



National Legal Aid Submission

Disability Safeguards Consultation

22 December 2025



Acknowledgement of country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.



About National legal Aid

Who are we?

National Legal Aid represents the eight independent Legal Aid Commissions in each state and territory of Australia. These Commissions work collaboratively to deliver essential legal services, making sure that justice is accessible to all Australians. We strive to support those who are most in need, ensuring fair and equitable legal outcomes. Legal Aid Commissions are independent, statutory bodies established by respective state or territory enabling legislation and funded by Commonwealth and State or Territory governments to provide legal assistance to people.

What do we do?

Legal Aid Commissions are the largest providers of legal services to people with disability across Australia, including grants of aid for ongoing legal representation, duty lawyer services at courts and tribunals, legal advice, family dispute resolution conferences, community legal education, and information and referrals.⁷ Each year, we provide 1.7 million legal assistances. 25 percent of our clients receiving legal representation have a disability.¹ The Australian Government funds Legal Aid Commissions in each state and territory to provide specialist legal advice and representation for National Disability Insurance Scheme (NDIS) appeals to the Administrative Review Tribunal (ART).

Why do we do it?

Our shared vision is that all people experiencing disadvantage have access to legal assistance and fair justice outcomes that contribute to safe, thriving families and communities. We are the 'safety net' of the legal system – there to assist families and individuals in times when they are in highest need. Our clients include people most in need of legal assistance including First Nations peoples, victim-survivors of domestic and sexual violence, and people with disabilities.

© 2025 National Legal Aid. Reproduction without express written permission is prohibited.

Written requests should be directed to National Legal Aid.

www.nationallegalaid.org

¹ National Legal Aid, Strategic Plan 2025-2030.



Executive Summary

National Legal Aid (NLA) welcomes the opportunity to contribute to the development of a strengthened Disability Support Quality and Safeguarding Framework (**the Framework**). We support the overarching aim of establishing a Framework that strengthens safeguards for all people with disability both within and outside the NDIS. Safeguarding must do more than prevent harm -it must actively empower people with disability to exercise their rights and live with dignity and autonomy.

NLA emphasises the critical importance for people with disability to have access to legal assistance to resolve issues related to their disability. Safeguards are not only about risk mitigation but must also include accessible, independent pathways for people to defend and enforce their rights, including access to legal advice and representation as well as non-legal advocacy.

To be effective and equitable, the Framework must:

1. Recognise access to legal assistance and non-legal advocacy as core safeguards.
2. Ensure review and complaint pathways are accompanied by independent, funded advocacy and/or legal support.
3. Invest in rights-focused capability building, delivered accessibly and in partnership with Legal Aids.
4. Promote coordinated safeguarding across all systems affecting people with disability.
5. Establish mechanisms for continuous monitoring and accountability.

Legal assistance is a critical safeguard that ensures people with disability can understand, claim and enforce their rights. A safeguarding system without properly funded, specialist legal assistance will not meet its intended purpose. NLA stands ready to work with the Commonwealth to ensure that the safeguarding system is genuinely protective, empowering, and rights-affirming for all people with disability.

Safeguards must protect fundamental rights and provide accessible pathways to justice

NLA supports the development of a national Disability Support Quality and Safeguarding Framework that expands beyond the NDIS to cover all disability support environments, and we are supportive of core safeguarding functions identified in the Consultation Paper: prevention, capability building, monitoring, and responding to harm. However, safeguards will only be effective if people with disability can practically realise their rights.

Legal Aids have significant expertise supporting clients who have experienced harm arising due to unmet needs, service failures, or restrictive practices – including through interactions with the justice, corrections, child protection, family violence, housing, education and income support settings. Drawing on this experience, Legal Aids observe that:

- People with disability frequently experience administrative and systemic barriers that prevent them from challenging incorrect decisions or unsafe support environments.
- Legal assistance is often the determinant of whether a person with disability can engage with or benefit from a safeguard. Administrative and legal processes can be complex, burdensome and require procedural knowledge, making these difficult to navigate without specialist support.
- Where people receive support from advocates and legal assistance, they are significantly more likely to obtain correct decisions, support adjustments, and protection from unsafe practices.

The provision of specialist, trauma-informed, holistic legal services that address a range of legal and non-legal problems can ensure that people with disability have the support they need to overcome barriers to participating fully and equally in society. Legal assistance, in particular, is vital for people who are at risk of compulsory treatment, seclusion or restraint, as it safeguards their rights and promotes accountability. Legal Aids consider there is particular need for improvement in terms of:

- Accessible legal and non-legal advocacy and advice for people with disability, especially First Nations peoples, people from culturally and racially marginalised backgrounds, women and children;
- Accessible legal education and rights awareness for the community; and
- Education for legal professionals about working with people with disability.



Legal assistance for NDIS appeals

The critical importance of ensuring access to specialised legal assistance for people with disability is demonstrated by the 2025 evaluation of the NDIS Appeals Program undertaken by the Law and Justice Foundation of NSW (the Evaluation).²

The NDIS Appeals Program provides access to legal assistance for people who are seeking to appeal a decision made by the National Disability Insurance Agency. For example, in relation to supports their needs or eligibility to gain access to the NDIS. The Department of Health and Disability funds Legal Aids to deliver the legal services component of the NDIS Appeals Program, including legal advice, task assistance and representation.³ This is part of the broader National Disability Advocacy Program which provides support to people with disabilities to resolve issues related to their disability.

The Evaluation found that

*'...the appeals process is complicated, daunting, exhausting, resource intensive and difficult to navigate without the support of a lawyer, advocate or similarly experienced person.'*⁴

The Evaluation demonstrates overwhelming evidence that access to legal support materially improves people with disability's capacity to:

- Understand and respond to complex decision-making processes – including complex legal processes;
- Navigate burdensome evidentiary and procedural requirements;
- Present their case before independent reviewers; and
- Achieve correct, lawful and just outcomes.

Key evaluation findings include:

- Participants experience significant barriers relating to literacy, disability-related cognitive load, and emotional strain in challenging decisions independently.
- Appeals supported by advocates or lawyers result in more complete evidence, more accurate issue-framing, and a higher rate of internal review reversals, and that issues are often resolved earlier when legal support is available.

² Davies K, Ratcliffe S, Kothe E, Takchi S (2025) 'I would have given up without it': An evaluation of the NDIS Appeals Program Legal Services.' Law and Justice Foundation of NSW.

³ Davies et al, n1.

⁴ Ibid, p.23.

- People without representation are more likely to abandon appeals, accept incorrect decisions, or experience deterioration in wellbeing.

In NDIS appeal matters Legal Aids have observed a more formal and increasingly adversarial environment with government agencies legally represented in the context of most applicants being self-represented. A legal system that is increasingly adversarial without funded legal assistance is itself a safeguarding risk. Recent reports note that in 2024-25, the National Disability Insurance Agency (NDIA) paid \$60.7m to external law firms to represent it at the ART, representing a 60% increase from the previous year.⁵ This presents a significant power imbalance. The increasingly adversarial nature of NDIS Appeals matters has caused distress for applicants, who are people with disabilities and their families seeking access to the NDIS to get support, or access to particular supports they need.

The Evaluation found that legal assistance for NDIS appeals resulted in better outcomes for clients, helped clients be more informed and prepared, enhanced access to justice and fairness, reduced delays, supported the fair and efficient operation of the ART and the NDIS (including by filtering out non-meritorious cases), and represented value for money.

The NDIS Appeals Program Legal Services has evolved into a unique specialist program that helps the legal system function better, promotes transparent and fair NDIA decisions and, most importantly, gives people with disability better access to justice and necessary supports that can change lives.⁶

Legal Aids are not able to meet demand for the NDIS Appeals Program within the current funding provided (2023 data shows that just 65% of the demand for the Program was being met).

Recommendation

The Framework must explicitly recognise access to legal assistance as a core safeguarding mechanism rather than an ancillary or optional support.

The Commonwealth must commit to adequate and sustained funding for accessible legal assistance to ensure that; people with disability have the legal support they need to practically realise their rights and are not disadvantaged in increasingly adversarial legal proceedings.

NLA submits that adequate funding is necessary to address the significant power imbalance created by government agencies being routinely legally represented, to reduce distress for Applicants and their families, and to promote fair, efficient, and timely decision-making by the ART and the NDIA. Expanding

⁵ Kate Lyons, 'They've engaged a barrister!' Parents of high-needs children say Labor is waging lawfare over disability support', The Guardian, 24 September 2025.

⁶ Ibid, p. 2.

access to legal assistance will improve outcomes for participants and prospective participants, enhance access to justice, support the effective operation of the NDIS and represent value for public expenditure.

Safeguards must embed effective, independent review and complaint pathways

Independent review, dispute resolution, and complaint mechanisms will be critical to ensuring the system increases safety, quality and wellbeing for people with disability in practice. We agree with the Consultation Paper's acknowledgment that people with disability are often not given enough information about their rights, options and safety and with the need for accessible information co-designed with people with disability. However, the safeguarding framework cannot assume that awareness of a safeguard equates to a person's capacity to use it. The Framework must be paired with funded, specialist support to ensure equitable access.

Case study: Improved access to support for people receiving compulsory mental health treatment in Victoria

Under the *Mental Health and Wellbeing Act 2022 (Vic)*, every person receiving compulsory treatment in Victoria is now connected to an advocacy service that can provide them with support and information so they can have as much say as possible about their assessment, treatment and recovery, on an opt-out basis. Advocates "help consumers speak up about their views, preferences and concerns while navigating the processes around compulsory orders, including where restrictive practices are used, like seclusion and chemical restraint."

Data from the first 12 months of the new model shows that consumer feedback about the opt-out service has been overwhelmingly positive, with consumers reporting they were 'relieved' and/or 'happy' when an advocate contacted them due to having received a notification.

Thank you for all your help, if it wasn't for you, I would be still locked up in that place.

IMHA should be proud to have you advocating for people like me who don't get heard.

Thank you (First Nations consumer who accessed Victoria's Independent Health Advocacy Service)

There has also been an increase in access to legal assistance since the start of opt-out, with more frequent referrals to legal services, and specialist lawyers at the Victorian Aboriginal Legal Service, Mental Health Legal Centre and Victoria Legal Aid representing more consumers at the Mental Health Tribunal.

(Independent Mental Health Advocacy (IMHA) Report on opt-out register and non-legal advocacy service for period 1 September 2023 to 31 August 2024 (June 2025)).



Legal assistance and non-legal advocacy support should be integrated into safeguarding architecture as a mandatory referral point wherever a rights breach or contested decision occurs.

Recommendation

Legal assistance and independent advocacy must be included as structural components of the safeguarding system, including:

- Mandatory automatic referral pathways from complaints, incident reporting, and restrictive practice oversight bodies.
- Clear, accessible and co-designed information about accessing Legal Aid services as part of safeguarding notifications and decision letters.
- Sustainable and adequate Commonwealth funding for specialist disability legal assistance and representation to ensure equitable access, timely support and system-wide consistency.

Strengthen capability: enabling people with disability to understand and exercise their rights

The Consultation Paper emphasises capability building as a safeguard in its own right. NLA supports this strongly. However, capability building must be framed not as an expectation that individuals should self-manage risk but as a rights-enabling function supported by accessible systems and specialist supports. Based on experience working with people with disability, Legal Aids observe that:

- People with disability often rely on fragmented or inaccurate information from multiple sources including providers, plan managers, and others which can undermine their understanding of rights.
- Early legal assistance promotes preventative safeguarding by correcting misunderstandings and resolving issues before harm escalates.
- Supported decision making models and frameworks play a critical role in safeguarding the rights of people with a disability and give them a voice in decisions that impact them.
- Community legal education delivered through disability advocacy organisations, allied health networks and culturally and racially marginalised communities improves participants' ability to identify unsafe situations and seek help early.

Recommendation

The Framework should include a commitment to:

- Fund and deliver accessible, plain-language information co-designed with people with disability that includes clear information on how to access support to make and escalate complaints, report incidents, including legal assistance.
- Integrate legal assistance into capability-building initiatives.



- Target supports where they are needed including communities with high safeguarding risk such as First Nations communities, people in rural, regional and remote areas, and people from culturally and racially marginalised backgrounds.

Safeguards must be integrated across systems

People with disability interact with multiple systems: health, housing, justice, income support, education, and child protection. Failures or gaps in these systems can become safeguarding failures, even when NDIS supports are adequate.

Legal Aid Commissions repeatedly observe safeguarding breakdowns where:

- People with disability are inappropriately criminalised due to unmet support needs or lack of supported decision-making. Based on experience working with people with disability, Legal Aids observe that people with disability are overrepresented in the criminal justice system due to failures of multiple systems and services to adequately support them and meet their needs. The problematic policing of people with disability also contributes to the overrepresentation of people with disability in the criminal justice system. Legal Aid practice experience highlights poor police conduct towards people with disability, including police interpreting the presentation of a person with disability as indicating intoxication, misunderstanding dysregulation and responding in ways that heighten rather than diffuse the situation.
- Individuals experience housing instability due to insufficient support coordination or poor provider practices.
- Restrictive practices are used without proper oversight or procedural fairness.
- People are placed at risk of harm because systems do not communicate or coordinate effectively.

Safeguards must extend across environments, settings and systems, with priority given to improving safeguarding in high-risk environments including in custodial settings, places of detention, situations where people with disability encounter police, and in engagement with child protection.

Through Legal Aids' equality law work, we also see the benefit of education, advice and legal assistance about discrimination services (and a stronger more effective Australian Discrimination Law framework) as a key safeguarding mechanism across service provision and other areas like education.

Recommendation

Embed mechanisms for cross-system coordination, including:

- Formalised partnerships with Legal Aids as part of national safeguarding governance arrangements.
- Clear and accessible escalation pathways when safeguarding concerns intersect with criminal law, family violence, tenancy, guardianship or administrative law issues.

- A nationally consistent approach to supported decision-making that promotes autonomy and reduces reliance on substitute decision-making.

Monitoring and accountability

Effective safeguarding requires data, transparency and continuous improvement. Yet safeguarding data is currently fragmented across providers, regulators, tribunals and oversight bodies. Legal Aids hold unique insights into systemic complaints, barriers to rights enforcement, and patterns of harm.

For example, the NDIS Appeals Program Evaluation showed:

- Systemic issues (for example delayed internal reviews, inconsistent decision-making, inadequate evidence standards) emerge clearly through aggregated casework.
- Without formal channels, these insights are often not captured or used to inform systemic improvements.

Recommendation

The Framework should commit to:

- National reporting on the accessibility and use of legal supports within safeguarding pathways.
- Data collection on demographic inequities, including for First Nations people, people in remote areas, and people with complex or intersecting needs.