Submission on National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026

A4 Autism Aspergers Advocacy Australia

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Preface

Autism Asperger Advocacy Australia, known as A4, appreciates the opportunity to comment quickly on the government's proposed legislation, the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026, that was referred to your committee on 14/5/2026. However, A4 believes the timescale for commenting is inadequate and a disgrace. It is undemocratic and unAustralian.

The following submission does not contain all the evidence we would like to provide because there simply has not been the time needed to pull it all together.

A4 is a national grassroots organisation to provide systemic advocacy for Autistic Australians and others affected by autism spectrum disorder. A4 started in 2002. It was created to represent all autistic people and especially to be a voice for those whose autistic impairment means that they cannot represent themselves.

The government recognised A4 as a disability representative organisation (DRO) for autism.

A4 is a member of the Australian Autism Alliance, the Australian Federation of Disability Organisations (AFDO), and the Australian Disability Consortium.

A4 regularly attended the NDIS's Disability Representative and Carer Organisation (DRCO) forums until the NDIS decided to exclude A4's neurodivergent representation in 2024.

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Introduction

Autism Aspergers Advocacy Australia (A4) thanks your *Senate Standing Committees on Community Affairs* for the opportunity to respond to your Inquiry into the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (the Bill).

A4 is the national grassroots organisation representing Australians with autism spectrum disorder (ASD). Currently, the NDIS reports that 43% of NDIS participants have "autism" as their primary disability type. Presumably, that means the NDIS has records of a formal ASD diagnosis for 338,099 Australians[1], 43% of those meeting NDIS eligibility criteria with "with permanent and significant disabilities" (s24 of the NDIS Act 2013) or s25 needing early intervention.

According to the Minister's second reading speech the Bill will

- restore the National Disability Insurance Scheme (NDIS) to its foundational purpose of assisting Australians with permanent and significant disabilities
- refine eligibility criteria through objective assessments of functional capacity
- introduce stricter controls on unscheduled plan reassessments and unspent fund rollovers.
- fortify the system against fraud, rorts and non-compliance.
- centralising pricing decisions under ministerial oversight.

A4 feels that this is not an accurate representation of this Bill's intent nor its likely effects. Problems with these specific claims are discussed in Proposed legislation below.

The government intends this bill to have a much greater and different impact than what they describe/admit. The government's real intent is to limit/control disability spending by removing the commitment to providing essential disability support for many of the people who most need them.

The original NDIS legislation sought to provide choice and control in accessing reasonable and necessary support for people with disability … consistent with Australia signing the United Nation's Convention on the Rights of Persons with Disability (UN CRPD).

The Bill seeks to eliminate that access and ignore those rights that the Australian government agreed to. The government's description of its bill is dishonest.

The Bill constrains disability support and excludes ⅓ of the people expected to benefit from the current legislation from 2030, including pushing at least

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[1] Table D.8, Q3 2025-26 NDIS Quarterly Report

160,000 current participants off the NDIS and into support systems that do not exist and currently have no clear plans of how they will work.

The disability sector sees the government's Bill differently. Much of the sector sees the Bill as having the following secret agenda. The sector sees the Bill as:

- a knee-jerk response to NDIS growth in numbers and cost. The Bill aims to cap costs removing needs-based funding. The sector sees this as breaking promises made when the Scheme was initially legislated to meet disability needs, honour human rights, and provide choice and control.
- delaying or limiting eligibility for many who really need the NDIS. Minister Butler has indicated that he expects to limit NDIS participants to 600,000 by 2030. That reduces current numbers from 774,456 and projected numbers for 2030 from over 900,000. Use of unvalidated functional assessment and the requirement to "exhaust all other treatment options" is designed to
    a) minimise NDIS participant numbers, and
    b) avoid providing essential disability support.
- a vigorous attack on supports for people with disability to participate socially in their communities. This especially impacts people whose disability involve substantial social impairment, such as autistic NDIS participants.
- a missed opportunity to fix rather than exacerbate major failings of the NDIS such as its impairment notices.

On its current trajectory, autism would soon be 50% or more of NDIS primary disability type. The Bill is clearly aimed at reducing support for autistic Australians, yet the Minister's second reading speech for the Bill avoids autism completely. That is not honest.

The autism sector sees the Bill as:

- disrespecting and demonising the autism sector generally.
- especially targeting autistic Australians for service denial and exclusion – and especially entrenching service denial for the most vulnerable who need the most support – see https://a4.org.au/node/2567 and more.
- amplifying the government's on-going war on autistic Australians – see https://a4.org.au/node/2288, https://a4.org.au/node/2331, https://a4.org.au/node/2400, https://a4.org.au/node/2426, https://a4.org.au/node/2441, https://a4.org.au/node/2485, and more.
- legitimising and extending bureaucratic disability discrimination against autistic and neuro-divergent Australians.

This Bill need to be replaced with realistic approaches to disability generally and autism in particular.

Recognising problems

Fundamentally, the government refuses to recognise and address the real nature of its problems with the NDIS. The government has not made clear what problems its legislation seeks to address or rectify. Legislation works best when it is clear what the issue is that it is addressing.

The Explanatory Memorandum for the Bill states:

> The National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (the Bill) will protect the National Disability Insurance Scheme (NDIS, Scheme) for people with permanent and significant disability and for future generations who will rely on it.

It identifies what it considers to be "two key vulnerabilities".

1. the NDIS is currently growing at a rate that was unforeseen when it was established in 2013
2. the NDIS has become the target for fraudulent activity.

The following explores these and other issues around the proposed legislation. A4's view is that so far government has only looked superficially at these issues and ignored numerous other critical factors. The result is seriously unsatisfactory legislation as we explain below.

Problem 1 –NDIS cost

The cost of the NDIS is increasingly alarmingly – everyone agrees on this issue. But there is relatively little effort going into identifying key aspects of the issue.

The issues with "unforeseen NDIS growth" are more complex than government recognises.

The Productivity Commission got their initial estimates wrong. They initially estimated Tier 3 would support 410,000 participants. That was quickly revised up to 450,000. But that figure was never properly explained. It was substantially lower that the ABS's estimate of number of Australians with severe or profound disability under the age of 65 years based on its 2012 SDAC survey.

Government was warned that its estimate of 9% of participants being autistic was too low. And there was no provision for or recognition of the growing number of autism diagnoses.

Basically, the initial predictions for the NDIS were wrong.

NDIS cost is determined primarily by NDIS participants and their support needs. Both the number of participants and the cost of their plans are higher than anticipated … and continue to grow.

Lesser components of cost are the administrative burden and dysfunction (inefficiency, fraud, etc.). These are discussed below.

The major problem has several parts.

1. The number of NDIS participants continues to grow when the expectation was that numbers would be relatively stable once the NDIS was fully rolled out.
2. The amount of support each participant wants/needs continues to increase.
3. The cost of supports continues to grow.

The government's knee-jerk response is to limit two of these three aspects. The legislation aims to

1. tighten eligibility criteria for the NDIS to limit growth in the number of NDIS participants.
2. restrict NDIS supports reducing support funding per participant.

The government recognises that remaining NDIS participants will still needs support, but it is unclear what support those people need.

There also seem to be an implicit recognition that the supports that the NDIS currently provides for the people who will be kicked off are not the right supports or the that the NDIS is not providing their supports as efficiently and/or economically as they should. Otherwise, we would know what those people need and the transition to other systems would be far easier to plan.

Legislation, policy and programs that aim to get the NDIS back to flawed initial estimates is inherently flawed.

Rather than rushing about trying to achieve the unachievable, government needs to better understand the disability sector and develop achievable policies that recognise reality; that do not rely on flawed estimates and assumptions.

Problem 2 – childhood disability

Reports in Australia show growing problems with school students with disabilities – see https://theconversation.com/27-of-australian-students-now-have-an-adjustment-for-disability-at-school-why-are-we-seeing-this-growth-283379 and https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/school-students-with-disability

There are important parts to this problem:

1. insufficient understanding of varying needs of the 27% of school students with disability.
2. at present, around 20% of students need supplemental support but that supplemental support is inadequate.
3. disability supports in schools are not delivering satisfactory educational outcomes.

While challenge of getting better education outcomes for students with disability is not unique to Australia, it is likely that Australia is ahead of other countries in having some national data that identifies this problem.

Australia's governments need to benefit from this knowledge: to investigate properly the causes of increasing childhood disability and evidence-based approaches to improving outcomes nationally.

The autism challenge

Currently, 43% of NDIS participants have "autism" as their primary disability type … and the numbers keep growing. Despite contrary advice from the autism sector (and the ABS), the Productivity Commission's original expectation was that 9% of NDIS participants would be autistic and that the numbers would be relatively stable.

The Productivity Commission was wrong: it used the wrong advice. Government must recognise autism is a growing challenge.

Recently, the government wrote its National Autism Strategy that had no discernible input from the NDIS nor Education departments. An autism strategy that omits those crucial areas cannot deliver meaningful outcomes.

Some school students with disability are autistic. For decades, the ABS has reported that education outcomes for autistic students are especially poor[2]. Autistic students in Australia do not get the education support that they need. As yet there is no evidence that the NDIS's early intervention strategy is improving education outcomes for autistic school students … neither through preparing them better for school nor better support through their school years.

The Bill aims to relieve the NDIS of responsibility for most autistic students. And replacement supports do not exist … they are not even properly planned.

Notably, the government developed its National Autism Strategy without written input[3] from the federal Education Department or the NDIA.

Minister Butler targeted autism in his reforms without reference to the National Autism Strategy. He announced Thriving Kids (TK) to reduce substantially the number of autistic NDIS participants. This also reduces funding for autistic children by about 80%: TK funding for autistic children is $^{1}/_{5}$th the reasonable and necessary funding those children get in the NDIS. As yet, there is no commitment to TK providing evidence-based early intervention that addresses the specific needs[4] of autistic children. The long-term cost of denying autistic children evidence-based early intervention for their autism is enormous … more than the current cost of the NDIS.

Increased autism diagnosis is a worldwide phenomenon and challenge. Legislation that denies children essential supports makes the problem worse.

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[2] See https://www.abs.gov.au/articles/autism-australia-2022#autism-and-education-attainment from 2022, and similar reports from 2009, 2012, 2015, 2018.

[3] Confirmed by FoI.

[4] Different/distinct from the types of supports that children with other disability types need.

The government's failure/refusal to address shortfalls in the clinical workforce needed to support autistic children and improve outcomes is a national disgrace.

Problem 3 – NDIS Tiers 1 & 2

NDIS implementation failed to follow its initial design that described Tiers 1 & 2 to meet the need of people with disability who were not in the 410K or 450K Australians who were to get support from NDIS Tier 3.

When it started, NDIS officials went through state/territory budgets sucking up every disability dollar. NDIS officials left little or no funding for Tier 1 supports.

And the NDIS did not bother to create or support a Tier 2. This was a responsibility of the initial NDIS Board. They failed: they did not deliver a key element of a sustainable NDIS. Subsequent NDIS Boards did not address this issue.

So, people with disability found themselves in a futile quest for an oasis of support in the desert of disability services or scrabbling to get into the only lifeboat in the disability support oasis. They needed supports that no longer existed … so they joined the NDIS as their only option. That is not how the NDIS was originally meant to work.

By failing to attend to Tiers 1 & 2, the NDIS created the need for more people with disability to get their support from NDIS Tier 3. The NDIS created the problem that it now finds itself in.

Having a so-call "independent" review of the NDIS headed by the Board Chair who set up the NDIS meant that the NDIS Review was never going to recognise the problems its initial implementation caused. The NDIS review failed to learn from its major mistakes.

1. Tiers 1 & 2 were essential
2. Their estimated level and stability of autism prevalence were major flaws in the NDIS design.

Now Minister Butler, the federal government, and the federal health department expect the states and territories to suddenly ramp up disability support after the NDIS annihilated disability expertise at the state level. The Health Department's solutions for non-NDIS disability look like clones of the state-operated health systems which cannot be considered quality solutions. The Minister and his department appear to be trying to do the same (or a similar) thing and expecting a better outcome. Be warned – this is not good strategy.

Problem 4 – NDIS as a target for fraud

Politicians need to be honest that fraud is inherent in their small government doing regulation of private sector services. The initial NDIS Board seems to have ignored this issue when they implemented the NDIS.

Many in the disability sector reject government's portrayal of participant fraud in the media.

The ANAO reported (25/6/2025)

> 3. The NDIA paid out $41.85 billion for NDIS claims in 2023–24. In September 2023, the NDIA estimated that 6 to 10 per cent of these outlays could be for non-compliant, fraudulent or incorrect claims.

Other reports are more conservative. An ABC News report said:

> An estimated $1.4 billion was lost from the National Disability Insurance Scheme last financial year due to "payment errors" including fraud and over-claiming, a five-fold increase from two years ago.
>
> The estimated potential loss, outlined in the latest National Disability Insurance Agency (NDIA) annual report, represents 4 per cent of the scheme's total outlay.

Clearly, there are fraudulent claims, but it is not known what the actual level of fraud is. The disability sector would like to know whether fraud, other inefficiencies, and inflated costs in the NDIS are at a substantially higher level than comparable privatised service sectors. Fraud in the NDIS appears to be an inevitable consequence of neo-liberal "small government".

If NDIS systems really pay claims that are written on serviettes, as a media report claims, then the NDIA and its administration are a joke. It is unlikely that legislation is needed to address such issues. Clearly, the NDIA needs much better staff, not new legislation, to address such issues.

Proposed legislation

The proposed legislation does not address the actual problems with the NDIS that need to be addressed.

Most of the proposed legislation is unnecessary since the NDIS and its ministers already have most of the powers that the government says the new legislation brings. For example,

1. the claim that it gets back to the foundational purpose are false. The legislation sends most of the early intervention back to the states which is the opposite of the NDIS's original purpose.
2. the NDIS has always had eligibility criteria based on impairment and functional capacity. Specifically, eligibility in List A for autistic applicants always ASD Level 2 or higher – those with ASD Level 1 were always subject to further assessment. Eligibility was never based purely on an ASD diagnosis.
3. the NDIS has always exercised its power to reject Section 48 plan review requests.
4. fraud was always illegal and the NDIS already has a fraud taskforce. There is no justification for new fraud provisions. Payment should always depend on the NDIS receiving valid invoices for services and

verification from participants that the services were received. Government must keep the records.
5. The NDIS already operates its service price list.

None of the government's explanations and justifications for the proposed legislation are acceptable. They are dishonest.

The real (and unstated) purpose of the proposed legislation is to protect ministerial and NDIS decisions that violate the UN CRPD, and planning decisions made by unqualified and untrained NDIS delegates. The parliament should be very wary in making such decisions. These are decisions that deny people with disability *a fair go*.

ministerial decisions without oversight

The proposed legislation empowers NDIS Ministers to decide arbitrarily that specific disability supports cannot be funded. It is A4's understanding that the legislation gives NDIS Ministers enormous power to make decisions that are not subject to review.

NDIS ministers already have this power and it has already been exercised as is shown in:

1. the NDIS's Case Management Guide for Applied Behaviour Analysis that limits planners' discretion for severely autistic participants
2. the Section 10 NDIS supports lists.

In his recent Press Club speech, he complained

> Decisions in the Federal Court and Administrative Review Tribunal have restricted the Agency's ability to implement scheme changes to ensure the Scheme serves and supports those it was built for.

This claim is deceptive. The changes the Minister and scheme want are to limit some participants' access to some essential supports. The Minister's goal is for the Scheme to serve only some of those it was built for, those who government decides are affordable. It neglects internationally recognised human rights that tribunals and courts agreed provided choice and control over access to some NDIS supports. The proposed legislation overturns several Federal Court decisions that set precedents for NDIS operation.

A4 is concerned that the Minister and the NDIS want the power to block specific supports for autistic children. Despite strong research evidence and consistent AAT/ART decisions, the NDIS wants to deny severely and profoundly autistic children access to more intensive evidence-based early intervention. The government opposes Tribunal decisions based on extensive evidence that intensive supports for autistic children are reasonable and necessary … and satisfy s34(1) of the *NDIS Act 2013*. The government prefers that NDIS delegates with little or no scientific knowledge, training, or experience can make binding decisions that deny children they have never met essential supports.

The government wants legislation that allows the Minister to deny NDIS participants specific types of essential support without consultation and safe from review.

Decisions about what types of supports the NDIS can fund must be subject to impartial expert review. Such decisions cannot be completely in the hands of the Minister.

Restore foundational purpose

To appreciate the foundational purposes of, we note that the explanatory memorandum for the original NDIS Act 2013 says:

> **Part 2 – Objects and principles**
>
> **Clause 3** outlines that the objects of the Act are to provide for the National Disability Insurance Scheme in Australia, to support the independence and social and economic participation of people with disability during the NDIS launch, and to ensure people with disability have their reasonable and necessary support needs met and are able to exercise choice and control over the planning and delivery of their supports.
>
> The objects of the Act also include facilitating the development of a nationally-consistent approach to the provision and funding of supports for people with disability, promoting innovation in the provision of supports, raising community awareness around disability and facilitating greater community inclusion of people with disability.
>
> The Act also gives effect to certain obligations that Australia has as a party to the ***Convention on the Rights of Persons with Disabilities.*** The Convention on the Rights of Persons with Disabilities is defined in clause 9 to mean the Convention done at New York on 30 March 2007 and set out in Australian Treaty Series 2008 No.12 [2008] ATS 12.

These original objects and principles (or foundational purposes) are broader and quite different from the "foundational purposes" the Minister described for this new Bill.

The new Bill annihilates these three primary purposes of the original Bill. The new bill:

1. Cuts support for independence and social/community participation
2. Promotes separate foundational supports in different states/territories (the opposite of "a nationally-consistent approach").
3. Eliminates efforts to meet obligations toward the ***Convention on the Rights of Persons with Disabilities.***

The foundational purpose or intent was for more than "assist" … the NDIS was never intended to limit supports for autistic Australians needing the most support and sent them off to the ART to try to argue their case usually without legal or advocacy support against experienced NDIS-funded barristers in an increasingly dysfunction Injustice System. For example, autistic children with the highest needs become subject to the NDIS especially cruel policies – see https://a4.org.au/node/2567.

The NDIS never implemented its “foundational purpose”, especially key elements such as Tiers 1 & 2. Instead, the NDIS ran around the country absorbing all disability funding thereby preventing state and territory governments from maintain any disability supports or expertise.

The lack of disability supports in mainstream settings is a direct result of NDIS implementation.

eligibility and assessments of functional capacity

A4 accepts the principle of basing eligibility and support provision on valid and objective measurement of people’s impairment and function capacity.

The problem with the proposed legislation is that it fails to legislate these objectives. It does the opposite. It facilitates Ministerial discretion to create discriminatory and unjust barriers to NDIS access and supports using invalid (or unvalidated) eligibility and functional capacity assessments.

It rubber-stamps processes that are unvalidated and unreliable. The legislation allows the government to fiddle with NDIS eligibility tests to achieve the financial outcomes it considers voters will accept. Australian voters are not sympathetic to the most vulnerable citizens.

Assessment of functional capacity for autistic people is especially problematic. Autism has very broad variation across a complex “spectrum” of impairments. No one has created a tool for functional assessment of autistic subjects though many have tried. There is no reason at all to expect that the NDIS will succeed.

So, it would be a serious mistake to legislate NDIS accessibility based on a functional assessment tool that does not exist for autistic Australians … and where it is unlikely a reliable and validated tool will exist in the foreseeable future.

Notably, the original NDIS was meant to base support needs on individual needs assessment … presumably by treating clinicians who know (and respect) the participant and their impairments (and strengths). This is how the health system works: it is likely to be the best approach for parts of the disability sector as well.

The other issue with reliance on functional assessment without regard for diagnosis or underlying aetiology … is that different responses are often needed for the same impairment. For example, a non-verbal autistic person whose neurology does not support language may not be able to speak using AAC, while an autistic person whose non-verbal functioning is dyspraxia may become quite proficient at communicating via AAC.

Currently, the NDIS has a secret process for creating a severity rating, a number up and including 16. Autistic participants cannot get a rating of 16; a severity if 15 is their maximum.

Manty NDIS severity ratings for most autistic participants appear, though we cannot be certain, to be based on assessment tools that the NDIS knows do not provide accurate or reliable assessments of functional capacity for autistic children. Many autistic children are subject to PEDI-CAT assessments, and it appears the NDIS uses these assessments in determining its participant severity rating. The NDIS knows that because the PEDI-CAT typically understates the impact of autism, the authors of the assessment created an autism specific version known as the PEDI-CAT (ASD). The NDIS had the PEDI-CAT (ASD) evaluated and the result was relatively negative: see https://pubmed.ncbi.nlm.nih.gov/38678516/ and https://www.autismcrc.com.au/knowledge-centre/publications/reliability-validity-and-acceptability-pedi-cat. The reviews say:

> **Conclusion:** The PEDI-CAT (ASD) had adequate psychometric properties and acceptability as a measure of Activities and Participation codes. However, it lacks comprehensiveness and relevance when compared to the ICF Core Sets for ASD and has the potential to overestimate functioning.

The NDIS continues to use the non-ASD PEDI-CAT on autistic children: records obtained from the NDIA PIA process show that the NDIS computer systems cannot records a PEDI-CAT (ASD) result for children who were assessed using that assessment. Nor can they properly record the severity levels provided in a full DSM-5 diagnosis report. NDIS severity ratings for autistic children are based on insufficient and unreliable information.

Recently, an experienced OT gave evidence to the ART about a report that contained a PEDI-CAT assessment. She said she did not know there is a PEDI_CAT (ASD) for autistic subjects.

The NDIS indicated that it regards the autistic NDIS participants with a rating of up to 10 as having “mild to moderate” autism … and will exit them, together with children whose primary disability type id Developmental Delay, from the NDIS as soon as possible – see https://a4.org.au/node/2772. An email to a journalist shows the NDIS in August 2025 expected to exit 120,444 children aged 0-8 years and 94,421 aged 9-14 years. That was all (100%) of children with Developmental Delay, and 71% of autistic NDIS participants aged 0-8 years and 82% of those aged 9-14 years.

The government relies on unreliable and unvalidated severity rating to make critical decisions about supports that have major and lasting impacts on the lives if autistic children.

Children with other disability types and severity ratings up to 10 were not considered for expulsion.

Already, the NDIS does not give autistic children a fair go. The proposed legislation aims to promote greater NDIS discrimination against autistic participants by giving the Minister the power to make arbitrary decisions to deny them essential supports.

stricter on unscheduled plan reassessments.

Sections 100 and 48 of the NDIS legislation allow for a participant to request an internal review of the planners (CEO's delegate's) planning decision.

A4 has observed that most of these internal reviews simply affirm the original planning decision. There is little or no evidence of a proper review. The so-called reviews are little more than acknowledgment of having received a review application and simply rejecting it.

The proposed legislation will make no practical difference: internal reviews are often cursor to non-existent. Already, they take little more effort than processing an application and rejecting it.

It seems that the real but unstated purpose of this aspect of the proposed legislation is to discourage the growing number applicants from requesting of plan review. The government has not provided any evidence that such a strategy would work nor that it would benefit participants.

Notably, the latest ART statistics (to 30/4/2026) show that the NDIS's original planning decision was wrong (hence the Tribunal process changed the outcome) was 68%. More than 2 in 3 original NDIS decisions taken to the Tribunal were wrong. The NDIS's performance is the worst (by far) reported in the ART's statistics. The parliament should not pass laws to protect the NDIA's abysmal performance.

The proposed legislation aims to empower the Minister and the NDIS to

1. prevent ART reviews by denying participants the internal review that is an essential prerequisite for an independent review of poor NDIS's decision – most NDIS decisions that are reviewed independently are overturned so it is essential that they can be independently reviewed.
2. limit/restrict/deny the Tribunal legal grounds for upholding participants' internationally agreed human rights to access essential reasonable and necessary supports for their disability and impairments.

fraud, rorts and non-compliance.

Fraud is illegal. And it is inherent in the small government approach where government struggles to regulate service provision rather than just delivering essential services directly.

The proposed Bill requires NDIS participants and their Informal Supports to keep their own records. It requires participants, many with poor executive functioning, to maintain records, an unnecessary bureaucratic demand that will increase administrative non-compliance with no real benefit. This just burdens unpaid Informal Support with unreasonable administration.

This is like RoboDebt on steroids.

A better solution would be for the Agency to collect service/support details electronically as a condition of payment. This simplifies "registration". It makes the NDIS responsible for maintaining records and facilitates automated fraud detection – such as when someone claims to provide more support than is possible in each period … and many other prospective over-charging possibilities.

The onus must be on the NDIS to ensure the payments it makes are valid, and to keep its own records of payments made. Incredibly, the NDIS currently does not provide the ART with records of payments it made under an review applicant's Statement of Participant Supports (SoPS or NDIS Plan) that it is reviewing – and most notably, the Tribunal does not allow applicant's to subpoena those records.

Dysfunctional legislation

The existing legislation has serious issues that need to be addressed.

NDIS legislated impairment categories omit autism

Autism is defined and described as social, communication and behavioural impairment. These three impairment categories are omitted from the impairment categories that NDIS legislation recognises.

The current legislation makes impairment categories central to the NDIS. Sections 24(1)(a), 25(1)(a) and 32BA(3) list the recognised impairment categories consistently. Remarkably, none of the legislated categories properly includes autism, the most common primary disability type in the NDIS. The NDIS Quarterly report (Q3 2025-26, Table D.8) says 338,099 or 43.7% of all NDIS participants have autism as their primary disability type but their primary disability type is not recognised legally.

Section 24 of the *NDIS Act 2013* says:

> **24 Disability requirements**
>
> (1) A person ***meets the disability requirements*** if:
>
> (a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or the person has one or more impairments to which a psychosocial disability is attributable; and
>
> (b) the impairment or impairments are, or are likely to be, permanent; and
>
> (c) the impairment or impairments result in substantially reduced functional capacity to undertake one or more of the following activities:
>
> (i) communication;
>
> (ii) social interaction;

(iii) learning;

(iv) mobility;

(v) self-care;

(vi) self-management; and

(d) the impairment or impairments affect the person's capacity for social or economic participation; and

(e) the person is likely to require NDIS supports under the National Disability Insurance Scheme for the person's lifetime.

The six categories listed in s24(1)(a)[5] are intellectual, cognitive, neurological, sensory, physical, and psychosocial.

But autism does not fit into any of the six categories that are listed in the legislation. The DSM-5 has autism is in its *neuro-developmental* category; autism if not due to a known neurological condition.

Basically, the *NDIS Act 2013* lacks a proper category for the most common and often most disabling disability type in the NDIS. The current legislation can be interpreted to deny support to some of the most profoundly disabled Australians.

Some NDIA officials might say that autism fits in the neurological impairment category. However, some people with the same neurology are fully functional so the divergent neurology is not couple to impairment.

Autism research typically describes ASD as the triad of social, communication and behavioural impairment. It would make sense for the NDIS legislation to recognise these three areas of impairment so autistic impairment can be legally described for the purposes of the NDIS.

Notably, Part B(4) of the DSM-5 diagnostic criteria for ASD[6] states:

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

so autistic people can have sensory impairments as part of their recognised autistic behavioural responses.

Independent review process

The proposed legislation aims to protect numerous NDIS decision powers from external or independent review. This is contrary to basic human rights; it is extremely unfair.

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[5] also listed in s25(1)(a) and s32BA(3).

[6] See https://a4.org.au/dsm5-asd

While Minister Butler has objected to Tribunal and court outcomes, there is a need to recognise that the current process already favours then government. Vulnerable Australians will lose out more if this legislation is allowed to further bias Tribunal and court outcomes and deny basic human rights or fair access to legal systems for some of Australia's most vulnerable citizens.

For example, some difficult decisions are delayed unreasonably – for example, see https://a4.org.au/node/2789.

Missing components

Human Rights Assessment

A4 believes that the proposed legislation severely undermines human rights provisions in the existing legislation.

The government needs to obtain and consider an impartial assessment of the effect of the proposed legislation on the human rights of Australians with disability, and especially the rights of Australian children with disability under all the UN treaties that Australia is part to.

Genuine sustainability improvement

The NDIS needs to improve disability outcomes and efficiency.

The greatest sustainability improvements will come from improving early intervention, effective capacity building, and using evidence-based supports. Key aspects of a sustainable NDIS are missing.

Some cost reduction can be achieved through administrative efficiency (include fraud reduction).

The current administration does not collect data and measure cost-benefit for disability related outcomes. It does not know how to improve NDIS sustainability.

Legal Protection and Advocacy for Individuals

A4 observes that few severely autistic Australian can get quality advocacy services to support them in accessing essential disability supports. The NDAP program is massively under resourced and lacks essential capacity and capability to advocate sufficiently and effectively for autistic clients.

For example, few autistic NDIS participants have legal or advocacy support in their ART matters. Mostly, they are left to fight their legal battles on their own with little or no legal or advocacy support.

Conclusions

A4 agrees that currently the NDIS costs too much. But that is due to especially poor NDIS implementation from the beginning. The proposed legislation does not aim to restore the NDIS's original purpose: it aims to hand too much control to the Minister of the day. The disability sector observes that budgetary rather than human rights objectives influence even Labor ministers.

The NDIS never achieved its "foundational purpose": it failed to implement key elements, Tiers 1 & 2 and planning based on individual goals and functioning. In the beginning, the NDIS absorbed all state/territory disability funding thereby annihilating state and territory governments' capacity to maintain any disability supports or expertise. States lack the capacity to resume disability support.

The lack of disability supports in mainstream settings is a direct result of NDIS implementation.

The abilityNEWS Daily (21/5/2026) observed …

> **Bottom line:** The system is moving from participant discretion towards ministerial and agency control. Much of the practical effect of this is deferred into the future. Ministerial rules and NDIA implementation will effectively decide how the reforms work.

Experience of "ministerial and agency control" has disadvantaged NDIS participants and their Informal Supports. Mostly, it results in diminishing and undermined human rights for people with severe and profound disability.

The government's description of its legislation is deliberately misleading and dishonest. The disability sector deserves honesty. Australians deserve a far better approach to legislation. In its current form, this legislation is unacceptable.

Genuine NDIS sustainability will only be achieved through improving disability outcomes and operational streamlining. The proposed legislation does the opposite.

Annex A: Autism Spectrum Disorder

The full description of Autism Spectrum Disorder (ASD) from the *Diagnostic and Statistical Manual of Mental Disorder, 5th edition Text Revision 2022* (DSM-5-TR) https://doi.org/10.1176/appi.books.9780890425787 is available at https://a4.org.au/dsm5-asd.

Most notably it says:

> … Only a minority of individuals with autism spectrum disorder live and work independently in adulthood; those who do tend to have superior language and intellectual abilities and are able to find a niche that matches their special interests and skills. In general, individuals with lower levels of impairment may be better able to function independently. However, even these individuals may remain socially naive and vulnerable, have difficulties organizing practical demands without aid, and are prone to anxiety and depression. Many adults report using compensation strategies and coping mechanisms to mask their difficulties in public but suffer from the stress and effort of maintaining a socially acceptable facade. Scarcely anything is known about old age in autism spectrum disorder.

The NDIS has its own unique systems for describing autistic NDIS participants that do not match clinical descriptions. Some of the features of the NDIS approach are described at https://a4.org.au/node/2647

Autism numbers: ABS SDAC vs NDIS

The ABS uses data from its Survey of Disability, Ageing and Carers to estimate the number of autistic Australians. It produces a series of reports that were summarised in a report, *Autism in Australia: data and its sources* (July 2023), given to the government officials who wrote the National Autism Strategy.

Figures 16 & 17 in the report compare data from Carer Allowance (child) for autism with the ABS SDAC estimates and show considerable agreement of the ABS estimates with the Carer Allowance (child) data for the population where every eligible child has a medically confirmed diagnosis.

Since the NDIS started, the reliability of Carer Allowance (child) data has declined substantially. Fewer families of autistic children access this disability support even though they are eligible and when accessed it puts dollars directly in their pockets (with no reported fraud).

In 2012, the ABS estimated that there were 115, 400 autistic Australians and 73% had severe or profound disability (see Table 1 in *Autism in Australia* (2023)). So, very few, if any, of them were over 65 years of age.

So, the ABS estimated that in 2012, there were around 84,242 (114,400x0.73) severely or profound autistic Australians.

On the other hand, the Productivity Commission (who had early access to the ABS SDAC data) estimated that just 9% of 410,000 (36,900) NDIS participants would be autistic. Just 44% of the ABS's estimated number of severely and profoundly autistic Australians would be eligible to be NDIS participants.

The Productivity Commission did not allow for the growth in autism diagnoses of children that the ABS has been reporting.

The autism sector warned the Productivity Commission and the NDIS that their autism estimates and assumptions were most likely wrong.

By 2018, autism as a primary disability type in the NDIS rose from an expected 9% to 29% of NDIS participants. NDIA officials told Senate Estimates that they expected to cut that level back to 20% autistic NDIS participants. But the rate has continued to increase and has now exceeded 43% of NDIS participants.

NDIS autism number now exceed projections from the latest ABS SDAC data. Autism diagnosis rates for Australian children may have increased with the NDIS. Some reports suggest Australia now has the highest national rate of autism diagnosis in the world.

Government needs to recognise and address the issue that autism numbers are growing. And that legislation intended to deny many autistic children, especially those most affected by their disorders, access to evidence-based ASD-specific early intervention is an inappropriate (ineffective and costly) response. The Australian federal government needs to end its war on autistic children.