission to the Senate Community Affairs Legislation Committee

Inquiry into the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026

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About me

I'm Sam Paior, from The Growing Space - a support coordination, and informal systemic advocacy practice working with NDIS participants and families across Australia. I am also sole parent of two young adult NDIS participants – one with Down syndrome and autism, and one with brain injury. I am co-founder and director of the Self Manager Hub, a community of 16,000 participants and nominees who predominantly self-manage (some are plan managed). I have also held a role on the NDIS Independent Advisory Council for the past 5.5 years.

This submission reflects my personal and professional work outside of IAC and the Self Manager Hub. Over the last two weeks I have read the Future Generations Bill, its Explanatory Memorandum, and the Integrity and Safeguarding Act 2026, alongside published analyses from the Justice and Equity Centre, Darren O'Donovan, Villamanta Disability Rights Legal Service and Intrepidus Law, and the first 30 published submissions to your Committee. I have reached more than 536,000 views through our social media and learned of concerns from more than 9,600 online interactions since April 22nd, the date of Minister Butler's Press Club Speech. This submission tries to make sense, and recommendations, from what I learned.

I support the objective of placing the NDIS on a sustainable long-term footing. I do not support this Bill in its current form. It contains several changes that, in my view, the Committee should recommend be amended before passage. I have set them out below by audience - because the Bill's effects fall very differently on existing participants, prospective applicants, self-managers, providers, and on the "reasonable and necessary" test itself.

The exceptionally short timeframe for responses to this Bill means I may have made errors in my interpretation of the Bill, and I am not a lawyer, so reading and fully understanding the implications of nearly 400 pages of Bill and Explanatory Memorandum and drafting this response has been overwhelming and not as thorough or fulsome as I would have liked.

This submission is in my own words, with some AI assistance for typo and grammar checking and to ensure consistency and reduced repetition. It is mostly written as though I were speaking directly to the people who are subject to the proposed legislative changes -

- participants and nominees

- future potential participants and their nominees
- people who self-manage their NDIS plan funding (often with highly individualised teams post service failures and harms to those with profound disability/needs)
- NDIS providers
- everyone affected by the proposed changes to “Reasonable and Necessary”, and the lack of clarity and security around buying/claiming decisions

Recommendations are numbered inline under each section where the issue is discussed, and list again at the end of the submission under the same numbers for ease of reference.

1. If you're already on the NDIS

Seven pieces of this Bill concern me for people already on the scheme.

The Minister can cut your plan by instrument, with no review (s 34A). A percentage of funding can be removed from a support category by legislative instrument. The first cut is locked in: social and community participation, phased in from 1 October 2026 as plans renew. The same power can apply to any support category to any level in future. The EM confirms: “Changes to funding as result of support determinations are not subject to merits review” (¶ 285). For a participant whose social and community participation funding is what keeps them in the world outside their own front door, including assistance at GP appointments, support while visiting Mum or Papa in the nursing home, and even help at the supermarket.

> *Suggestion 1:* Amend s 34A to require that any percentage reduction be preceded by mandatory co-design, or at the very least, consultation with the disability community and a published impact statement, and that affected participants retain individual merits-review rights where the reduction produces an harmful change in their plan.

Particular concern for participants with very high support needs. For some participants, social and community participation funding is not discretionary or recreational in any meaningful sense. It is the mechanism through which essential supervision, behavioural support, communication support, nursing oversight, airway safety, active support, and intensive disability support are delivered outside the home. A participant requiring 24/7 supervision may be funded through a combination of in-home support (say, 18 hours per day) and community participation support (say, 6 hours per day), together creating a practical 24-hour safe support framework.

Where a participant requires continuous 1:1 support because of profound behavioural support needs, complex health risks, tracheostomy care, swallowing risks, absconding risk or other intensive needs, a percentage-based reduction to community participation funding does not magically reduce the need for supervision. It simply leaves periods of the day where no safe support arrangement exists. The foreseeable risks include serious neglect, preventable hospitalisation, increased restrictive practices, carer breakdown, placement collapse, increased emergency service involvement, and in some circumstances, life-threatening harm including choking, airway difficulties and self-harm.

The Bill and its associated public commentary risk framing community participation supports as discretionary lifestyle expenditure - workers scrolling on phones. That framing does not recognise that, for many participants with complex disability, these supports are inseparable from core safety, supervision, communication, regulation, inclusion and safeguarding needs.

> *Suggestion 2:* Amend s 34A so that any percentage reduction to a support category cannot apply to participants whose plan funding for that category reflects high or complex support needs - including but not limited to participants requiring 24/7 supervision, participants with profound behavioural support needs, participants with complex health support needs (including tracheostomy, swallowing risk or airway management), and participants with intensive 1:1 support requirements. Provide an automatic exemption mechanism so that a uniform percentage reduction cannot produce unsafe gaps in supervision or support.

The Minister can also cap any support, for any cohort, at any time (s 33(2EA)). By legislative instrument, the Minister can specify a maximum amount, a maximum intensity (the EM's example is “12 hours per year of a particular kind of therapy support” - ¶ 515), or a maximum worker-to-participant ratio. It overrides the planner's reasonable-and-necessary finding - the EM's Marco example walks through it (¶ 527): planner finds 30 hours of therapy is needed, cap is 25 hours, Marco receives 25. A narrower version sits in s 32K(3D) for new framework plans. My structural concern: new ss 33(2G)–(2H) and 209(2AA)–(2AB) (EM ¶ 1424–1426) *allow* the cap value to live in a document incorporated by reference, which the Agency can update without Parliament seeing it again. The cap *rule* stays disallowable; the cap *number* underneath it does not.

> *Suggestion 3:* Require cap values themselves to sit in the disallowable NDIS rule, not in a document incorporated by reference under ss 33(2G)–(2H) and 209(2AA)–(2AB).

The "whole of person" approach is being narrowed (s 34(1)(aa)). Section 34(1)(aa) adds the word "directly" - supports become fundable only if the need arises "directly" from a qualifying impairment. As Darren O'Donovan notes, this "erects a medicalised barrier on the claiming of support." For people whose disabilities interact - physical and psychosocial, or sensory and cognitive - that interaction may stop being funded.

> *Suggestion 4:* Delete the word "directly" from s 34(1)(aa), restoring the whole-of-person approach achieved in the 2024 amendments.

Plans auto-renew and unspent funds are not rolled over (s 50A). From 1 February 2027, when a plan ends it is automatically renewed for 12 months by operation of law - and is not subject to merits review (EM ¶ 352). But the Bill makes no distinction between one-off funding you've already used and one-off funding you're still waiting on. A custom wheelchair on order? A home modification quoted but not yet built? A vehicle modification still being finalised? On the literal text of s 50A(2)(b), that funding disappears at the plan end date. The variation power in s 47A cannot rescue it - variations adjust supports that are *in* the plan; they don't restore supports stripped from it by operation of law. The EM's "Soraya" example carefully picks a participant whose wheelchair has already been purchased (¶ 472); it never addresses the participant whose chair is still on order. This feels like an easily fixable and likely unintentional drafting oversight.

> *Suggestion 5:* Amend s 50A(2)(b) so that one-off funding which has been quoted, ordered or otherwise actioned at the plan end date carries over until the support is provided andclaimed or 12 months after renewal, whichever is earlier.

Asking for an unscheduled reassessment becomes much harder (s 48A). The Agency now has 90 days instead of 21 to decide AND the "deemed decision" safety net is gone, AND the change must be "significant and ongoing" - with informal-supports changes only counting if "unanticipated."

> *Suggestion 6:* Retain the 21-day decision timeframe for unscheduled reassessment requests, restore the "deemed decision" safety net for missed deadlines, and remove the "unanticipated" qualifier on informal-supports changes.

There is also no emergency reassessment pathway. The Bill treats all unscheduled reassessments the same. But for a participant whose support arrangement has collapsed, whose housing is at risk, whose behaviour support needs have escalated, or who is facing an immediate safety risk, 90 days is not a timeframe - it is the period in which harm happens. The current scheme has no statutory fast-track pathway for these participants, and the Bill does not create one. It should.

> *Suggestion 7:* Insert into s 48A a separate emergency reassessment pathway with a statutory 14-day decision timeframe, available where the participant, a nominee or a treating practitioner certifies that the participant faces an urgent safety, housing, behavioural or support-breakdown risk. Provide that a missed 14-day deadline is a deemed decision in the participant's favour pending final determination.

Plan suspension and revocation can happen without you knowing (ss 40A, 30(1A)). The CEO can suspend a plan after "reasonable attempts" to contact the participant - but neither "reasonable attempts" nor the minimum period before such attempts can be deemed exhausted is defined in the Bill. A participant could be overseas for two weeks, in hospital, in a mental-health crisis admission, in the middle of a family bereavement, or simply have a phone number that's been changed - and find their plan suspended. Suspension for 90 days = revocation under s 40A. Worse, s 30(1A)(a) allows *direct* revocation without the 90-day window if reasonable attempts have been made. None of the protected circumstances participants would expect - hospital admission, mental health crisis, bereavement, short-term overseas travel, communication breakdown - is named in the Bill. The Agency's administrative discretion is the only safeguard, and it isn't enough.

> *Suggestion 8:* Define “reasonable attempts” in s 40A and s 30(1A) as requiring evidenced contact attempts via every channel the participant has provided (phone, email, post, and any listed emergency contact, nominee or support coordinator), documented and spread over a minimum 60-day period. Build in protected-circumstance exclusions that pause the clock - hospitalisation, mental health admission, bereavement, family emergency, overseas travel of less than 6 weeks, and communication breakdown outside the participant's control. Remove the direct-revocation pathway in s 30(1A)(a); the 90-day suspension window in s 40A does the necessary work without removing the safety net.

Eligibility itself is being reopened. Section 9B introduces a new “functional capacity” test (described in section 2). The EM is explicit that it applies to “all current participants in the NDIS as well as anyone who applied to the NDIS previously or applies in the future” (¶ 143). From 1 January 2028, existing participants can be reassessed. The EM concedes the Scheme will be “significantly smaller” than the ~900,000 participants projected for 2029–30 without reform (¶ 2132).

> *Suggestion:* (See Suggestion 10 in section 2 - delay the commencement of the s 9B test until the assessment tool has been designed, consulted on, piloted, tested/evidenced and made public.)

Schedule 5 sits over all of this - a “Henry VIII power” (a term/history new to me!) letting the Minister modify how the NDIS Act operates for 12 months by “transitional” rule. We've seen how “transitional” plays out: the 2024 NDIS Supports Rules carried that label and are still in force eighteen months later, amended multiple times.

> *Suggestion 9:* Narrow the Schedule 5 transitional rule-making power - limit the subject matter to specifically enumerated transitional issues; reduce the duration; require mandatory consultation with the disability community; and require a published impact statement before any such rule is made.

2. If you're trying to get on the NDIS (eligibility)

A new "naked person" functional capacity test (s 9B). Functional capacity is defined as your ability to do an activity "without assistance from other people, assistive technology or modifications" and in a context that "excludes, as far as possible, the impact of the person's environmental and personal circumstances." That is not how disability actually works. In real life, the effects of multiple impairments cannot be neatly separated. A vision impairment shapes how a person navigates the world; a physical impairment shapes what they can carry; a psychosocial impairment shapes when and where they feel able to leave the house – and even a mild impairment of one of these can exponentially impact the support needs related to the eligible impairment. These interact constantly. As Hespe J recognised in *Eastham*, 'a need for a support will invariably be the product of a confluence of factors' (at [83]). The Bill, by inserting 'directly' and repealing Note (b), demands that participants and planners do something that is in practice impossible - pull apart a single need into its component causes and pin it on the one qualifying impairment.

The detailed assessment tool comes later through rules - so Parliament is being asked to vote on the legal shell of a test it hasn't seen. The proposed timeframe to create, test and implement this tool is genuinely unachievable without putting lives at risk through poorly designed, implemented and tested algorithms.

> *Suggestion 10:* Delay the commencement of the s 9B test until the assessment tool has been (a) designed and published in draft, (b) consulted on with the disability community, (c) piloted with diverse cohorts including people with intellectual disability, psychosocial disability, rare conditions, and First Nations and CALD participants, and (d) made subject to disallowable parliamentary scrutiny of the rules creating the tool.

You must try "all appropriate treatment" first (s 25A). "Appropriate treatment" is treatment that is evidence-based, regularly performed in Australia, and can reliably be expected to "materially improve" your impairment. Section 25A(2) provides that treatment is appropriate "regardless of whether the person's individual circumstances restrict the person from accessing the treatment." This overturns *NDIA v Davis* (2022). If you can't afford it, if there's a five-year wait list, if you live somewhere it isn't available - that doesn't matter for this test. This is a return to the old postcode lottery, and will disproportionately impact our First Nations people and all those on low incomes or with other healthcare access barriers (this also disproportionately affects those with intellectual disability).

> *Suggestion 11:* Remove or qualify s 25A(2) so that the participant's individual circumstances restricting access to treatment - including geography, cost, wait lists, and access barriers tied to disability - must be considered in deciding whether a treatment is "appropriate" for that person.

"Materially improve" is like a trap door - and the Bill doesn't define it. Both the new permanence test (s 24(5)(b)) and the "appropriate treatment" definition (s 25A(1)(b)) hinge on whether a treatment can "materially improve, reverse, or alleviate the impact of, the impairment." The Bill itself doesn't define "materially." The EM at ¶ 639 and ¶ 648 says "materially means noticeably or significantly" - and "noticeably" sits at a very different point on the spectrum from "significantly." The drafting flaw: the test is about improving "the impact of the impairment," not whether the treatment would lift you out of the scheme. So a treatment producing a "noticeable" improvement to one aspect of an impairment can disqualify you - even if you would still be well below the substantially-reduced-functional-capacity threshold after it. The EM's "Matiu" example uses friendlier language about functional capacity (¶ 663), but a court will read the Bill first. This is possibly another unintended drafting miss, and needs fixing in the legislation, not the EM.

> *Suggestion 12:* Define "materially improve" in the Bill itself (not the EM) by tying it to the substantially-reduced-functional-capacity threshold - so a treatment that produces a "noticeable" improvement but leaves the person still well within the scheme's eligibility threshold does not disqualify them.

Early intervention narrows from "mitigating or alleviating" to "reducing" (item 90 of Schedule 1). People with degenerative conditions - MND, MS, Parkinson's - currently come into the scheme on the basis that supports can mitigate the impact of inevitable decline. Showing that a support will *reduce* impact is much harder when capacity is on a known downward trajectory.

> *Suggestion 13:* Retain the existing wording "mitigating or alleviating" in the early-intervention provisions; do not narrow it to "reducing."

Compensation schemes block you automatically (s 25B). If your impairment was caused by a motor-vehicle accident or workplace injury and a compensation scheme covers it, that impairment is "excluded" - regardless of whether the compensation scheme actually pays for the supports you need. Section 25B(4) lets the Minister declare other systems as "alternatives" by rule; the EM specifically names aged care (¶ 685). Worth watching if you're approaching the age-care/disability interface - including First Nations people who can access aged care from age 50. Might also boot you from the scheme on an eligibility reassessment where your impairment was caused by a car accident 30 years ago and at the time you used the payout to buy your home – are you now required to sell your house to fund your support needs? And what happens when those funds run out?

> *Suggestion 14:* Amend s 25B so an "excluded impairment" only applies where the compensation or alternative scheme actually pays for the supports the participant needs. Require any s 25B(4) declaration of an alternative system to be a disallowable instrument, subject to mandatory consultation with the disability community and, where the declaration affects First Nations people, with relevant First Nations representative bodies.

And the access decision timeframe blows out from 21 days to 90 (s 20(2)(a)). An extra ten weeks without supports while you wait.

> *Suggestion 15:* Retain the existing 21-day decision timeframe in s 20(2)(a) for access requests.

3. If you self-manage and/or employ your own workers

Two important pieces of good news, alongside the concerns. While some of this is outside of the current Bill's remit, it gives important context, and may also raise other issues for the Committee that I've not been able to uncover in the Bill due to the time constraints on submissions.

Good news 1: The NDIS Commission has now confirmed twice (Self Management Advisory Group, 5 May 2026, and again in mid-May) that mandatory registration as a SIL provider requires three elements: high-risk supports, *managed by* a provider, *and* delivered by a provider. Self-managers running their own workers or sole-trader contractors are generally not caught. Restrictive Practices remain an exception. No supports stop on 1 July 2026.

However - the Minister has flagged that personal care supports (across the board?) will have a requirement for registration, which may undo the recent comfort provided by the NDIS Commission as per above.

Good news 2: The Minister's new price-setting power does *not* apply to self-managed funding. New s 45C(2) is explicit, and the EM at ¶ 1363 confirms self-managed participants can pay above the price guide where they need to - at the trade-off of buying less. That flexibility survives the Bill.

The claim window drops from two years to 90 days (s 45A(5)(a)). For self-managers who batch their invoicing, who are recovering from a hospital stay, who are parents juggling six things, or who are managing complex teams of workers, this is a real administrative burden.

> *Suggestion 16:* Retain a longer claim window (6 months minimum) with a broader "exceptional circumstances" discretion that explicitly contemplates hospitalisation, family emergency, and the practical realities of self-management.

Three years of records for participants, five years for nominees and others (excluding providers), automatic debt if missing (ss 45B(5), 45B(7), 182(4)). If you cannot produce a specified record on the Agency's request, you owe an *automatic* debt equal to the amount you claimed, and you can't ask for a review - while a reasonable record-keeping requirement is fair, the lack of statutory defences listed is not.

There is an odd defence pattern worth flagging. Providers face a civil penalty for failing to retain records (s 45B(3)) - but the Minister can prescribe rules excusing that penalty (s 45B(4)). Participants and nominees face no equivalent civil penalty but also no equivalent rules-based defence to the debt. Providers can be excused from the penalty; participants and nominees cannot be excused from the debt. The only escape is the s 195 special-circumstances waiver - and s 195(a)(ii) requires that the person did not "knowingly" fail to comply. As O'Donovan puts it, "the agency is not required to put forward any proof of non-entitlement nor even attempt to think about whether the person was, in fact, on broader evidence, entitled." The debt arises by operation of law - only the CEO's *waiver* decision is reviewable, not the debt itself.

> *Suggestion 17:* Amend s 195(a)(ii) to add some kind of "justified in the circumstances" exception, matching recent social security amendments on financial abuse and coercive control (please refer to the Robodebt Royal Commission for recommendations on debt management). Amend s 182(4) to require the CEO to consider whether the absence of records actually corresponds to non-entitlement before raising the debt.

Nominees additionally face a new civil penalty under s 80(5) for knowingly breaching their duty. The carve-outs in ss 73ZSH(2), 73ZSI(2) and 73ZSJ(2) protect against infringement notices, compliance notices and enforceable undertakings - but not against a direct civil-penalty order in court. Many nominees are unpaid family members who have stepped into the role to support someone they love. The exposure they would carry under this Bill is disproportionate to the role.

> *Suggestion 18:* Remove s 80(5), or in the alternative, add a "reasonable steps" defence and explicit protection from direct civil-penalty orders where the nominee is acting in good faith without remuneration.

4. Certainty and flexibility - what's missing from the Bill

Two important gaps in the current scheme are not addressed anywhere in this Bill. Both leave participants and nominees carrying the risk of decisions only the Agency can make, and both could be fixed by simple statutory amendments.

There is no way to check before you buy, and no way to appeal after you've claimed (ss 45, 45A). The Bill does nothing to fix what is already one of the worst administrative gaps in the scheme. There is no statutory mechanism for a participant or nominee to obtain a binding ruling on whether a particular support is claimable before they purchase it, and no appeal pathway if the Agency cancels a claim after the money has been spent. Self-managers and plan-managed participants are forced to make purchasing decisions on the basis of operational guidelines, a pricing document, a contradictory and difficult even for the ART to use NDIS Supports list, and (sometimes) genuinely lousy verbal advice from the contact centre or written advice from an LAC, Support Coordinator or Plan Manager (none of whom have decision making authority) - and none of which binds the Agency. If the Agency later disagrees, the participant carries the debt under s 182(4), and the only escape is the s 195 special-circumstances waiver. There is no equivalent of the ATO's binding private ruling mechanism or Medicare's MBS item lookup.

Under the Bill this gap becomes more dangerous, not less. The claim window drops from two years to 90 days (s 45A(5)(a)), missing records produce an automatic debt (s 182(4)), and automated decision-making is authorised for s 45 and s 45A from seven days after Royal Assent. The Agency gets faster, more automated, and harder to challenge. Participants get less time, fewer defences, and the same lack of pre-claim certainty. It's a lose-lose.

> *Suggestion 19:* Insert into the NDIS Act a binding pre-claim advice mechanism modelled on the Australian Taxation Office's private rulings (see ITAA 1953 Schedule 1, Part 5-5) under which a participant, nominee or plan manager may apply in writing to the Agency for a ruling on whether a specified support is claimable *for that participant*, and the Agency is legally bound to honour that ruling for the period stated. Provide statutory timeframes within which the Agency must respond, beyond which a positive ruling is deemed to have been given.

Where a participant relies in good faith on written advice, the Agency should be held to that advice. A binding pre-claim advice mechanism (above) is one half of the answer. The other half is that, where a participant has acted on written advice direct from the Agency that a particular support is claimable, the participant should not later be saddled with a debt because the Agency changed its mind. Without that protection, written advice is worthless and the system runs on fear and guesswork.

> *Suggestion 20:* Insert into the NDIS Act a statutory safe-harbour provision so that, where a participant or nominee has relied in good faith on written advice from the Agency that a particular support is claimable for that participant, the participant is

> not liable to repay claims approved on that basis, and any debt arising must be waived under s 195.
>
> *Suggestion 21:* Provide a statutory merits-review pathway for claim disallowances and post-payment claim reversals under ss 45 and 45A, including timeframes within which the Agency must act to reverse a paid claim, and beyond which a paid claim is deemed finally approved. Where the Agency seeks to recover a paid claim as a debt, the participant or nominee should have a right of merits review of the *underlying claim decision*, not only the debt decision.

The Bill misses a chance to embed accessibility, Easy Read and supported decision-making at the level of the Act. None of these changes will work as intended if participants cannot understand them, cannot read the decisions made about them, and cannot get the supported decision-making help they need to navigate the system. The Bill creates a denser, faster, more automated scheme - and does nothing to make sure that participants can engage with it on equal terms. Easy Read versions of plan documents and key decisions have never been provided by the scheme. Communication supports for participants with intellectual disability, psychosocial disability, complex communication needs or CALD backgrounds are not statutorily required. Supported decision-making, recognised throughout the Disability Royal Commission's recommendations, is not embedded as a statutory obligation in the NDIS Act.

> *Suggestion 22:* Insert into the NDIS Act statutory obligations that (a) all participant-facing decision notices, plan documents, and review information must be provided in Easy Read and in formats accessible to the participant on request, at no cost; (b) the Agency and its authorised intermediaries must provide reasonable communication supports to participants to enable them to understand and respond to decisions affecting them; and (c) the principles of supported decision-making (recognised in the Final Report of the Disability Royal Commission) are to be observed by the Agency and the Tribunal in decisions affecting a participant. Make non-compliance a reviewable decision.

The Replacement Supports rule is too narrow. The 2024 NDIS Supports Transitional Rules contain a Replacement Supports mechanism which allows a participant to ask the Agency for approval to spend existing plan funding on a “standard household item" (which would otherwise be on the "out" list) as a replacement for a more expensive or less beneficial support that is on the "in" list. One example might be a second washing machine ("out" list) used to wash many times daily soiled linens and clothing, replacing a more expensive weekly commercial linen service ("in" list). The mechanism exists. It somewhat works. But it is artificially narrow and is not a reviewable decision.

The rule only allows replacement with a standard household item. It does not allow replacement with a mainstream service or support that would achieve the same or better outcome for the participant at the same or lower cost. Consider three examples a self-manager will recognise immediately:

A visual reminder and scheduling app designed for use by someone with intellectual disability, on a mainstream smartphone, replacing part of the cost of a support worker prompting the participant several times a day.

A short weekly engagement with a motivational or behaviour-change coach, replacing months of more expensive specialist behavioural support.

A few hours with a lawyer to review self-management contracts for a participant who employs their own workers, replacing the much higher ongoing cost of engaging a full-service HR provider to manage the same employment arrangements.

In each case the replacement is cheaper, more dignified, more inclusive and at least as effective. In each case the current rule blocks it because the replacement is not a "standard household item." This is exactly the kind of choice-and-control flexibility the scheme was designed to enable, and was indeed promised for New Framework Plans. It is also exactly the kind of cost-effective spending the Government says it wants. The Bill should not pass without broadening this rule.

> *Suggestion 23:* Amend the NDIS Supports Transitional Rules (or replace them with provisions in the NDIS Rules made under the Act) to broaden the Replacement Supports mechanism so that a participant or nominee may apply to the Agency for approval to spend existing plan funding on any mainstream good or service that achieves the same or a better outcome for the participant at the same or lower cost than a comparable "in" list support, provided that the participant or nominee documents the comparison and the Agency retains a discretion to refuse on stated reasons. Make any refusal a reviewable decision.

5. If you're a provider

I will keep this short because providers will be making their own submissions, and my concerns are focused on the impacts for disabled people and families. But the Committee should note for further context:

Penalties have moved up by an order of magnitude - 10,000 penalty units for a “serious contravention” (new s 11B, Integrity Act), well over $3 million per breach. Operating unregistered when you should be registered is now criminal (s 73B). Banning orders reach key personnel, approved quality auditors and people involved in providing services that “enable or facilitate” supports (s 73ZN(2B)). A new Anti-Promotion Order power exists (s 73ZOA). The NDIS Provider Register publishes compliance notices and enforceable undertakings (s 73ZDA). I have no argument with these.

However, under the Bill, the NDIA is now its own enforcement body, on top of the Commission - with its own inspectors, investigators, compliance notices, enforceable undertakings and infringement notices (ss 73ZSH–K). Two regulators, two parallel sets of powers. I do not understand why these powers proposed to be given to the NDIA could not be given to the Commission instead, and why government would want to fund two sets of enforcement?

> *Suggestion 24:* Consolidate the enforcement powers proposed in Schedule 2 Part 2 within the existing NDIS Commission rather than establishing a parallel NDIA enforcement function. The Commission is already set up to regulate in the NDIS context.

Also, under the Bill, NDIS pricing now sits with the Minister, on Agency advice, through legislative instrument (s 45C). The NDIS Review's Recommendation 11 was that pricing should be done by the Independent Health and Aged Care Pricing Authority (IHACPA) - the same independent body that prices hospital and aged care services. The Bill goes a different way. Less independence and more political “flexibility.”

> *Suggestion 25:* Implement NDIS Review Recommendation 11. Amend s 45C so maximum-price determinations must be made on the binding advice of IHACPA, not the Agency.

6. Reasonable and necessary, rebuilt

These changes feel among the most consequential. The test that decides what gets into your plan - section 34 - has been deeply re-engineered.

Financial sustainability is now built into the bones of the scheme (s 3(1)(d), s 17B). Section 3(1)(d) is rewritten so the scheme's objects become “provide NDIS supports that are reasonable and necessary, so far as is consistent with the financial sustainability of the scheme” (EM ¶ 485). Section 31 - the principles directing planning to be individual, choice-led and participant-directed - is repealed in full. New s 17B requires the CEO to have regard to scheme sustainability in every planning decision. This applies to both old and new framework plans. It is the most fundamental architectural shift in the Bill and has barely been mentioned publicly. It doesn’t sound too distressing on the face of it, but think about what it means in terms of the whole direction of the scheme. It’s a strong pointer to a “disabled people are a burden” mentality, and sadly enshrines that narrative in the core of the Act.

> *Suggestion 26:* Amend s 17B so financial sustainability is *one* of several considerations the CEO must weigh - alongside the choice-and-control, individualisation and participant-direction principles previously found in s 31 - rather than an override that sits above the reasonable-and-necessary test. Retain s 31's planning principles in modified form within Part 2 of the Act.

“Effective and beneficial” now demands peer-reviewed research first (s 34(1E)–(1F)). A new evidence hierarchy ranks: (a) published peer-reviewed research, (b) participant's circumstances, (c) previous-plan outcomes, (d) “other matters.” Then s 34(1F) goes further: the CEO can refuse to be satisfied if peer-reviewed research is missing - even if (b) and (c) support the participant. Missing research is effectively a veto. Rare conditions don't have peer-reviewed cohort studies. Novel or innovative or customised supports don't have a research base. And these sometime REALLY WORK for an individual. First-time applicants have no “previous plan outcomes.” Treating professionals' clinical experience is buried in (d). And lived experience - knowing what works because you live in your body - has no statutory anchor at all. I also wonder how the Agency could ever hope to fund day programs or group homes - neither of which would meet this evidential requirement (so I guess this amendment is not all bad…).

> *Suggestion 27:* Amend s 34(1E) to enumerate “lived experience of the participant” and “clinical experience of treating practitioners with the participant” as evidence categories of equal weight to peer-reviewed research. Remove s 34(1F), so that missing peer-reviewed research cannot operate as a veto where other categories of evidence support the participant.

“Value for money” now demands cheaper comparable supports - and the safeguard requiring the comparable support to achieve the same outcome has been quietly removed (s 34(1A)). “Comparable” is undefined. So a cheaper support that achieves a different - worse - outcome can be treated as comparable.

> *Suggestion 28:* Restore the requirement that any “comparable support” under s 34(1A) must achieve the same outcome as the support being compared.

The parental responsibility presumption (s 34(1G)–(1J)). The CEO must presume parents are responsible for providing “substantial care and support” - supervision, personal care, transport, emotional and behavioural support - for their disabled children. A drafting flaw to flag: only paragraph (1H)(b) carries the qualifier “regardless of the child's disability.” The (1H)(a) list does not. On the literal text, the presumption is that parents do all of that *generally*, not just at the level a parent of any child would do. Section 34(1J) prohibits funding whose primary purpose is to “reduce burdens on parental time below what is reasonably expected of a parent” - with no objective benchmark for what's “reasonable.” This section again seems to consider only a solo young participant as a “naked person” and does not seem to consider the impact where families have multiple children with disability, nor where the parent may have a disability. This is a serious flaw.

> *Suggestion 29:* Insert the “regardless of the child's disability” qualifier into both paragraphs (1H)(a) and (1H)(b), not just (b). Tie the “reasonably expected of a parent” benchmark in s 34(1J) to what a parent of a non-disabled child of the same age would reasonably be expected to do. Require the presumption to be modulated by the actual capacity of the parent (including any disability of the

> parent) and the cumulative care load where the family includes multiple disabled children.

Informal supports first (s 34(1K)). Formal funded supports only where reliance on informal networks would expose someone to “material risk of harm, abuse or neglect that cannot be mitigated through informal or lower cost supports.” A high bar that undervalues choice around carer reliance and loses future-focused capacity-building before carers age out. This also places undue burden on the partner of a disabled person who might be able to provide informal support, but would be unable to maintain employment or any kind of reasonable relationship due to caring responsibilities. At what point should a solo father be changing the tampon of his 20-year-old daughter because that is not considered a “material risk of harm, abuse or neglect”? This is such a dark return that will undo all the work done to increase independence, dignity and respect of and for disabled people, and will further entrench the “carer burden” narrative, further devaluing the lives of disabled people in the public eye.

> *Suggestion 30:* Amend s 34(1K) so that the “material risk of harm” test takes account of (a) the dignity and independence of the participant, (b) the sustainability of the informal arrangement (including carer health, carer employment, and the carer's own capacity over time), and (c) the participant's right to choose not to rely on informal supports in matters affecting their bodily autonomy and intimate care. Restore future-focused capacity-building as a fundable category before carers age out.

“More appropriately provided by another system” returns (s 34(1)(g)). Even if a support is otherwise reasonable and necessary, the CEO can refuse to fund it on the basis another system should provide it. This reverses *NDIA v Sutherland* (EM ¶ 2073). It operates at the *planning* stage, separately from access-stage exclusions. So even after you are on the scheme, individual supports can be referred off to a “more appropriate” system you may or may not actually be able to access.

> *Suggestion 31:* Amend s 34(1)(g) so that the CEO can only refuse to fund a support on the basis another system should provide it where the participant has actual,

> accessible and timely access to that system. A theoretical alternative is not an alternative.

For old framework plans, this is a visible planner-level test that can be challenged. For new framework plans, the same logic is baked into the budget method algorithm (s 32K) and the needs assessment tool (s 32L). Under EM ¶ 1640, the tool incorporates documents "as in force or existing from time to time" - so the assumptions can change without parliamentary scrutiny. This is quite terrifying to me. Same outcome; different visibility. Old framework gets a test you can see. New framework gets an algorithm you can't.

> *Suggestion 32:* Require publication of the Independent Technical Review. Require key budget-method and assessment-tool parameters - including any cap values, weightings, and cohort definitions - to sit in disallowable NDIS rules, not in documents the Agency can update "as in force from time to time" without parliamentary scrutiny. Require consultation with the disability community before changes.

Add transparent reporting on what the scheme is actually doing. Parliament and the public cannot evaluate whether the Bill is working as intended unless the Agency publishes the data needed to see that. Under the Bill, with ADM operating across claims and plan decisions, the case for these processes to become part of routine public reporting is clear.

> *Suggestion 33:* Require the Agency, by statutory provision, to publish quarterly data covering (a) claim rejection rates by support category and by plan management type, (b) reassessment request decision timeframes including the proportion of decisions made within the statutory period, (c) plan suspension and revocation numbers and reasons, (d) participant safety incidents reported under the safeguards framework, (e) measurable indicators of unmet need, and (f) cohort-disaggregated impact data (including First Nations participants, CALD participants, participants with intellectual disability, psychosocial disability, profound and complex support needs, regional and remote participants, women and girls, and self-managed participants). Require the Agency to publish an annual reconciliation of automated decision outcomes against human review outcomes.

7. Automated decision-making

Schedule 3 Part 2 of the Bill immediately authorises automated decision-making for four sections from seven days after Royal Assent: s 33 (plan content), s 45 (payments), s 45A (claims), and s 45C (pricing). Under s 59C(2), the Minister can add more sections by legislative instrument. The Justice and Equity Centre and Darren O'Donovan have both written carefully on the ADM concerns - including the robodebt parallels and the fact that the safeguards in s 59E are not legally enforceable. Given the robodebt history, automating claim assessment and plan decisions before legally enforceable safeguards are in place is the kind of risk this Parliament should not take.

> *Suggestion 34:* Make the safeguards in s 59E legally enforceable. Require human review of any adverse ADM decision affecting a participant's funding, eligibility or claim before the decision takes effect. Defer commencement of ADM authorisation for ss 33, 45, 45A and 45C until these safeguards are in place and audited.

If the Bill must pass, build in a mandatory independent post-implementation review.
The combined effect of the changes in this Bill - new functional capacity test, new budget method, new automated decision-making, new claim window, new replacement-renewal mechanism, narrowed reasonable-and-necessary test, expanded ministerial powers - is impossible to model in advance. The honest position is that no-one knows what the cumulative impact on participants will be. That is reason enough to require statutory, independent post-implementation review.

> *Suggestion 35:* Insert into the NDIS Act a statutory requirement for an independent post-implementation review of the changes made by this Bill, to be commenced no later than two years after Royal Assent and reported publicly to Parliament. The review must include (a) mandatory consultation with the disability community, (b) evaluation of participant safety outcomes including unmet need, hospitalisation rates, restrictive practice rates, plan suspensions and revocations, and harm incidents, (c) cohort-disaggregated analysis (including First Nations participants, CALD participants, participants with intellectual disability, psychosocial disability, profound and complex support needs, women and girls, and self-managed participants), and (d) a published government response within six months of the

> **review's tabling. Provide that material findings of harm trigger an obligation on the Minister to introduce remedial amending legislation.**

8. Consolidated suggestions

Each suggestion is numbered inline above where the issue is discussed. They are collected here for ease of reference, in the same order they appear in the body of the submission. The numbering is not a priority ranking - every one of these suggestions addresses a problem that, if left unfixed, will harm participants, prospective participants or those who support them.

From section 1 - If you're already on the NDIS

1. Amend s 34A to require that any percentage reduction be preceded by mandatory co-design, or at the very least, consultation with the disability community and a published impact statement, and that affected participants retain individual merits-review rights where the reduction produces an harmful change in their plan.

2. Amend s 34A so that any percentage reduction to a support category cannot apply to participants whose plan funding for that category reflects high or complex support needs - including but not limited to participants requiring 24/7 supervision, participants with profound behavioural support needs, participants with complex health support needs (including tracheostomy, swallowing risk or airway management), and participants with intensive 1:1 support requirements. Provide an automatic exemption mechanism so that a uniform percentage reduction cannot produce unsafe gaps in supervision or support.

3. Require cap values themselves to sit in the disallowable NDIS rule, not in a document incorporated by reference under ss 33(2G)–(2H) and 209(2AA)–(2AB).

4. Delete the word “directly” from s 34(1)(aa), restoring the whole-of-person approach achieved in the 2024 amendments.

5. Amend s 50A(2)(b) so that one-off funding which has been quoted, ordered or otherwise actioned at the plan end date carries over until the support is provided andclaimed or 12 months after renewal, whichever is earlier.

6. Retain the 21-day decision timeframe for unscheduled reassessment requests, restore the “deemed decision” safety net for missed deadlines, and remove the “unanticipated” qualifier on informal-supports changes.

7. Insert into s 48A a separate emergency reassessment pathway with a statutory 14-day decision timeframe, available where the participant, a nominee or a treating practitioner certifies that the participant faces an urgent safety, housing,

behavioural or support-breakdown risk. Provide that a missed 14-day deadline is a deemed decision in the participant's favour pending final determination.

8. Define “reasonable attempts” in s 40A and s 30(1A) as requiring evidenced contact attempts via every channel the participant has provided (phone, email, post, and any listed emergency contact, nominee or support coordinator), documented and spread over a minimum 60-day period. Build in protected-circumstance exclusions that pause the clock - hospitalisation, mental health admission, bereavement, family emergency, overseas travel of less than 6 weeks, and communication breakdown outside the participant's control. Remove the direct-revocation pathway in s 30(1A)(a); the 90-day suspension window in s 40A does the necessary work without removing the safety net.

9. Narrow the Schedule 5 transitional rule-making power - limit the subject matter to specifically enumerated transitional issues; reduce the duration; require mandatory consultation with the disability community; and require a published impact statement before any such rule is made.

From section 2 - If you're trying to get on the NDIS

10. Delay the commencement of the s 9B test until the assessment tool has been (a) designed and published in draft, (b) consulted on with the disability community, (c) piloted with diverse cohorts including people with intellectual disability, psychosocial disability, rare conditions, and First Nations and CALD participants, and (d) made subject to disallowable parliamentary scrutiny of the rules creating the tool.

11. Remove or qualify s 25A(2) so that the participant's individual circumstances restricting access to treatment - including geography, cost, wait lists, and access barriers tied to disability - must be considered in deciding whether a treatment is “appropriate” for that person.

12. Define “materially improve” in the Bill itself (not the EM) by tying it to the substantially-reduced-functional-capacity threshold - so a treatment that produces a “noticeable” improvement but leaves the person still well within the scheme's eligibility threshold does not disqualify them.

13. Retain the existing wording “mitigating or alleviating” in the early-intervention provisions; do not narrow it to “reducing.”

14. Amend s 25B so an “excluded impairment” only applies where the compensation or alternative scheme actually pays for the supports the participant needs. Require any s 25B(4) declaration of an alternative system to be a disallowable instrument,

subject to mandatory consultation with the disability community and, where the declaration affects First Nations people, with relevant First Nations representative bodies.

15. Retain the existing 21-day decision timeframe in s 20(2)(a) for access requests.

From section 3 - If you self-manage and/or employ your own workers

16. Retain a longer claim window (6 months minimum) with a broader "exceptional circumstances" discretion that explicitly contemplates hospitalisation, family emergency, and the practical realities of self-management.
17. Amend s 195(a)(ii) to add some kind of "justified in the circumstances" exception, matching recent social security amendments on financial abuse and coercive control (please refer to the Robodebt Royal Commission for recommendations on debt management). Amend s 182(4) to require the CEO to consider whether the absence of records actually corresponds to non-entitlement before raising the debt.
18. Remove s 80(5), or in the alternative, add a "reasonable steps" defence and explicit protection from direct civil-penalty orders where the nominee is acting in good faith without remuneration.

From section 4 - Certainty and flexibility

19. Insert into the NDIS Act a binding pre-claim advice mechanism modelled on the Australian Taxation Office's private rulings (see ITAA 1953 Schedule 1, Part 5-5) under which a participant, nominee or plan manager may apply in writing to the Agency for a ruling on whether a specified support is claimable *for that participant*, and the Agency is legally bound to honour that ruling for the period stated. Provide statutory timeframes within which the Agency must respond, beyond which a positive ruling is deemed to have been given.
20. Insert into the NDIS Act a statutory safe-harbour provision so that, where a participant or nominee has relied in good faith on written advice from the Agency that a particular support is claimable for that participant, the participant is not liable to repay claims approved on that basis, and any debt arising must be waived under s 195.
21. Provide a statutory merits-review pathway for claim disallowances and post-payment claim reversals under ss 45 and 45A, including timeframes within which the Agency must act to reverse a paid claim, and beyond which a paid claim is

deemed finally approved. Where the Agency seeks to recover a paid claim as a debt, the participant or nominee should have a right of merits review of the *underlying claim decision*, not only the debt decision.

22. Insert into the NDIS Act statutory obligations that (a) all participant-facing decision notices, plan documents, and review information must be provided in Easy Read and in formats accessible to the participant on request, at no cost; (b) the Agency and its authorised intermediaries must provide reasonable communication supports to participants to enable them to understand and respond to decisions affecting them; and (c) the principles of supported decision-making (recognised in the Final Report of the Disability Royal Commission) are to be observed by the Agency and the Tribunal in decisions affecting a participant. Make non-compliance a reviewable decision.

23. Amend the NDIS Supports Transitional Rules (or replace them with provisions in the NDIS Rules made under the Act) to broaden the Replacement Supports mechanism so that a participant or nominee may apply to the Agency for approval to spend existing plan funding on any mainstream good or service that achieves the same or a better outcome for the participant at the same or lower cost than a comparable “in” list support, provided that the participant or nominee documents the comparison and the Agency retains a discretion to refuse on stated reasons. Make any refusal a reviewable decision.

From section 5 - If you're a provider

24. Consolidate the enforcement powers proposed in Schedule 2 Part 2 within the existing NDIS Commission rather than establishing a parallel NDIA enforcement function. The Commission is already set up to regulate in the NDIS context.

25. Implement NDIS Review Recommendation 11. Amend s 45C so maximum-price determinations must be made on the binding advice of IHACPA, not the Agency.

From section 6 - Reasonable and necessary, rebuilt

26. Amend s 17B so financial sustainability is *one* of several considerations the CEO must weigh - alongside the choice-and-control, individualisation and participant-direction principles previously found in s 31 - rather than an override that sits above the reasonable-and-necessary test. Retain s 31's planning principles in modified form within Part 2 of the Act.

27. Amend s 34(1E) to enumerate “lived experience of the participant” and “clinical experience of treating practitioners with the participant” as evidence categories of

equal weight to peer-reviewed research. Remove s 34(1F), so that missing peer-reviewed research cannot operate as a veto where other categories of evidence support the participant.

28. Restore the requirement that any "comparable support" under s 34(1A) must achieve the same outcome as the support being compared.
29. Insert the "regardless of the child's disability" qualifier into both paragraphs (1H)(a) and (1H)(b), not just (b). Tie the "reasonably expected of a parent" benchmark in s 34(1J) to what a parent of a non-disabled child of the same age would reasonably be expected to do. Require the presumption to be modulated by the actual capacity of the parent (including any disability of the parent) and the cumulative care load where the family includes multiple disabled children.
30. Amend s 34(1K) so that the "material risk of harm" test takes account of (a) the dignity and independence of the participant, (b) the sustainability of the informal arrangement (including carer health, carer employment, and the carer's own capacity over time), and (c) the participant's right to choose not to rely on informal supports in matters affecting their bodily autonomy and intimate care. Restore future-focused capacity-building as a fundable category before carers age out.
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From section 7 - Automated decision-making

34. Make the safeguards in s 59E legally enforceable. Require human review of any adverse ADM decision affecting a participant's funding, eligibility or claim before the decision takes effect. Defer commencement of ADM authorisation for ss 33, 45, 45A and 45C until these safeguards are in place and audited.

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Closing

I support the work of placing the NDIS on a sustainable long-term footing. I do not accept that the work of getting there requires Parliament to pass this Bill as drafted. The 35 amendments above would not derail the Government's policy direction, nor materially reduce scheme sustainability (see what I did there?). They would protect people from the parts of the drafting most likely to harm them - by accident or by design - and preserve the parliamentary oversight that the Bill is, in several places, quietly handing away. My suggested amendments safeguard the scheme against future governments who may not share the same intent as our current government – Primary Legislation should always act as a shield against an unknown future.

I would welcome the opportunity to speak to this submission at hearing.

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