

NDIS Reforms Bill No. 2: Proposed Changes to the NDIS Act

December 2024

Community Mental Health Australia



Community Mental Health Australia (CMHA) is the federated peak body representing the community-managed mental health sector across Australia’s states and territories. We advocate for the needs of individuals with mental health challenges, ensuring they receive support at home and in their communities.

CMHA provides a unified voice for over 700 community-based, non-government organisations that work with tens of thousands of mental health consumers, families, and carers. The sector is a vital part of civil society, emphasizing accessibility, prevention, early intervention, and holistic approaches to mental well-being. These organisations also address the social determinants of health, offering a wide range of practical supports to enhance recovery and resilience.

Community Managed Organisations (CMOs) are a cornerstone of this sector, with many founded by people with lived experience. CMOs play a critical role in expanding the peer workforce and fostering recovery-oriented services. CMHA provides leadership and advocacy to highlight the importance of community mental health and psychosocial support, ensuring its benefits are recognized and valued nationwide.

Endorsements:



Acknowledgements

CMHA sincerely thanks our member state and territory community mental health peaks for their expertise and contribution to this submission. A special note of thanks to the Queensland Alliance for Mental Health (QAMH) for their authoritative advice and detailed submissions on changes to the NDIS. These peak representative bodies comprise state community mental health organisations, lived experience advocates from diverse perspectives- LGBTIQ+, First Nation

Peoples and culturally and linguistically diverse groups most affected by the withdrawal of community supports at the intersections of cultural identity and disability. We thank and acknowledge the custodians of this land, the Aboriginal and Torres Strait Islander people of the many traditional nations and language groups throughout Australia. We acknowledge the wisdom of Aboriginal Elders past and present and pay our respect to the Aboriginal communities whose land was never ceded.

Introduction

CMHA welcomes the opportunity to provide feedback to the NDIS Quality and Safeguards Commission on NDIS Reforms Bill No. 2 – *Proposed Changes to the NDIS Act*. The proposed reforms, grouped into three key areas—penalty frameworks, safeguarding measures, and information-gathering powers—are designed to enhance the safety and rights of participants with an exposure draft of the bill, expected by Autumn next year. CMHA shall discuss concerns regarding the proposed changes and their impacts upon the disability sector and workforce. We are concerned about the speed of a number of these changes without adequate time for their affects to be tested. There is a risk that without additional financial support and a comprehensive review of NDIS pricing structures, workers may be compelled to leave and good providers withdraw from the sector. These issues shall be explored along with relevant disability rights of inclusion, dignity and living independently in the community free from abuse. Finally, we're very grateful to share the constructive feedback and recommendations of Queensland Alliance for Mental Health in the Q&A section.

Discussion

CMHA supports the Minister Shorten's intention to strengthen safeguards, elevate human rights of people with disability and contribute to the Scheme's sustainability. By Autumn 2025, following release of the exposure draft, the new legislation shall impose stricter regulatory requirements with stronger penalties and criminal offences for those doing the wrong thing. CMHA has concerns that the inadequate pricing model combined with increased surveillance and penalties will undo those intentions by acting as a blunt instrument, harming the sector and service users.

The pricing model is so low that it risks sector failure

CMHA is deeply concerned that underlying flaws in the pricing model combined with additional penalties will price good providers out of the market. The NDIS Pricing Reform 2024 will make tight profit margins increasingly unattractive for providers to stay in operation. In remote and rural settings where costs of goods and services are higher compared to urban areas, the threat of sector collapse is real- Operators on margins slightly above zero will have zero incentive to operate.

We absolutely need a resilient, adequately remunerated disability sector

Recent data highlights a growing demand for mental health services, with many individuals experiencing severe or moderate mental illness unable to access adequate support. The 2020 Productivity Commission Inquiry into Mental Healthⁱⁱⁱ identified major gaps in Australia's

psychosocial support services and recommended further analysis of unmet needs at regional and state levels. A recent technical report (2022-23)ⁱⁱⁱ reveals the following demand:

- **Severe Mental Illness:**
 - 335,800 individuals aged 12-64 require support
 - Total support hours needed: 21.9 million
 - Unmet need: 230,500 people (69%)
- **Moderate Mental Illness:**
 - 311,500 individuals require support
 - Total support hours needed: 3.3 million
 - Unmet need: 263,100 people (84%)

These figures show a substantial rise in unmet needs compared to previous assessments. While not all individuals qualify for NDIS services, many with psychosocial disabilities are eligible. Notably, NDIS service providers often assist clients both within and outside the NDIS framework.

Sector challenges

This latest State of the Disability Sector Report released by Sydney University, 9 December 2024, shows significant challenges. In the 2023–24 financial year, half the 397 respondents made a loss and 13 per cent said they broke even. **80 per cent** of respondents said that they worry they won't be able to continue providing NDIS services at current prices^{iv}. **21 per cent** of respondents are considering getting out of the disability sector entirely, a significant increase from nine per cent in 2023.^v

“For organisations that provide specialist services, the current pricing model challenges their ability to provide the appropriate level of clinical governance, supervision and capability development that ensures clients receive high-quality services.” Chris Edwards, Vision Australia^{vi}

In their submission, NDIS Pricing Reform, Queensland Alliance for Mental Health record that, “The pressures on providers are such that in some cases, providers are forced to employ disability support workers at a Social, Community, Home Care and Disability (SCHADS) Award Level 1 or 2, with little opportunity for career progression. QAMH members frequently refer to two co-existing workforces – the underpaid and casualised NDIS workforce, and the better remunerated workforce funded under state and commonwealth contracts. In rural and remote areas, these issues are even more pronounced.” QAMH^{vii}

Workforce challenges

The pricing mechanism is too low and won't support a skilled, motivated workforce and industry committed to the highest standard of quality and care. A workforce committed to disability rights through continual learning and reflective practice is the first line of quality and safeguarding. Further empowering the Quality and Safeguards Commission without supporting the workforce risks undermining quality and safety. This is because a poorly remunerated workforce, with no provision for supervision, training and advancement lacks motivation. The NDIS Support Worker Cost Model (SWCM) provides no incentive to attract and retain motivated staff-

The Aged Care Royal Commission into Violence, Abuse, Neglect, and Exploitation highlighted that a low-skilled, poorly remunerated workforce, with limited training opportunities and no clear pathways for career advancement, directly contributes to systemic failures in quality and safety. It found that inadequate workforce conditions led to diminished standards of care, neglect, and, in some cases, outright harm. Workers who are underpaid and poorly supported are less equipped to meet the complex needs of vulnerable populations, increasing risks to client safety and violating their inherent dignity.^{viii, ix, x}

The commission emphasized that systemic underfunding exacerbates these challenges, failing to account for the actual costs of delivering high-quality care, including fair wages and necessary training. This lack of investment results in high workforce turnover, inconsistent care, and unmet needs, all of which undermine the safety and rights of clients^{xixii}

The commission further noted that insufficient training and development opportunities compromise workers' ability to provide rights-based care, which is critical for safeguarding client dignity and well-being^{xiii} The Disability Royal Commission has similarly identified workforce issues as critical in delivering safe, high-quality, and rights-based services. Specifically, it has raised concerns about the impact of inadequate training, poor remuneration, and limited professional development on the safety and dignity of people with disabilities.

WHS, Disability Rights and freedom from abuse

The **Interim Report (October 2020)** emphasized that systemic issues, including an inadequately trained workforce, contribute to failures in upholding the rights and safety of people with disabilities. The commission has also explored the link between workforce conditions and instances of violence, neglect, and abuse, demonstrating that a lack of professional development undermines the ability of workers to provide consistent, rights-based care.

Both Royal Commissions underscore the urgent need for systemic reforms in workforce conditions to safeguard human rights, dignity, and safety.

The findings reflect the principles enshrined in the **Convention on the Rights of Persons with Disabilities (CRPD)**:

- **Article 19: Living Independently and Being Included in the Community:** A poorly skilled workforce unable to deliver quality services may hinder individuals with disabilities from fully participating in the community.

- **Article 25: Health:** The inadequacy of skilled and motivated staff can compromise access to high-quality healthcare services, leading to unmet health needs and inequitable care.
- **Article 26: Habilitation and Rehabilitation:** Without skilled workers, individuals may not receive the support necessary for skill development, recovery, or enhanced quality of life, undermining habilitation and rehabilitation outcomes.
- **Article 28: Adequate Standard of Living and Social Protection:** Insufficient workforce investment results in reduced quality of services and support, directly impacting the standard of living for individuals reliant on the NDIS.

Additionally, the ACRC emphasized that the undervaluation of workers and lack of career incentives exacerbate workforce turnover, reducing the consistency of care—a critical element in building trust and maintaining safety for vulnerable individuals.

The NDIS Support Worker Cost Model (SWCM) must address these structural issues, ensuring fair remuneration and providing resources for supervision, training, and reflective practice. A workforce that feels valued and supported is the first line of safeguarding, critical for preventing harm and ensuring the dignity and human rights of people with disabilities.

The right of access to services: There is a risk of overreach and discouraging good disability services from providing holistic support for participants whose Plans do not specifically cover psychosocial disability- With no defined Foundational Supports until at least mid-2025, where will those participants with psychosocial disability on the NDIS receive their support?

New evidentiary requirements regarding psychosocial disability will impose additional barriers of access to the Scheme. The burden of evidence for people with psychosocial disability is already discouragingly high. A tightening of access for psychosocial disability may add to the unmet needs gap for psychosocial disability. These effects need to be considered with appropriate remedies to avoid unintended consequences.

Q&A: NDIS Reforms Bill No. 2 – Proposed Changes to the NDIS Act

Penalty Framework and Statutory Requirements

CMHA is grateful to Queensland Alliance for Mental Health (QAMH) and supports their constructive responses to NDIS Reform Bill No.2 feedback questions:

Questions 1 & 2: Do you support the proposed statutory duties for NDIS providers and their key personnel? Should these duties be more or less expansive, or revised in other ways?

The introduction of statutory duties for NDIS providers and their key personnel represents a significant shift in accountability requirements that must be considered within the broader context of sector sustainability. QAMH acknowledges the importance of ensuring providers and key personnel maintain high standards of service delivery and safety. However, we have serious concerns about implementing these new duties without first addressing systemic issues in pricing and support.

A fundamental challenge lies in the current Disability Support Worker Cost Model, which fails to adequately account for the infrastructure required to meet enhanced compliance obligations. Providers are already struggling to cover essential costs for training, supervision, quality assurance systems and professional development. The Ability Roundtable's recent analysis reveals that many providers delivering complex supports are operating with margins so thin that any additional regulatory burden risks making their services unsustainable.

The proposed statutory duty requiring key personnel to exercise 'due diligence' raises significant concerns due to its lack of clarity around what constitutes 'reasonably practicable' measures for compliance. This ambiguity is particularly problematic given that the proposed new Practice Standards for Psychosocial Supports - which would help inform these requirements - have not yet been released.

The current uncertainty creates substantial challenges for:

- Smaller providers with limited resources and administrative capacity
- Organisations operating in regional and remote areas where staffing and resources are already stretched thin
- Providers supporting people with psychosocial disability who require specialised approaches to care

Without clear guidance, practical implementation support, and alignment with forthcoming practice standards, these providers may find themselves unable to meet new obligations despite their commitment to quality service provision and participant safety. This risks further reducing service availability in areas and for populations that already face significant barriers to accessing support.

Of equal concern is the proposed statutory duty of care for providers. While we strongly support measures to prevent adverse effects on participant health and safety, the legislation must recognise the complex nature of psychosocial disability support. The episodic nature of mental illness means that adverse health effects may occur despite best practice service delivery. The legislation needs to clearly differentiate between preventable harm and the natural progression of health conditions.

For these statutory duties to be effective while supporting sector sustainability, QAMH recommends several key refinements:

- 1. Explicit 'reasonably practicable' tests must be included in the legislation to provide clear compliance frameworks. These should account for provider size, location and the nature of supports delivered.**
- 2. Implementation must align with comprehensive pricing reform that reflects the true costs of quality service delivery, including adequate provision for training, supervision and compliance activities.**
- 3. Clear guidance and transition support should be provided, with consideration for provider size and location in compliance expectations.**

The implementation of increased penalties must be considered within the broader context of sector sustainability. The NDIS Pricing Reform 2024 will make already tight profit margins increasingly unattractive for providers to stay in operation.

This situation is further complicated by significant workforce challenges across the sector. QAMH members frequently report the existence of multiple co-existing workforces with stark disparities in remuneration and conditions:

- The largely underpaid and casualised NDIS workforce
- Better remunerated staff funded under state and commonwealth contracts
- The aged care workforce, which has recently received substantial wage increases and additional funding support

These wage disparities create significant challenges for workforce retention and service quality, particularly in rural and remote areas where the differences are even more pronounced. The proposal to introduce enhanced penalties for NDIS providers, which exceed those applied in comparable sectors like aged care, creates an inequitable regulatory environment. This approach fails to acknowledge the underlying systemic workforce issues and risks accelerating service withdrawal from communities where supports are already limited.

The combination of workforce challenges, remuneration disparities, and an uneven penalty framework across sectors may have the unintended consequence of further destabilising service provision, particularly in areas of greatest need.

Questions 3 & 4: Do you support the proposed new and increased penalties and offences framework? Should this framework be revised in any way?

The proposed enhancement of civil and criminal penalties raises concerns about proportionality and sector impact. While QAMH supports appropriate consequences for serious breaches, the suggested alignment with workplace health and safety legislation overlooks crucial considerations in sector context and capacity.

The consultation paper's comparison with WHS penalties requires careful examination. The paper notes that penalties for breaching WHS legislation can reach up to \$15 million, contrasting this with current NDIS maximum penalties of \$412,500. However, this comparison fails to acknowledge several critical factors.

Many providers deliver services across multiple sectors including disability, aged care, and community-based health services. Safety and quality standards should logically be consistent across these interconnected sectors, with WHS legislation serving as an overarching framework for ensuring worker and participant safety. Rather than creating a parallel penalty system under the NDIS, there may be value in examining how the current WHS framework could be better utilised to address quality and safeguarding concerns, while recognising that adequate service provision - a core aspect of participant safety - remains an NDIS framework responsibility.

Firstly, NDIS providers are already subject to WHS legislation, meaning they potentially face penalties under multiple regulatory frameworks for the same incident. Section 207 of the National Disability Insurance Scheme Act 2013 explicitly enables both WHS and NDIS Act proceedings to be pursued. The cumulative impact of these overlapping penalty frameworks has not been adequately considered.

Secondly, the financial context of NDIS service provision differs significantly from many industries subject to WHS legislation. Recent sector analysis shows that:

- The average NDIS provider operates on margins below 2%

- Complex support providers frequently operate at a loss
- Many providers are reducing services or exiting the market
- Insurance costs are increasingly prohibitive

Questions 5 & 6: Do you support the proposed anti-promotion orders powers? Should these powers be revised in any way?

QAMH strongly supports robust action to address exploitative marketing practices within the NDIS marketplace. Misleading or deceptive promotion of services can have severe consequences for participants, who may make life-altering decisions based on incorrect information. The examples provided in the consultation paper - particularly regarding misleading advertising for Short Term Accommodation and exaggerated claims about Specialist Disability Accommodation profits - highlight serious issues that require decisive regulatory intervention to protect vulnerable participants.

However, the proposed anti-promotion order powers require careful consideration to ensure they do not inadvertently restrict legitimate provider communication with participants and the community. The consultation paper provides limited detail about what constitutes prohibited conduct beyond broad statements about undermining scheme integrity. This lack of specificity creates uncertainty for providers attempting to communicate their services effectively.

We recommend the development of clear guidelines regarding prohibited conduct through genuine consultation with the sector. These guidelines should:

- **Provide explicit criteria for determining when marketing undermines scheme integrity, ensuring providers can confidently develop compliant communication strategies.**
- **Establish transparent processes for issuing and reviewing anti-promotion orders, including appropriate appeal mechanisms.**
- **Consider the needs of smaller providers and those serving specific communities, including culturally appropriate communication methods.**

Question 7: Do you have concerns about evidentiary certificates?

The proposal to allow evidentiary certificates signed by the NDIS Commissioner as prima facie evidence requires careful consideration of procedural fairness and administrative efficiency. While we understand the intention to streamline legal processes and reduce resource burden, several important considerations must be addressed.

The consultation paper suggests that evidentiary certificates would primarily cover formal, technical, and non-contentious evidence. However, without clear parameters around what constitutes 'non-contentious' evidence, there is potential for certificates to be used more broadly than intended. This could disadvantage providers, particularly smaller organisations with limited resources to challenge certificate contents.

We recommend the establishment of clear criteria governing:

- **The specific types of information that may be included in evidentiary certificates**

- **Clear and simple processes for providers to review and contest certificate contents before court proceedings**
- **Appropriate limitations on certificate use in more complex or contested matters**

Safeguarding

Questions 8 & 9: Do you support the proposed expansion of banning order categories? Are there additional categories that should be included?

QAMH supports, in principle, extending banning order powers to include NDIS auditors and consultants. The significant influence these roles have on provider operations and participant outcomes justifies their inclusion in safeguarding mechanisms. However, implementation must be carefully considered to avoid unintended consequences.

The expansion of banning orders must be accompanied by clear guidelines regarding:

- The specific conduct that may trigger a banning order
- The evidence required to support banning decisions
- Appeal mechanisms and procedural fairness requirements
- Transition arrangements for affected participants and providers

The consultation paper's suggestion that these powers would apply to those providing "fraudulent, unsafe or otherwise contrary" advice requires greater specificity. Without clear definitions, there is risk of inconsistent application and potential misuse of these powers.

Information Gathering

Question 10: Do you have concerns about the proposed measures to strengthen the NDIS Commission's powers to obtain relevant information from NDIS providers?

The proposed enhancement of information gathering powers, including shortened timeframes and Australian-based storage requirements, presents significant practical challenges for providers. While QAMH supports effective oversight, these requirements must be balanced against operational realities and resource constraints.

The requirement for Australian-based information storage particularly impacts providers using international software solutions or cloud-based systems. The transition costs and ongoing operational implications of this requirement have not been adequately addressed in the consultation paper. Small and medium-sized providers may struggle to meet these requirements within current pricing constraints.

The proposed shortened timeframes for information provision raise concerns about provider capacity, particularly in circumstances requiring complex data collection or involving multiple service locations. Regional and remote providers face additional challenges in meeting reduced response times due to infrastructure limitations and staffing constraints.

We recommend:

- 1. A more nuanced approach to timeframes that considers the type of information requested and provider circumstances. Critical safeguarding matters may warrant urgent responses, but routine information requests should maintain reasonable timeframes.**

2. **Clear guidance on information storage requirements, including transition periods and support for providers to achieve compliance.**
3. **Consideration of the cost implications within NDIS pricing frameworks to ensure providers can maintain appropriate information management systems.**

The proposal to extend powers to 'make and change Prescribed Bodies Rules' to the NDIS Commissioner warrants particular attention. While these powers were introduced under the last Bill, their expansion requires careful consideration. There are significant concerns about the appropriate level of oversight and accountability for such broad-ranging powers.

We recommend that:

1. **Changes fundamental to scheme operation should be subject to greater public scrutiny than is possible through delegated legislation. The development of rules that significantly impact service delivery should involve robust parliamentary oversight.**
2. **The principle of co-design must be maintained in rule development. The disability community's voice should be central in developing regulations that directly affect service provision and participant outcomes.**
3. **Clear limitations should be placed on rule-making powers to ensure they cannot be used to make fundamental changes to scheme operations without appropriate consultation and oversight.**

References

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ⁱⁱ [ndis-pricing-reform-2024_qamh-submission.pdf](#)

ⁱⁱⁱ <https://www.health.gov.au/sites/default/files/2024-08/analysis-of-unmet-need-for-psychosocial-supports-outside-of-the-national-disability-insurance-scheme-final-report.pdf>

^{iv} https://nds.org.au/images/state_of_the_disability_sector_reports/nds_state_of_the_disability_sector_report_2024.pdf

^v <https://nds.org.au/news/new-research-highlights-urgent-need-for-sustainable-services-for-people-with-disability>

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^{vii} [ndis-pricing-reform-2024_qamh-submission.pdf](#)

^{viii} rcac 2021: [royal commission into aged care quality and safety final report - care, dignity and respect: volume 3a - the new system](#)

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^x royal commission into aged care quality and safety final report: 'care, dignity and respect' statement from ms janet anderson psm, aged care quality and safety commissioner | aged care quality and safety commission

^{xi} royal commission into aged care quality and safety final report: 'care, dignity and respect' statement from ms janet anderson psm, aged care quality and safety commissioner | aged care quality and safety commission

^{xii} background document 4 - royal commission into aged care quality and safety

^{xiii} royal commission into aged care quality and safety final report - care, dignity and respect: volume 3a - the new system