NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026

National Legal Aid | **4 June 2026**

Prepared for: Senate Community Affairs Legislation Committee

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.

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About National Legal Aid

Who are we?

National Legal Aid (NLA) represents the directors of the eight state and territory Legal Aid Commissions (Legal Aids) in Australia. Legal Aids are independent, statutory bodies established under respective state or territory legislation. They are funded by Commonwealth and respective state or territory governments to provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

What do we do?

NLA brings together the experience of the eight Australian state and territory Legal Aids. Legal Aids work across areas of criminal, civil and family law to provide legal representation, legal tasks, community legal education, integrated services and policy and project work.

Legal Aids 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. Each year, we provide 1.7 million instances of legal assistance. 25% of our clients receiving legal representation have a disability. The Australian Government funds Legal Aids 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) under the NDIS Appeals Program.

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.

Executive summary

A strong and sustainable NDIS is essential for people with disability to live independently, safely, with dignity and choice. Through our work as Legal Aids, clients with disability tell us the NDIS supports they receive significantly help them in their daily lives. The future of the NDIS should be secured through considered and tested law reform grounded in lived experience, fairness and accountability — prioritising sustainable support for people with disability over cost saving.

The National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (the Bill) proposes significant changes to *the National Disability Insurance Scheme Act 2013* (the NDIS Act), including to access, plan reassessment, support funding, renewals, review rights and decision-making.

If enacted, the measures will have life-changing consequences for people with disability: narrowing access to the Scheme, constraining reassessment pathways, increasing evidentiary and procedural barriers, narrowing the connection between impairment and supports, permitting reductions to support funding through delegated powers, and weakening practical access to review. The Bill also risks entrenching disadvantage for those already facing structural barriers, including First Nations peoples, people in rural and regional areas, people with multiple or episodic impairments, children, women, and those with limited informal supports.

Reforms of this scale must strengthen the Scheme's fairness, transparency and integrity — not diminish the rights and supports of the people it exists to serve. NLA is concerned many of the most consequential details will be left to future Rules and Ministerial determinations, with inadequate consultation, insufficient legislative clarity, and limited evidence the safeguards needed to protect participants will exist. This risks shifting the NDIS towards a system that is harder to access, harder to navigate and less accountable.

As a primary provider of legal support to people navigating complex NDIS review and appeal processes, NLA is concerned several measures will shift responsibility away from the Scheme and onto families, carers and other overstretched service systems, while increasing pressure on the Administrative Review Tribunal (ART), courts, advocates and legal assistance services. NLA strongly recommends the Bill be amended so that access is not significantly curtailed, supports are not reduced, important safeguards continue and review rights remain. Amendments are critical to: set key protections out in primary legislation; narrow or remove excessive delegated powers; preserve fair, accessible and timely review pathways; ensure reforms are co-designed with people with disability and tested for implementation; and provide additional investment in legal assistance, including the NDIS Appeals Program, to meet the predictable increase in disputes.

NLA supports reform to secure a sustainable NDIS that meets the needs of people with disability and the community. The Bill in its current form risks that future without significant amendment to its content and further careful consideration and consultation on its implementation.

List of Recommendations

NLA recommends:

Schedule 1 – Access and planning

Part 1 – Functional capacity definition

1. That any amendments to the functional capacity assessment framework ensure fairness by considering:

(a) a person's ability to access and meaningfully participate in the assessment, particularly people in rural, regional and remote communities;
(b) the compatibility and consistency of the assessment process and method with culturally safe practices, particularly for First Nations communities;
(c) the appropriateness of the assessment method for evaluating a diverse range of impairments, including complex, interrelated, or episodic impairments; and
(d) the capacity of the framework to accommodate fluctuations in functional ability over time, rather than relying solely on a single point-in-time assessment.

Part 2 – Unscheduled plan assessments

2. That, to ensure participants retain appropriate access to reassessments, the Bill be amended to remove s 48A(2) and (3), and s 48A(1) be redrafted as follows:

"For the purposes of paragraph 48(2)(b), the conditions are that:
(a) a participant's plan is insufficient to meet their current support needs; or
(b) a participant's plan is scheduled for automatic renewal within 3 months; or
(c) significant change in the participant's functional capacity; or
(d) alteration in the participant's personal or environmental circumstances."

3. That proposed s 48(2) of the Bill be amended to require a reassessment when a person receives an impairment notice that includes a new impairment.

4. That proposed ss 48(2) and (2A) of the Bill be amended to remove restrictions on both the formal requirements for making a reassessment request and who can make a reassessment request, to ensure this does not create unnecessary and arbitrary barriers for participants.

5. That proposed s 48(3) of the Bill be amended to reduce the timeframe for the CEO to decide whether to conduct a reassessment to 30 days instead of 90 days.

6. That the Bill be amended to enable the NDIA on internal review and the ART on external review to conduct a reassessment as part of its review power, where the participant has sought review of a decision not to conduct a reassessment.

7. That the Bill be amended to ensure the following review rights remain available:

(a) an automatic review where the CEO has failed to make a decision in relation to a reassessment request within the prescribed time; and
(b) a review of a decision by the CEO that the s 48A criteria have not been met.

8. That the transitional provisions in the Bill be amended so that the new reassessment criteria apply only to reassessment requests made after the day the item commences.

Part 3 – Link between impairment and supports

9. That Schedule 1, Part 3 – *Strengthen link between an impairment and need for support* – of the Bill does not proceed in its current form.

10. That, if Schedule 1, Part 3 of the Bill proceeds, s 34(1)(aa) be amended to retain a sufficient causal connection rather than requiring that a need arise "directly from a qualifying impairment", and to make clear that a support may be reasonable and necessary where the qualifying impairment is a material or contributory cause of the need, even if the need is also affected by another impairment, comorbidity, environmental factor or personal circumstances.

11. That the existing statutory recognition of environmental factors and the impact of another impairment be retained in s 32K(3A), s 32L and the note to s 34(1) of the NDIS Act.

Part 4 – Support determinations and funding caps

12. That the Bill be amended to remove provisions introducing support determinations (s 34A) or funding caps (ss 33(2EA) and 33(2EB)) that reduce the funding available for participants for reasonable and necessary supports.

13. That, if support determinations (s 34A) and funding caps (ss 33(2EA) and 33(2EB)) are retained, the Bill be amended to incorporate clear statutory safeguards, including that:

(a) support determinations (s 34A) and caps (ss 33(2EA) and 33(2EB)) apply only to specified classes of supports, rather than having broad or Scheme-wide application;
(b) support determinations (s 34A) and caps (ss 33(2EA) and 33(2EB)) be made through the Category A rules process, rather than by Ministerial instrument; and
(c) an intersectional impact analysis and survey report be tabled alongside any future instruments when introduced, with a minimum 15-day disallowance period before commencement.

14. That, if support determinations (s 34A) and funding caps (ss 33(2EA) and 33(2EB)) are retained, the Bill be amended to ensure that participants who are subject to support determination reductions in funding or funding caps can seek an exemption where there is an

impact on their functional capacity or a risk to their own or another person's safety, health or wellbeing.

15. That the Government ensure that communication to participants about any reduction in total funding is clear and transparent, with accessible pathways to support to assist participants to understand the implications for how funding is spent.

16. That, to ensure appropriate safeguards for any debts accrued, the Bill be amended to enable debts arising as a result of decisions made under ss 182(1) and (3) of the NDIS Act to be reviewable under s 99.

Part 5 – Plan renewals

17. That the Bill be amended to include a right for participants to opt in to a plan reassessment by making a request three months before the end date of their current plan.

18. That the Bill be amended to enable plans created under the plan renewal powers to be subject to the same review rights as other decisions resulting in a new plan.

Part 6 – Reasonable and necessary supports

19. That the Bill be amended to remove s 34(1)(g) on the basis this can be addressed through the NDIS supports lists or other rules.

20. That the Bill be amended to remove s 34(1A), or, if retained, that s 34(1A)(a) be redrafted as follows: *"must consider whether comparable supports which would achieve the same outcome are available at a substantially lower cost".*

21. That the Bill be amended to replace proposed s 34(1E) and (1F) with the content of the current Rules, which allow for the balanced consideration of the consensus of expert opinion, published literature and lived experience of the participant.

22. That, if s 34(1E) is retained:

(a) the Bill be amended to insert the word "likely" in s 34(1E)(b) and to omit s 34(1E)(c);
(b) s 34(1E)(c) not be confined to a participant's use of the support in a previous plan, but extend to any evidence of the participant's prior use of the support where such evidence is available; and
(c) the Bill be amended to refer only to "evidence as to outcomes for the participant".

23. That, if s 34(1F) is retained, the Bill be amended to remove the word "limited" from s 34(1F)(a) and (b).

24. That the Bill be amended to remove proposed provisions s 34(1G)–(1K) and retain Part 3.4 of the current Supports Rules in relation to family support.

Part 7 – Plan suspensions

25. That Schedule 1, Part 7 – *Plan Suspension etc* – of the Bill not proceed.

26. That, if Schedule 1, Part 7 of the Bill is retained, the Bill be amended to introduce a more limited suspension power, similar to s 26(3)(b)(i), in relation to participant non-compliance with s 50.

27. That the Bill be amended to remove s 30(1A) to ensure participant status cannot be revoked where the participant is not contactable.

28. That the Bill be amended to require that a plan cease to be suspended if the participant contacts the NDIA or provides the information requested, similarly to s 36(4)(c). This should occur by operation of statute without needing a formal decision. The CEO must be required to identify a different basis within the Act to re-suspend the plan if the CEO still considers there are grounds to do so. In the alternative, the Bill be amended to provide clear guidance as to when the CEO should cease a suspension, and a decision not to cease a suspension under s 40A(4) be a reviewable decision.

29. That, if Schedule 1, Part 7 of the Bill is retained, the Bill be amended to remove:

(a) proposed s 30(1A), which provides the power to revoke participants; and
(b) proposed s 32D(5), which undermines protections in s 36.

30. That the Bill be amended to provide the following safeguards in proposed s 40A:

(a) a requirement that the CEO must consider whether the suspension of a participant's plan would expose the participant to a risk of harm;
(b) amendments to s 40A(3) and (4) to provide that a plan ceases to be suspended where the participant contacts the NDIA or provides the information requested; alternatively, that the legislation provide clear guidance as to when the CEO should cease a suspension, and that a decision not to cease a suspension under s 40A(4) be a reviewable decision; and
(c) that, in consultation with the disability community and sector, the Bill be amended to provide clear definitions of "not contactable" and specify what constitutes "reasonable attempts" to contact a participant.

Part 8 – Permanence and treatment

31. That Schedule 1, Part 8 – *Tightening meaning of permanence to reduce access where an impairment can be treated* – of the Bill not proceed. NLA does not consider there are any changes to the current drafting that would rectify the significant issues presented by Schedule 1, Part 8.

Part 9 – Eligibility based on access to other services

32. That Schedule 1, Part 9 – *Eligibility based on access to other services* – of the Bill not proceed.

33. That, if Schedule 1, Part 9 is retained, ss 25B(2) and (3) of the Bill be amended to state that the "impairment was wholly or solely caused", and that the definition of "work-related injury" in s 9(b) be removed.

34. That, if Schedule 1, Part 9 is retained, the Bill be amended to remove the rule-making powers under ss 25B(1)(a), (1)(b) and (4), and that s 25B be limited to motor vehicle accident and workers' compensation schemes.

35. That the Government ensure that any rules related to aged care allow First Nations people under 65 who are receiving an aged care package to access any additional supports under the NDIS.

36. That the Bill be amended to ensure that, if a person has impairments that overlap with excluded impairments, assessment for access is undertaken as if the excluded impairment provisions do not apply.

Schedule 2 – Fraud measures

37. That the Bill be amended to allow for a special circumstances waiver in similar circumstances to those introduced for social security debts by Schedule 2 of the *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025*.[1]

38. That s 182(4) of the Bill be amended to include a reasonable excuse provision in relation to the record retention requirements, and to allow participants to demonstrate their entitlement to an NDIS amount in question by other means.

39. That s 53(3)(b) of the Bill be amended to limit civil penalties to situations involving intentional or reckless non-compliance.

40. That the Bill be amended to align the record retention requirements for plan nominees under s 45B(8) with the requirements for participants, noting that nominees may do any act that a participant may do under, or for the purposes of, the Act (s 78).

41. That clear operational guidelines be developed, alongside educational efforts, to ensure plan nominees understand their obligation to inform the NDIA of an event or change of circumstance likely to affect their ability to act.

42. That s 90(5A) of the Bill be amended to include a new subsection — "(c) and it is reasonable in the circumstances to do so" — to provide protection in instances where there is a reasonable excuse, inadvertent or unintentional non-compliance, or where removing the nominee would create an unacceptable risk of harm to the participant.

43. That the Government further consider how the proposed amendments in Schedule 2 to introduce new powers and functions for the NDIA to undertake enforcement and compliance activities will work within the current regulatory framework shared with the NDIS Quality and Safeguards Commission.

Schedule 3 – Governance arrangements

44. That the Bill be amended in accordance with the recommendations contained in the submission to the Community Affairs Legislation Committee by the Human Technology Institute at the University of Technology Sydney dated 29 May 2026, aimed at safeguarding the quality of decisions made using computer programs and automated decision-making, and mitigating their detrimental impact.

45. That the Bill be amended to prohibit the use of computer programs to take administrative action where the decision made, or the outcome of the operation of the law, is either:

(a) a decision or outcome that is not reviewable under the Scheme; or
(b) a decision or outcome that results in a debt.

Schedule 4 – New framework planning

46. That the Bill be amended to include requirements in s 32D(6) for a decision-maker to:

(a) be satisfied that the needs assessment report reflects the participant's need for supports under the NDIS; and
(b) be satisfied, having regard to the needs assessment report and any other information, that the reasonable and necessary budget provided under the plan meets the participant's need for supports under the NDIS.

47. That the Bill be amended to provide a safeguarding mechanism in the NDIS Act to ensure adequate human oversight and discretion and to give effect to the NDIS Act's Objects and Principles. This could be done by incorporating discretionary ranges and a manual

adjustment mechanism into the rules where the budget methodology does not produce a budget that adequately provides for a participant's demonstrated support needs.

48. That the Government hold further, targeted consultation that includes adequate provision of information, including draft Rules, assessment tools and sample documents (including sample support needs assessment (SNA) budget method outputs, and notices) to assist stakeholders to meaningfully test the legality, fairness and operation of the proposed rules. This should include:

(a) draft copies of all proposed rules relating to new framework planning;
(b) the full budget setting method, including any structured decision-making model or algorithm, showing clearly how the model operates and how particular factors will be weighed and converted to flexible or stated funding amounts;
(c) the documents that will be provided to participants explaining how their specific flexible and stated funding amounts have been determined; and
(d) the documents explaining how the changes will operate in practice, including examples of: notices of impairments; notices to have a new framework plan; support needs assessments; support needs assessment reports; and statements of participant supports.

49. That the Government consider transitional rules allowing additional consultation and testing before rules are finalised, noting that the current timeline may not permit proper scrutiny of the proposed amendments before they commence.

50. That the NDIA and Department of Health, Disability and Ageing (DHDA) collect and publish robust data relating to the transition to new framework plans to ensure any systemic risks can be identified early, including:

(a) how many participants have commenced the transition to new framework plans, and at what stages of the process they currently sit;
(b) the characteristics of participants transitioning, such as age, location, and whether they are First Nations; and
(c) the nature of changes observed by the NDIA between old framework plans and new framework plans, including whether budgets have increased, decreased or remained stable, and whether participants have experienced changes to key supports or lost access to supports previously available under their old framework plans because those supports were not included as stated supports.

51. That the Bill be amended to remove ss 32K(3C) and 32K(3D) to ensure that a funding amount cannot be less than the actual cost of providing or acquiring the support, or group or class of supports.

52. That, if ss 32K(3C) and 32K(3D) are retained in their current form, the Bill be amended to ensure that participants who are subject to a funding reduction for their flexible or stated support funding amounts as a result of new provision s 32K(3B) can seek an exemption where there is an impact on their functional capacity or a risk to their own or another person's safety, health or wellbeing.

53. That the Bill be amended to remove the addition of "directly" in s 32L(2).

54. That any NDIS rules relating to the support needs assessment and the support needs assessment report make clear that a support may be reasonable and necessary where the qualifying impairment is a material or contributory cause of the need, even if the need is also affected by another impairment, comorbidity, environmental factor or personal circumstances.

55. That the Bill be amended to include an express requirement that assessors are appropriately trained or qualified, having regard to the nature of the participant's impairments and support needs, as follows:

(a) subsection 32L(4B): the Minister must, by legislative instrument, determine one or more classes of qualifications for the purposes of this subsection; and

(b) subsection 32L(4C): a person must not undertake an assessment under subsection (4A) unless the person holds at least one qualification determined under this subsection.

Schedule 5 – Transitional rules

56. That the Government commit to working with people with disability and the disability sector in a timely and meaningful manner to secure the NDIS by strengthening trust, safeguards and rights. This must include robust and accessible consultation processes to ensure that the consequences of these reforms are understood and planned for, before any transitional rules are enacted.

Other considerations

57. That the Senate Community Affairs Legislation Committee's inquiry timeframe on the Bill be extended to allow genuinely accessible hearings, engagement and consultation with the disability community.

58. That the Bill be amended to include a legislative requirement for an independent review, by an appropriately skilled and qualified reviewer, of the operation of the amendments, to be undertaken 12 months after the Bill's commencement and in close consultation with people with disability and the disability sector. The review must include the impacts of the amendments for people with disability seeking to access the Scheme, participant outcomes,

review and appeal rights, and systemic impacts resulting from any increase in people seeking review or appeal of NDIA decisions.

59. That the Government release any modelling that has been undertaken on the systemic impacts of the proposed reforms, including increased demand on the ART.

60. That the Government closely monitor the impact of the reforms on demand for review and appeal of NDIA decisions, in close partnership with disability advocates and legal assistance providers.

61. That the Government ensure people with disability have access to necessary advocacy and legal assistance during the transition to the new framework, and in relation to reviewing decisions, through urgent and continued funding of the advocacy and legal assistance sector.

62. That the Government consider grandfathering provisions to ensure that any changes to the disability criteria for access do not operate retrospectively to apply the new criteria to people who are currently on the NDIS. This would be in line with the Government's approach to implementing budget measures, and other significant changes impacting people with disability, such as the changes to the disability support pension in 2006.

Schedule 1 – Access and planning measures

Part 1 – Defining functional capacity

The Bill proposes to introduce a statutory definition of "functional capacity" in s 9B with a view to standardising the assessment of whether a person's impairments result in "substantially reduced functional capacity" for the purposes of s 24(1)(c) of the NDIS Act. The Bill does not set out the substantive content of the proposed definition of "functional capacity", instead leaving key aspects and the factors relevant to its assessment to be determined by the NDIS Rules.

As a result, the practical implications of the amendment remain uncertain and raise concern as to how "functional capacity" will be assessed in practice. Significant aspects of the assessment framework are left to the NDIS Rules, including methods, criteria, classifications and/or thresholds. The intended approach appears to focus on a person's inherent ability to perform tasks or actions, without regard to personal circumstances or environmental factors that may affect functional performance. This risks assessments that do not fully reflect real-world disability and may overlook the practical impact of impairments in everyday environments.

The NDIS Rules must set out the matters to be considered and the relevant circumstances to be considered when assessing a person's functional capacity. Without this, assessments risk being applied inconsistently and unfairly. The assessment framework should avoid a one-size-fits-all approach and should consider the needs and circumstances of all people with disability, especially First Nations peoples and those in rural, regional and remote communities. The disproportionate impact of the Bill's reforms on First Nations peoples with disability is addressed in detail in Part 9 of this submission.

NLA recommends:

1. That any amendments to the functional capacity assessment framework ensure fairness by considering:

(a) a person's ability to access and meaningfully participate in the assessment, particularly people in rural, regional and remote communities;

(b) the compatibility and consistency of the assessment process and method with culturally safe practices, particularly for First Nations communities;

(c) the appropriateness of the assessment method for evaluating a diverse range of impairments, including complex, interrelated, or episodic impairments; and

(d) the capacity of the framework to accommodate fluctuations in functional ability over time, rather than relying solely on a single point-in-time assessment.

Part 2 – Unscheduled plan reassessments

The Bill significantly restricts participants' ability to seek necessary changes to their supports through a plan reassessment. Access to plan reassessment is a crucial right for participants to ensure that their plan meets their evolving support needs.

Access to reassessments will become increasingly important once plan renewals are introduced given that plan renewals will replace scheduled reassessment dates in old framework plans, will occur automatically and not be subject to review. We share below Kyle's story, through his sibling's words, to highlight the importance of the reassessment process for people to ensure their plan includes the supports they are entitled to under the NDIS.

Kyle's story: Why access to reassessment is crucial to ensure plans meet participant support needs

My brother Kyle* is in his 50s and is a participant of the NDIS because of his intellectual disability. He cannot understand things like money, public transport and medical or legal jargon. He lives with our mother, who is in her mid-80s, who cooks, cleans and does his laundry. I manage all of his finances and life, like appointments, medication, support workers and anything else he requires. When we had our most recent plan review, we had a meeting at around 5pm, and by the very next day he had a new 5-year plan that didn't reflect his current support needs. I had provided new reports, but they said it wasn't on the system, and they didn't take the time to check. I knew that within those 5 years, my mother might have health issues that will affect her ability to care for him, even temporarily. We appealed his plan and are currently at the Administrative Review Tribunal to show that Kyle needs a new plan with more support, and that a 5-year plan is not appropriate for him. If he didn't appeal his plan, he would be stuck with a plan that didn't meet his support needs. If there were more barriers to asking for a plan reassessment, Kyle would end up receiving less support than he needs and he would suffer mentally and physically.

**Pseudonym*

The Government's Impact Analysis for the Bill raises concerns about existing reassessment processes, including that plans increase an average of 21% on reassessment.[1] This reflects Legal Aids' experience working with clients - that planning decisions when first made do not properly reflect the participant's support needs and/or that support needs do change and may increase over time. In both instances, the right to request and access reassessment is a key protective mechanism for participants. In this context, we are concerned that the proposed conditions for conducting reassessment significantly confine reassessments, are confusing and unclear and leave significant scope for restrictive rulemaking and policy guidance. As with the functional capacity framework in Part 1, the practical content of these restrictions is left to rules rather than primary legislation, limiting parliamentary scrutiny and the ability of participants and advocates to understand or predict how the criteria will be applied.

[1] Office of Impact Analysis, Department of the Prime Minister and Cabinet, *National Disability Insurance Scheme Reforms Impact Analysis* (Report, 14 May 2026) 224.

Ensuring reassessment of support needs available instead of automated plan renewal

The interaction between the reassessment restrictions in this Part and the automated plan renewal provisions in Part 5 means that participants who cannot satisfy the new s48A criteria will have no mechanism to update their supports as their needs change. NLA's recommendation in relation to the opt-in reassessment right is set out in Part 5 below.

Requesting reassessment should not be confined by terminology around significant, unanticipated, substantial and/or ongoing

The Bill would include a new s 48A in the Act. S 48A contains restrictive terminology that will unduly preclude participants from requesting necessary changes to their supports as their needs change over time. These restrictions are particularly concerning given the proposed introduction of indefinite automated non-reviewable plan renewals. Plan reassessment will be the only mechanism for a participant to request a permanent change to their old framework plan.

'Significant'

The conditions for conducting reassessment require that any change to ongoing support needs or alteration in functional capacity or personal or environmental circumstances be 'significant'. The right to request reassessment should be available where a participant has experienced more subtle, yet important, changes in their support needs, functional capacity or personal or environmental circumstances. Reassessment requests should not turn on the significance of any alteration, but whether, because of the change or alteration, the plan is insufficient to meet their current support needs. Participants must be able to request necessary changes to their plan to access the supports they are entitled to as their circumstances change over time.

'Substantial'

Similarly to the above, we do not consider that there should be a requirement that any reduction in the ability to perform daily activities is substantial as a condition to conducting reassessment under s 48A(2)(c). The critical question is whether there is a need to reassess the plan to ensure it meets the person's current support needs following a reduction in their ability to perform daily activities.

'Unanticipated'

The conditions for conducting reassessment require that any change in personal or environmental circumstances be 'unanticipated'. It is not clear why this limit should be imposed and we consider it is an unnecessary barrier to a participant requesting reassessment.

If a participant's support needs have changed, the question of whether those changes were anticipated should not be relevant. The crucial issue is to ensure the plan reflects their current support needs.

The inclusion of 'unanticipated' may further preclude requesting reassessment based on issues with how the original plan was created. For example:

- The original planning process fails to detect a circumstance relevant to the participant's support needs and the need for associated supports emerges later.
- A participant raises a potential future change during their original planning discussion, but relevant funding is not provided because the change has not yet materialised.
- A participant raises a circumstance that later deteriorates (e.g. risk of carer burnout, relationship breakdown).

Further, the temporal reference is unclear for determining when an event or circumstance is unanticipated and could be restrictively interpreted as a circumstance with sudden onset.

'Ongoing'

The conditions for conducting reassessment require that changes or alterations be ongoing. They require:

- a significant change 'to...ongoing support needs' (ss 48A(1); and
- an 'ongoing' alteration in functional capacity (ss 48A(2)(a)) or personal or environmental circumstances (ss 48(3)).

The term 'ongoing' is ambiguous and may be interpreted as permanent. The Impact Analysis suggests that the focus is on permanence, which would be an inordinately high bar.[2] 'Ongoing' should not be interpreted as meaning for the remainder of the participant's life. A change in informal supports, a new employment opportunity or a move to a different region are circumstances capable of meaning 'ongoing', without being permanent. In the context of the other elements required for a s48A reassessment request, we do not consider 'ongoing' as necessary.

If the term is retained, we recommend amendment to 'likely to be ongoing'. In many scenarios where a participant seeks a reassessment, it will be difficult to definitively establish that the change is 'ongoing'.

'New or acquired'

SS 48A(2)(b)(ii) refers to one of the criteria for reassessment being whether a person has a new or acquired impairment which meets the access requirements.

In relation to the use of the wording 'new or acquired', this suggests that the impairment must be recent or have occurred after a particular point in time. In our view, the key question is not whether the impairment is new, but whether it was considered as part of the original plan assessment process.

[2] *Impact Analysis* (n 1) 201.

Inadequate safeguards

There are insufficient safeguards to address the significant risks associated with curtailing participant rights to request reassessment.

Plan variations are contemplated as a safeguard 'to ensure that participants are not placed at risk.'[3] However, plan variations may not allow for necessary changes to a participant's plan, particularly where the changes are extensive. The NDIA currently contemplates plan variations for 'small' changes to plans only, for example, to respond to a crisis or emergency, and that plan reassessment would be required after this time.[4] If a plan variation enacts a small change there is no guarantee that the CEO will initiate or agree to a reassessment after such time. The participant's ability to obtain a reassessment to address this gap will be crucial.

There are also further limits to plan variation to increase supports, depending on whether a participant has an old or new framework plan. Further, future rule-making or operational guidelines may place further constraints on obtaining plan variation.
Participants who are unable to satisfy the narrow plan reassessment criteria may rely on access to plan variations, but there is no guarantee that plan variations will be available or adequate to address the person's changed support needs.

Complex conditions for conducting reassessment

The proposed conditions for conducting reassessments are complex and difficult to navigate. A condition for conducting assessment under s 48A(1)(a) requires determining the connection between support needs and an impairment that meets the access requirements. There is currently no such requirement for requesting reassessment, with the Rules simply requiring consideration of whether the participant's need for NDIS supports has significantly changed because of matters including a change in the participant's functional capacity.

Reassessment will now require engagement with three separate tests engaging functional capacity in three different ways. This includes establishing there is a significant and ongoing alteration in relation to an activity, that it also arises from an impairment relating to the access requirements, and then that there must also be a substantial reduction in the participant's ability to perform daily activities.

This will cause confusion and difficulty for NDIS participants and third parties providing evidence, as well as creating challenges for decision-makers to apply. The complexity of these conditions is likely to produce:

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[3] *Impact Analysis* (n 1) 225.

[4] See National Disability Insurance Agency, 'Guide to Changing Your Plan' (Web Page) https://www.ndis.gov.au/participants/changing-your-plan/types-plan-changes/guide-changing-your-plan ('A plan variation is a small change to part of your current plan'); National Disability Insurance Agency, *Changing Your Plan* (Guideline) 7 ('We may need to respond quickly in the event that you need crisis or emergency supports ... until we can do a plan reassessment').

- inconsistent decision-making
- a lack of clarity about what is required and what must be addressed to obtain a plan reassessment
- a need for legal advice in making reassessment requests
- refusals for lack of highly targeted evidence; and
- substantial delays.

NLA recommends:

2. **That, to ensure participants retain appropriate access to reassessments, the Bill be amended to remove s 48A(2) and (3), and s 48A(1) be redrafted as follows:**

   For the purposes of paragraph 48(2)(b), the conditions are that:
   (a) a participant's plan is insufficient to meet their current support needs; or
   (b) a participant's plan is scheduled for automatic renewal within 3 months; or
   (c) significant change in the participant's functional capacity; or
   (d) alteration in the participant's personal or environmental circumstances.

The addition of a new impairment by way of impairment notice should lead to an automatic reassessment

We consider that there should be an automatic reassessment when a person is assessed as having a new impairment that meets the access requirements and they receive an impairment notice setting out the variation. For example, this might occur where they are accepted as having psychosocial impairment in addition to a physical one. This will be directly relevant to the support they receive under the NDIS, because supports are linked to the impairments for which a person has access. A reassessment at this point is essential, as the recognition of additional impairment under the NDIS will result in an increased need for NDIS support. In these circumstances a reassessment should be automatic.

NLA recommends:

3. **That proposed s 48(2) of the Bill be amended to require a reassessment when a person receives an impairment notice that includes a new impairment.**

Barriers to reassessment

Burdensome evidentiary requirements

The proposed conditions for conducting reassessment will require detailed evidence from medical and other health practitioners. This will create significant barriers to participants experiencing social and/or economic disadvantage obtaining plan reassessment. These requirements may be onerous and impractical for health practitioners to address. For example, it may not be possible for a health or medical practitioner to determine that a particular support need arises from the relevant impairment.

This reinforces the need to ensure that s 48A is amended to remove such barriers to reassessment.

Formal requirements

The Bill introduces a requirement that a reassessment request be in the form approved (if any), include any information and be accompanied by any documents required by the CEO, and confirms that the CEO is not required to make a decision unless any formal requirements are complied with (ss 48(2A)).

The formal requirements that the Bill would introduce for requesting reassessment will create further barriers, cost and delay to reassessment.

Limits on who can request reassessment

We acknowledge the financial benefit service providers may receive if they are funded to deliver additional services following a reassessment, however the reassessment request and resulting plan will only result in an increase when a participant meets the relevant statutory criteria. Limiting who can seek reassessment may present a significant barrier to people with disability seeking necessary changes to their funding. Further in circumstances where a service provider with a conflict of interest seeks reassessment, it is within the CEO's power not to conduct a reassessment.

The Impact Analysis acknowledges that this requirement may create barriers for "participants with communication and decision support needs".[5] This requirement will have a significant impact on people with disability with limited or no informal support in their lives to assist with navigating the NDIS.

NLA recommends:

4. **That proposed ss 48(2) and (2A) of the Bill be amended to remove restrictions on both the formal requirements for making a reassessment request and who can make a reassessment request, to ensure this does not create unnecessary and arbitrary barriers for participants.**

Fear of revocation a deterrent to requesting reassessment

The proposed changes create a chilling effect – participants with a genuine entitlement to ongoing NDIS support may avoid seeking necessary reassessment for fear of triggering a broader eligibility review and losing access to the Scheme altogether.

[5] *Impact Analysis (n 1) 225.*

We consider that those with access currently should not be subject to the new access eligibility criteria, similar to grandfathering clauses for other changes that have a significant impact on people's economic and social security.

Decisions on whether to conduct a reassessment should be made promptly

The Bill would amend s 48(3) of NDIS Act to alter the timeframe for the CEO to decide whether to grant a reassessment request from 21 days to 90 days.

Participants seek reassessments where their support needs are not being met by their current plan, and a prompt decision can be crucial for their safety and wellbeing given they may not have access to critical support. Participants should not wait 90 days merely for a decision as to whether they meet the criteria for an assessment to be conducted.

As noted above, under the proposed reassessment changes, participants will also need to address complex and stringent criteria to obtain a reassessment, and the decision may depend on the quality of their evidence. A 90 day wait for a decision will cause significant prejudice if there are simple things they could be doing to rectify gaps in their evidence or address criteria they missed.

NLA recommends:

5. **That proposed s 48(3) of the Bill be amended to reduce the timeframe for the CEO to decide whether to conduct a reassessment to 30 days instead of 90 days.**

Effective review right for reassessment decisions

Review rights for reassessment decisions are currently inadequate because the only decision that can be reviewed is the decision by the CEO as to whether a reassessment should occur.

If a participant requests a reassessment and the CEO refuses it, the decision-maker on internal and ART review can only make a preliminary assessment that the plan needs to be reassessed or make a decision not to conduct a reassessment. If the internal reviewer or ART decides that the plan needs to be reassessed, the matter is sent back to the NDIA to conduct the reassessment. It is only then that a new plan can be created, which may then be subject to further review if it does not meet the participant's needs.

Significant delays for participants could be avoided and efficiencies gained if the ART and the internal reviewer also had the power to determine what additional supports the participant is entitled to. The ART regularly determines questions such as this as part of its normal review around the content of participant plans. This would speed up access to crucial and consequential decisions for participants, and improve efficiency for the NDIA, the ART and legal assistance providers. This Bill provides an important opportunity to rectify what are currently ineffective review rights.

NLA recommends:

6. **That the Bill be amended to enable the NDIA on internal review and the ART on external review to conduct a reassessment as part of its review power, where the participant has sought review of a decision not to conduct a reassessment.**

The CEO’s failure to make a decision on a reassessment request should be reviewable

The Bill removes the making of a deemed decision where the CEO has not made a decision on a reassessment request within 90 days and, consequently the participant loses any internal and external review rights due to a failure to make a decision around a reassessment. The change is significant, as under the current provisions the deemed decision after 21 days results in an automatic review under s 100(5)(b).

Further, the proposed amendments to s 48(3) indicate that the requirement for the CEO to make a decision to conduct or refuse a reassessment within 90 days would only be engaged where the CEO determines “that the conditions in s 48A are satisfied”. On one interpretation, the obligation to make a decision would otherwise not arise, and a person making a reassessment request would receive no outcome at all in relation to that request, and no right of review. A CEO decision that the s48A criteria have not been met – or the CEO’s failure to make a decision on that question within 90 days – must be reviewable. The absence of this protection would leave participants with no recourse.

NLA recommends:

7. **That the Bill be amended to ensure the following review rights remain available:**

    (a) an automatic review where the CEO has failed to make a decision in relation to a reassessment request within the prescribed time; and
    (b) a review of a decision by the CEO that the s 48A criteria have not been met.

Transitional provisions that prejudice active reassessment requests

The transitional provisions in the Bill under Item 27 of Schedule 1 operate to create significant prejudice for people who have lodged a reassessment request prior to the Bill’s commencement. The proposed new s48A criteria are significantly different and more stringent - including the new required forms – and would apply to all outstanding reassessment requests that have not been decided at the time those provisions commence. This would result in all outstanding reassessment requests under the NDIS Act being refused - or left unaddressed - on the basis that the s48A criteria have not been met. People who have lodged a reassessment request under the existing criteria should have their request assessed according to those criteria, and should not have their application refused because they have not met criteria which were not relevant to their reassessment request at the time.

NLA recommends:

8. **That the transitional provisions in the Bill be amended so that the new reassessment criteria apply only to reassessment requests made after the day the item commences.**

Part 3 – Link between impairment and supports

Schedule 1, Part 3 proposes to amend the NDIA Act to strengthen the link between a participant's support needs and the impairment or impairments for which the participant meets the disability requirements or early intervention requirements.

The Explanatory Memorandum states that the amendments respond to Tribunal and Federal Court decisions said to have expanded access to supports beyond the original intent of the Scheme, including where there is a causal or contributory, rather than direct, link between a support need and a qualifying impairment. The policy concern is identified as Scheme sustainability, plan inflation and inconsistent decision-making.

The proposed "arising directly from" test is too narrow

Item 31 would amend paragraph 34(1)(aa) so that, for a support to be reasonable and necessary, it must be necessary to address needs of the participant arising ***directly from*** an impairment or impairments in relation to which the participant meets the disability requirements or early intervention requirements.

These proposed amendments risk creating an artificial distinction between a participant's "qualifying" impairment and their other impairments, comorbidities, environmental barriers and personal circumstances. Legal Aid clients frequently present with multiple and interacting disabilities, limited diagnostic histories, and changing functional capacity. In those circumstances, a support is often required due to the interaction of more than one factor. It may be nearly impossible to identify one impairment as the sole, dominant, direct or immediate source of the need for a specific support. A statutory test that asks decision makers to isolate the direct source of a support need is likely to generate inconsistent and unfair outcomes and increase requirements for specialist medical evidence.

The Explanatory Memorandum indicates that individual characteristics and environmental circumstances will continue to be considered. However, the Bill removes existing statutory recognition of those matters by repealing s32K(3A), Note 2 under s32L(6) and Note (b) under s34(1) (aa). This creates a real risk that operational decision-makers will apply the provision more narrowly than the examples suggest, particularly where participants cannot produce specialist evidence that links each impairment to each requested support.

The proposed amendment appears intended to reverse the practical approach recognised by the Federal Court in the matter of *Eastham*[6] where the Federal Court recognised that "a need for a support will invariably be the product of a confluence of factors" and that a support will satisfy s34(1)(aa) if it addresses a need that is causally related to a s34 impairment "notwithstanding that that need is also a product of another impairment (whether that be an impairment that satisfies s 24 or 25; or not) or another factor."

The proposed amendment will narrow the above approach and is likely to exclude supports where a qualifying impairment remains a real and material cause of the support need but is not the sole or immediate cause.

The amendments may disproportionately affect participants with multiple impairments and comorbidities.

Part 3 is likely to have a disproportionate impact on participants whose disability-related needs are complex, overlapping or have not been captured sufficiently by the impairment or impairments that were recorded when they first obtained access to the Scheme.

Items 28, 30 and 32 would remove statutory language and legislative notes that presently recognise that a participant's disability support needs may be affected by a variety of factors, including environmental factors and the impact of another impairment that did not itself satisfy the access requirements.

Many participants entered the Scheme years ago, with access decisions that did not comprehensively identify all relevant impairments. Others have acquired additional diagnoses since access or have conditions that interact with their qualifying impairment and subsequently create or intensify their support needs.

The practical effect may be that a participant is told that a support is not reasonable and necessary because the relevant need is said to arise from a non-qualifying impairment, even where the participant's qualifying impairment is a significant part of the reason why the support is needed. This would be inconsistent with a practical, whole-of-person approach to disability support and is likely to increase disputes at internal review and in the ART.

The examples in the Explanatory Memorandum illustrate this difficulty. In the example of Samira, the participant requires a more specialized wheelchair controller because of deterioration in hand function due to osteoarthritis, yet the support is funded because it is necessary for her to use the wheelchair required because of multiple sclerosis. In the example of Amrit, obesity does not meet the access requirements but is relevant to the type of walking frame that is safe and effective. These examples accept that non-qualifying conditions may shape nature, intensity or specification of the support required. That principle should be preserved in the Act.

[6] *Chief Executive Officer of the National Disability Insurance Agency v Eastham* [2026] FCA 147.

Increased evidentiary burden on disadvantaged participants

Part 3 is also likely to increase the evidentiary burden on participants and their representatives. Participants may need to obtain more detailed and costly medical and allied health evidence to prove that each requested support arises directly from a qualifying impairment.

The amendment will also make the decision-making process more complicated. Instead of simply asking whether a support is connected to a participant's disability-related needs, decision-makers may need to separate out which diagnosis caused each support need. This will lead to delays, inconsistent decisions and more reviews and appeals.

NLA recommends:

9. **That Schedule 1, Part 3 – Strengthen link between an impairment and need for support – of the Bill does not proceed in its current form.**

10. **10. That, if Schedule 1, Part 3 of the Bill proceeds, s 34(1)(aa) be amended to retain a sufficient causal connection rather than requiring that a need arise "directly from a qualifying impairment", and to make clear that a support may be reasonable and necessary where the qualifying impairment is a material or contributory cause of the need, even if the need is also affected by another impairment, comorbidity, environmental factor or personal circumstances.**

11. **That the existing statutory recognition of environmental factors and the impact of another impairment be retained in s 32K(3A), s 32L and the note to s 34(1) of the NDIS Act.**

Part 4 – Support determinations and funding caps

The introduction of 'support determinations' and funding caps to be made by the Minister will reduce the funding available for certain groups of supports (s 34A, s33(2EA) and s 33(2EB)). We do not support the introduction of support determinations or funding caps that reduce the funding available for participants for reasonable and necessary support.

These proposed powers are a fundamental shift in the principles and implementation of the NDIS, arbitrarily constraining access to individualised disability supports that have been determined as essential to meeting the person's disability support needs.
They also raise several concerns around the reduction in funding for reasonable and necessary supports, overturning the Federal Court decision in *McGarrigle v National Disability Insurance Agency [2017] FCA 308* (*McGarrigle*), which confirmed that the NDIS must fully fund a participant's reasonable and necessary supports.

NLA recommends:

12. That the Bill be amended to remove provisions introducing support determinations (s 34A) or funding caps (ss 33(2EA) and 33(2EB)) that reduce the funding available for participants for reasonable and necessary supports.

Broad rule-making powers to reduce funding of reasonable and necessary supports

These proposed 'support determinations' will reduce funding for groups of supports through the introduction of a legislative instrument, which will enable the Minister to reduce the funding amount for a specified group of supports for the purposes of ensuring the financial sustainability of the Scheme.

The Explanatory Memorandum suggests a support determination can reduce funding targeted at particular cohorts of participants, including 'based on classes of participants, identified with reference to characteristics such as a participant's circumstances or the nature of supports that they receive.'[7] The current drafting enables reduction of funding not only for groups of supports, but also for classes of participants based on delegated legislation. In addition to 'support determinations', the Bill gives the Minister power to make other determinations that set caps on the support a participant can receive (proposed ss 33(2EA) and 33(2EB)).

This is a broad provision which enables the capping of supports, support intensity and fixing of ratios through legislative instrument, effectively leaving participants in constant uncertainty about whether a reasonable and necessary support may be capped.
This represents a significant shift away from the NDIS' individualised approach to funding participants based on their disability support needs, prioritising financial sustainability over the support needs of people with disabilities.

We anticipate this will result in people receiving less support than they have been assessed as needing. One impact of this change will be to increase people with disability's reliance on families and carers to provide reasonable and necessary supports, as illustrated in Ross, Tony and their family's story below, told through the words of his parent.

Ross, Tony and their family's story: The huge toll of reducing community participation funding on parents caring for adult children

My wife, Michelle*, and I are the parents of two adult sons who are participants in the NDIS: Ross* who is in his mid-20s and Tony* who is in his early-30s. Both of our sons live with significant disability.

[7] Explanatory Memorandum, National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (Cth) 30.

Ross is a very active and enthusiastic young man who is passionate about sport and music. He receives Social, Community and Civic Participation (**SCCP**) funding through the NDIS, which enables him to take part in various social and recreational activities, including soccer, rugby, AFL, group outings, dances, concerts and other live performances. Many of these events are in Melbourne which is a 3-hour round trip away on the train. Cutting his SCCP funding would deprive him of these activities as they simply don't exist in our area.

Michelle and I provide a huge amount of informal support to the boys, but we both have various health issues. Life is difficult for us as parents, and it is important for us to get a break from the boys.

The day programs and weekend activities Ross participates in using SCCP funding serve the dual purposes of ensuring that he can engage in the community in a way that gives him a satisfying and fulfilling life as well as providing crucial respite for Michelle and me – which ultimately results in a lower cost to the NDIS because he lives with us and we provide him with so much informal support.

If the SCCP funding is reduced, it means that they will be at home for so much more time, placing additional demands on Michelle and myself. We are ailing aged pensioners whose lives have been dedicated to the needs of the boys. We have had no retirement. In the past 30 years we have been out, just the two of us, only three times.

*Pseudonyms

Disproportionate impact of support determinations on women, young people, people living in regional areas and CALD communities

The Minister for Disability and the National Disability Insurance Scheme has specifically referred to the need to 'reset' participant budgets for social and community participation and capacity-building daily activities as one of the changes being introduced to reduce the cost of the Scheme.[8] We see through our work with clients, the critical role that social and community participation plays in reducing the need for additional supports, as illustrated below in Amira's story.

Amira*'s story – Community supports improve my physical disability and give me hope for my future

Community supports let me go to the doctor when I need to, see my psychologist in person, meet friends, and go buy some nice yarn from an independent shop. It all improves my mental functioning and daily life. It also lets me be more on top of my physical disability. I have fewer days where I have to stay in bed and more days when I can leave the house.

I'm now thinking about other things I could do in the future. I would like to get back into the workforce part-time. I expect it would take a year or more before I could do so, but this feels possible in a way that it hasn't in the last eight or nine years.

If this funding were reduced, it would increase my social isolation and worsen my psychosocial disability. Depending on how much funding was cut, I might even need to decide

[8] Hon Mark Butler MP, 'Securing the Future of the NDIS for Future Generations' (Media Statement, 22 April 2026) https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/securing-the-future-of-the-ndis-for-future-generations.

between essential medical and disability appointments, reducing my access to critical supports. I feel it would also reduce my chances to work again. I might have to reassess my future.
I'm hoping one day to need less support. I don't want an external timeline on that, and I might always need support with some things, but eventually I would like to go out or work without help. Cutting this support may prevent me from getting there.

* Pseudonym

The Impact Assessment contemplates the impact of a reduction by 50% of Social and Community Participations (SCCP) supports, and specifically acknowledges that a reduction will impact participants, and that some cohorts will be disproportionately impacted.

We are particularly concerned about the acknowledged impact on women and girls, participants residing outside major cities and regional centres, culturally and linguistically diverse participants and children and young people. For children and young people, the impact will be disproportionate on their social and community participation given they have relatively smaller average budgets.

In addition, the proposed reduction to SCCP supports will disproportionately impact women due to the gendered nature of caring (67.7 per cent of primary carers were women in 2022). As a result, and as noted in the Impact Assessment, these proposed changes are likely to increase informal caring responsibilities, which will impact levels of social and economic participation for carers who are women.

The only proposed response to this in the Impact Assessment is that "opportunities to increase gender equality will be considered as part of the design and evaluation of the future market reforms to delivering social and community participation and capacity building activities."

In light of the Government's stated commitment to gender equity and increasing social and economic participation of women, including the recent launch of the Gender Equality Strategy, we recommend Government reconsider these reforms that will entrench disadvantage for women, as well as for young people, CALD communities and people in regional, rural and remote areas.[9]

NLA recommends:

13. That, if support determinations (s 34A) and funding caps (ss 33(2EA) and 33(2EB)) are retained, the Bill be amended to incorporate clear statutory safeguards, including that:

[9] Department of the Prime Minister and Cabinet, *Working for Women: A Strategy for Gender Equality* (Report, 7 March 2024) https://genderequality.gov.au/.

(a) support determinations (s 34A) and caps (ss 33(2EA) and 33(2EB)) apply only to specified classes of supports, rather than having broad or Scheme-wide application;
(b) support determinations (s 34A) and caps (ss 33(2EA) and 33(2EB)) be made through the Category A rules process, rather than by Ministerial instrument; and
(c) an intersectional impact analysis and survey report be tabled alongside any future instruments when introduced, with a minimum 15-day disallowance period before commencement.

Lack of safeguards to ensure safety of impacted participants

Due to support determinations not being applied on a 'plan-by-plan' basis, any resulting reductions in funding are not reviewable decisions so participants cannot challenge the decisions through available merits review pathways. The Explanatory Memorandum justifies this based on the Administrative Review Council's 1999 report 'What decisions should be subject to merit review?', which notes that legislation-like decisions of broad application are not suitable for merits review because they are subject to the accountability safeguards that apply to all legislative decisions and are not directed towards the circumstances of a particular person.

The only safeguards that are currently proposed in the legislation are that the Minister must consider the safety of participants in making a support determination, including whether a reduction in funding for groups of supports could place participants at risk of neglect, crisis, or loss of essential functioning.

This provision is a blunt instrument which is not capable of responding to unique participant circumstances. It is unclear how the Minister can or will consider risk of safety to all NDIS participants who would be affected by a support determination, noting that every participant will experience unique circumstances related to their safety. In addition, as noted above, there are no individual review rights or mechanisms for an individual to have their circumstances reconsidered, which means that there can be no effective way of ensuring that the safety of participants is adequately considered.
Such a consequential and life-changing policy position requires access to a mechanism which allows for consideration of the impact of the funding cut and appropriate safeguards for participants.

NLA recommends:

14. That, if support determinations (s 34A) and funding caps (ss 33(2EA) and 33(2EB)) are retained, the Bill be amended to ensure that participants who are subject to support determination reductions in funding or funding caps can seek an exemption where there is an impact on their functional capacity or a risk to their own or another person's safety, health or wellbeing.

Risk of participants overspending and debts to service providers

The Bill provides that support determination will not change the text of a participant's plan or alter a decision by the CEO of what is considered reasonable and necessary for a participant. This means that for participants, there will be a total amount of funding for reasonable and necessary support, which will then be reduced by a percentage to partial funding of a support that is available to spend and that reduction will not be clear from the plan.

This will undoubtedly lead to confusion for participants about what funding is available for support and could lead to overspending and debts to service providers if participants think they have an amount the planner decides is reasonable and necessary, but there is actually a percentage reduction.

In addition, there is currently no process under the NDIS Act for a participant to request a review of a decision that a debt should be raised because they have not used their funding in accordance with their plan nor to request as an original decision that a debt be waived or written off (s 99 specifies that only the decisions **not to** waive or write off debts are reviewable). Clear pathways to challenge and seek review of debt decisions are critical, as we saw in Robodebt.

NLA recommends:

15. **That the Government ensure that communication to participants about any reduction in total funding is clear and transparent, with accessible pathways to support to assist participants to understand the implications for how funding is spent.**

16. **That, to ensure appropriate safeguards for any debts accrued, the Bill be amended to enable debts arising as a result of decisions made under ss 182(1) and (3) of the NDIS Act to be reviewable under s 99.**

Part 5 – Plan renewals

Under the proposed s50A, scheduled to become operative on 1 February 2027, a new plan will be created on the end date provided in the Statement of Participants Supports (SOPS) (proposed s33(2)(ba)). New plans created under the new s50A will be for a period of 12 months with an automatic rollover of the plan at the end of the 12-month period. The effect of the proposed s50A is that on the expiry of a new plan period, a new 12-month plan will come into effect, placing the participant in a cycle of automatic "plan rollovers". This cycle will continue until such time as the participant is successful in applying for a plan reassessment or plan variation, or transitions to a New Framework Plan.

As noted in Part 2, the effect of the proposed automated plan renewal process is that with no "planning trigger" to commence a process of considering and updating a plan based on a participant's functional capacity or support needs, all participants will become stuck in a "plan rollover" loop until they transition to New Framework Plans. This effectively only leaves a request for a plan reassessment or plan variation in order to check that the correct supports are funded

and are working together in the way they should, update any goals, consider any changes to the participants circumstances or conditions that might necessitate changes, and ensure the plan reflects what they are entitled to under the NDIS. We are concerned about the impact this will have on participants, particularly given the barriers to reassessment and variations noted above.

Participants must retain the ability to opt in to a formal plan reassessment when their plan is approaching its end date, to ensure their plan continues to reflect their current support need.

Plan renewals should be reviewable decisions

The content of a new plan when a plan renewal occurs is the primary decision impacting participants in terms of the support they can access under the NDIS. Participants must have a right of review of plan renewal decisions, enabling the NDIA to consider whether their support needs continue to be met by their plan and providing access to independent review at the ART.

There are also additional elements of the plan renewal decisions that include consideration and discretion and which could result in consequential alterations to the plan. This includes decisions about whether to remove one-off funding from the plan if it hasn't been spent, and other alterations to plans foreshadowed to be included the yet- to-be-made rules (for example removing time-limited funding from an old plan). There may be good reason one-off or time-limited funding may not have been spent in the old plan, and the Bill does not include right of review if such supports are arbitrarily removed as part of the plan renewal process.

NLA recommends:

17. **That the Bill be amended to include a right for participants to opt in to a plan reassessment by making a request three months before the end date of their current plan.**

18. **That the Bill be amended to enable plans created under the plan renewal powers to be subject to the same review rights as other decisions resulting in a new plan.**

Part 6 – Reasonable and necessary supports

The Bill fundamentally changes how the NDIA must assess 'reasonable and necessary' supports – shifting the focus away from the individual needs and goals of participants. Government has indicated that the financial sustainability of the Scheme is the policy justification for this change. New provisions (proposed s17B) introduce principles requiring the CEO to prioritise the Scheme's sustainability when making planning decisions. Reductions to formal supports on the grounds of financial sustainability for the Scheme will inevitably result in that financial burden being shifted to families and informal carers. These are fundamental changes to how reasonable and necessary supports will be evaluated, planned for and delivered, resulting in significant disadvantage for participants.

Refusing supports on the basis that another service system is 'more appropriate'

As part of the 2024 changes to the NDIS Act, the Government removed a previous requirement to consider if another system should fund a support because the NDIS supports lists were intended to clarify what is and is not covered by the NDIS. The Bill re-introduces this requirement through the introduction of a new s34(1)(g) which provides that the CEO must be satisfied the support is not more appropriately provided or funded by another scheme or government service system.

This effectively means even if a support is on the supports list, the NDIA could still refuse it if it decides another system should provide it. This adds an additional basis for the NDIA to refuse funding and enables an individual planner to effectively speculate on service divisions between Federal and state governments and service systems. It is unclear why the requirement should be reintroduced given the NDIS supports lists already serves this purpose.

NLA recommends:

19. **That the Bill be amended to remove s 34(1)(g) on the basis this can be addressed through the NDIS supports lists or other rules.**

Interpretation of value for money fails to consider outcomes of the support

The concept of "comparable support" in proposed s34(1A)(a) does not incorporate sufficient consideration of the outcomes of the support, as is currently required under the National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Supports Rules) which requires a comparable support to achieve the "same outcome". The Explanatory Memorandum10 suggests the decision-maker should consider the benefits achieved and the costs of the alternate support in considering whether a support is value for money. However this concept has been diluted in proposed 34(1A), which requires only that the support be "comparable", not deliver the "same outcome". When comparing two supports, the extent to which they achieve the same outcome must be central to the assessment.

Further, the proposed s34(1A)(a) requires the CEO to consider whether the comparable support is available at a lower cost, whereas the current Supports Rules requires a "substantially lower" cost. The current "Reasonable and Necessary Supports" Operational Guideline further explains this as being a real or material difference in cost. The cumulative effect of these differences could be to allow for less effective, albeit slightly cheaper, alternatives to be funded in lieu of more effective supports which could have better long-term value. This also unnecessarily weakens a participant's choice and control, which is retained as an objective in s17A, by requiring participants to use a slightly although not appreciably cheaper support.

We consider the current Supports Rules provide clear and consistent guidance for making decisions around 'effective and beneficial' under s34(1)(c) and that proposed s34(1A) is unnecessary.

[10] Explanatory Memorandum (n 7) 52.

NLA recommends:

20. **That the Bill be amended to remove s 34(1A), or, if retained, that s 34(1A)(a) be redrafted as follows: "must consider whether comparable supports which would achieve the same outcome are available at a substantially lower cost".**

Effective and beneficial considerations create significant evidentiary and other barriers to supports

The proposed changes around what can be considered effective and beneficial when funding a support introduce significant new evidentiary barriers for funding supports and substantially diminish the participant's own experience in what supports have been beneficial for them. They are also confusing for participants to navigate.

The Bill proposes that decisions about whether a support is 'effective and beneficial' are made by prioritising peer-reviewed and generalised research about the effectiveness (or not) of a support – over a participant's lived experience or evidence from their treating practitioners of the use of that support. We see through our work the important role that hearing directly from the person whose life will be impacted by a support has on fair decisions under the NDIS, as illustrated in Lin's story in her own words below. The Bill's proposed changes to limit lived experience being considered would make it harder for participants to get funding for some supports, particularly for more novel or tailored supports such as certain therapies, even if they can show those supports have had good results for them.

Lin's* story: Why my lived experience explained a support to be 'effective and beneficial'

I live with anxiety disorders, hoarding disorders, OCD and depression. My chronic fatigue prevents me from getting out of bed and walking. Most days I feel isolated. When you cannot leave your house, you get worse and more isolated.

On my occupational therapist's recommendation, I used my flexible capacity building budget under my NDIS plan to be treated by a physiotherapist for my psychosocial disability. The treatment made such a difference to me. Before I have a physio appointment, I struggle to get out of bed and shower. With my physio's treatment, I got physical support and was guided in movement. I was able to do things I didn't know I could with my condition, in a safe environment. My mood lifts, I felt more proactive, positive, stronger, and more mentally capable of social participation.

When the NDIA reviewed my plan, they told me that physiotherapy was not effective and beneficial for me, so I could not use my budget for this anymore. That's when I made an internal review, and eventually an appeal to the Administrative Review Tribunal (**ART**). It was frustrating because the evidence of my psychologist, physiotherapist and support coordinator was all showing the physio was beneficial for me. I was moving towards achieving my goals under the NDIS plan through using physio, but I kept hitting up against the legal framework. Through the review process, I submitted evidence of my lived experience which

showed how important physio was for me, and I was successful. This support reduces my need for other supports and is having a positive effect on me and my life and my future.

**Pseudonym*

NLA recommends:

21. That the Bill be amended to replace proposed s 34(1E) and (1F) with the content of the current Rules, which allow for the balanced consideration of the consensus of expert opinion, published literature and lived experience of the participant.

If s34(1E) and (1F) are retained, we have several specific concerns outlined below.

Unclear distinction between s34(1E)(b) and (c)

In assessing whether a support is effective or beneficial, the participant's lived experience of that support, and evidence of its benefit for them, must be treated as a central consideration. On the present drafting, the Bill does not make clear whether evidence of the way in which a support meets a participant's individual support needs is intended to be considered under s34(1E)(b), s34(1E)(c), or both. We consider that evidence is properly accommodated within s34(1E)(b). The purpose of s34(1E)(c) is therefore not clear.

We further submit that s34(1E)(b) should be amended to make explicit that the relevant evidence can relate to the "likely" effectiveness of a support. That clarification is necessary because, in many cases, a participant will be seeking access to a support they have not previously received. Without such an amendment, the provision risks excluding evidence simply because the support is new to the individual participant.

Focus on "outcomes" and "functional capacity" in s 34(1E)(c)

It is not apparent why the assessment of whether support is beneficial should be framed by reference to prior outcomes and functional capacity in the manner proposed by s34(1E)(c). Although those matters may sometimes be relevant, the present drafting would operate unfairly in many common cases. Most obviously, a participant may be seeking support for the first time. In that circumstance, they will be unable to demonstrate outcomes arising from the use of that support in a previous plan. The difficulty is even more acute where the participant is entering the NDIS for the first time and, by definition, has no previous plan from which such evidence could be drawn.

If s34(1E)(c) is retained, it should not be confined to a participant's use of the support in a previous plan. At a minimum, it should extend to any evidence that the participant has previously used the support, where they have been able to do so. Preferably, the reference to use of the support in a previous plan should be removed altogether, so that the inquiry is not artificially

narrowed by a criterion bearing no necessary relationship to whether the support is, in fact, beneficial.

The provision also places undue emphasis on whether the support improves, maintains, or reduces a decline in a participant's functioning with respect to the activities against which access is measured, or their social or economic participation. That is an unduly narrow prism through which to assess the benefit of support. Supports may be beneficial for other reasons, including because they advance the participant's stated goals, enable the effective delivery of other supports, or stabilise circumstances in ways not captured by those limited criteria. There is no evident policy or legal justification for restricting the concept of benefit in this way.

NLA recommends:

22. That, if s 34(1E) is retained:

- **(a) the Bill be amended to insert the word "likely" in s 34(1E)(b) and to omit s 34(1E)(c);**
- **(b) s 34(1E)(c) not be confined to a participant's use of the support in a previous plan, but extend to any evidence of the participant's prior use of the support where such evidence is available; and**
- **(c) the Bill be amended to refer only to "evidence as to outcomes for the participant".**

Discretion to refuse even where supportive evidence available

The proposed amendments introduce a range of discretions by which a support may be found not to be beneficial notwithstanding compelling evidence to the contrary. In particular, s34(1F) would permit refusal of a support request on the basis that there is only "limited" general evidence supporting that category of support, even where the participant's own circumstances and evidence strongly indicate benefit. That sets an inappropriately high barrier to funding supports which are justified on the material available. The mere fact that publicly available evidence is limited should not, of itself, operate as a reason to refuse a support that is otherwise well supported by the evidence before the decision-maker.

NLA recommends:

23. That, if s 34(1F) is retained, the Bill be amended to remove the word "limited" from s 34(1F)(a) and (b).

Shifting the burden of care for children onto parents and carers entrenching social and economic disadvantage

The Bill includes, for the purpose of s34(1)(e), the presumption that parents are responsible for providing substantial care and support for their children, including supervision, personal care, transport, emotional support and behavioural support, regardless of the child's disability support needs or age.

This selectively imports factors from the Supports for Participants Rules, while omitting the requirement to consider whether the child's care needs exceed those of a child without a disability.

The proposed changes fundamentally increase the caring burden for parents. This will entrench social and economic disadvantage by preventing parents from working, and in many cases, will result in greater demands being made of the social security system to provide income support. It also risks the wellbeing of family units by exacerbating carer burnout. In severe cases, family breakdown may occur or result in a child participant being placed in out-of-home care.

The proposed changes provide little protection to children in cases where families cannot reconcile their carer burden with other commitments. The only protective considerations are in relation to whether relying on family, carers, informal networks or the community would expose a participant or another person to a material risk of harm, abuse or neglect that cannot be mitigated through informal or lower cost supports (proposed s34(1K)(a)), or where replacement of informal supports and networks is necessary because of the unsustainability of the provision of those supports and networks (proposed s34(1K)(b)(ii)). These are not sufficient to guard against the very real risk of families and carers facing burnout and crisis – often necessitating a high-cost intervention - before they are able to access NDIS supports.

NLA recommends:

24. That the Bill be amended to remove proposed provisions s 34(1G)–(1K) and retain Part 3.4 of the current Supports Rules in relation to family support.

Part 7 – Plan suspensions

Schedule 1, Part 7 introduces new powers enabling the CEO to suspend a participant's plan where the participant is not contactable or fails or refuses to respond to requests for information. It also expands the circumstances in which participant status may be revoked.

Proposed amendments are not justified and are disproportionate

NLA does not consider that the Explanatory Memorandum establishes a sufficient basis for the proposed changes. The Explanatory Memorandum identifies that the CEO is currently unable to suspend a participant's plan where the participant cannot be contacted or fails or refuses to respond to requests for information. However, the proposed amendments go significantly beyond addressing this issue by introducing broader powers which extend beyond what is necessary to address the identified gap.

Existing provisions already allow for plan suspension in certain circumstances, including under s36(3)(b)(i), and the *NDIS Act* provides broad powers to obtain information from persons other than the participant under ss 36 and 55. These powers may be utilised where a participant is not contactable or fails or refuses to provide information. We consider these provisions to be

sufficient to address most of the identified concerns. A more limited amendment providing suspension powers in relation to non-compliance with requests under s 50 would adequately address the identified gap.

The Explanatory Memorandum also refers to risks to participant wellbeing where the Agency is unable to contact a participant. It is unclear how suspension or revocation addresses those risks. The proposed amendments do not introduce any welfare mechanism or safeguards directed to participant wellbeing, such as consideration of risks to the participant before a plan is suspended. In fact, they operate to diminish existing protections within s 36 of the current legislative framework.

To the extent that the amendments are said to protect the integrity of the Scheme, suspension of a plan is sufficient to prevent the use of funds where there is uncertainty about a participant's circumstances. The introduction of revocation powers is not necessary to achieve that objective.

NLA recommends:

25. **That Schedule 1, Part 7 – Plan Suspension etc – of the Bill not proceed.**

26. **That, if Schedule 1, Part 7 of the Bill is retained, the Bill be amended to introduce a more limited suspension power, similar to s 26(3)(b)(i), in relation to participant non-compliance with s 50.**

Revocation should not be an available option

Under the proposed amendments where information has been requested under ss 36 or 50 and the participant is not contactable, the CEO may either suspend the participant's plan (proposed s 40A) or revoke participant status (proposed s 30(1A)).

Given the significant consequences of revocation, this should not be an available option in the absence of clear and appropriate safeguards. Revocation may permanently exclude participants from the Scheme, including those who are unable to reapply due to age restrictions. Additionally, revocation risks further isolating vulnerable participants whose disabilities may have contributed to their inability to comply with an information request. This cohort may experience long term exclusion from disability supports if required to engage in a reapplication process, noting that if their plan is revoked they would have to complete the reapplication process without any disability support.

Suspension of a participant's plan, whilst still a significant impact, is a more proportionate response as it allows the NDIA to manage risk while preserving a participant's connection to the Scheme. Revocation should be limited to circumstances where there is a substantive basis to conclude that a participant no longer meets the access criteria.

NLA recommends:

27. **That the Bill be amended to remove s 30(1A) to ensure participant status cannot be revoked where the participant is not contactable.**

Risk of prolonged suspension and lack of review rights

The current drafting of the Bill has the potential to cause excessive delay before a plan suspension ceases. A participant may make contact in accordance with s 40A(3), following which the CEO may take up to 28 days to request information under proposed s 40A(4). Once the participant provides that information, the CEO may take a further 28 days to request additional information under s 40A(6). This cycle may continue an indefinite number of times until the CEO decides to cease the suspension under s40A(4)(a).

The Bill provides no guidance as to when it is appropriate for the CEO to cease a suspension. In circumstances where a participant has not been found ineligible for access to the Scheme, there is no clear justification for a suspension to continue indefinitely while the Agency undertakes further enquiries. This creates a risk of prolonged suspension without resolution.

While a participant may seek review of an initial decision to suspend their plan, there are no equivalent review rights where the CEO does not agree to cease the suspension under s 40A(4). This is a significant gap in the current drafting.

NLA recommends:

28. **That the Bill be amended to require that a plan cease to be suspended if the participant contacts the NDIA or provides the information requested, similarly to s 36(4)(c). This should occur by operation of statute without needing a formal decision. The CEO must be required to identify a different basis within the Act to re-suspend the plan if the CEO still considers there are grounds to do so. In the alternative, the Bill be amended to provide clear guidance as to when the CEO should cease a suspension, and a decision not to cease a suspension under s 40A(4) be a reviewable decision.**

Lack of clarity and safeguards in the proposed framework

Provisions in the Bill lack clarity in respect to key concepts and do not provide sufficient safeguards to support participants before a suspension or revocation decision is made. The proposed amendments contain no definition of when a participant is considered 'not contactable,' such as a particular number of contact attempts or providing a timeframe to expect a response. There are also no parameters for what constitutes 'reasonable attempts' to contact a participant, for example consideration of a participant's preferred contact method, requirements to make enquiries with third parties such as justice or health departments, or requirements to review all relevant information held by the Agency. While the Explanatory Memorandum provides limited examples, these are not reflected in the legislation. The absence of clear statutory guidance creates a risk of inconsistent application and insufficient effort to engage participants through accessible and appropriate communication methods.

There are many circumstances in which a participant may be unable to engage with the Agency, including hospitalisation, incarceration, homelessness, family violence, cognitive impairment, poor mental health, or lack of access to reliable communication. Participants in rural and remote areas may face additional barriers, including limited connectivity and reduced access to services. In context such as these, a failure to respond should not result in detriment to a participant.

The proposed framework also departs from, and undermines existing protections in the current legislation. The present framework in s36 requires the CEO to have regard to specified matters before a suspension is imposed in response to non-compliance, and facilitates re-engagement by requiring the resumption of the planning process where information is subsequently provided. The proposed provisions do not preserve these features and instead introduce more direct pathways to suspension without safeguards.

The consequences of suspension and revocation to vulnerable participants will be significant. Participants may lose access to essential support despite continuing need, with potentially serious impacts on their health, safety and wellbeing. Participants who are revoked may find themselves in a position that they are no longer eligible for access to the Scheme, for example where age restrictions apply, or may face significant delay and difficulty in reapplying. While decisions to suspend or revoke are reviewable, the effectiveness of this safeguard is likely to be limited. Participants may not be aware that a decision has been made, may not receive notice, or may be unable to engage with the review process within the required timeframes. The same barriers that prevent engagement may similarly make it difficult to seek a review. Critically, the participant will not have access to supports pending review. Their access to support will be completely removed, despite no actual change in their high level of need that is the basis for their access to the NDIS.

Taken together, the absence of clear definitions, guidance and safeguards suggests insufficient consideration has been given to how these powers will operate in practice. Further consultation and consideration must be given to the wording of the proposed legislation before any changes to the *NDIS Act* are made.

NLA recommends:

29. That, if Schedule 1, Part 7 of the Bill is retained, the Bill be amended to remove:

- **(a) proposed s 30(1A), which provides the power to revoke participants; and**
- **(b) proposed s 32D(5), which undermines protections in s 36.**

30. That the Bill be amended to provide the following safeguards in proposed s 40A:

- **(a) a requirement that the CEO must consider whether the suspension of a participant's plan would expose the participant to a risk of harm;**

(b) amendments to s 40A(3) and (4) to provide that a plan ceases to be suspended where the participant contacts the NDIA or provides the information requested; alternatively, that the legislation provide clear guidance as to when the CEO should cease a suspension, and that a decision not to cease a suspension under s 40A(4) be a reviewable decision; and

(c) that, in consultation with the disability community and sector, the Bill be amended to provide clear definitions of "not contactable" and specify what constitutes "reasonable attempts" to contact a participant.

Part 8 – Permanence and treatment

Flawed approach to permanency

The Bill includes proposed amendments that present a significant reframe of how permanency is determined. They shift the enquiry away from the permanence of the impairment itself to the permanence of its impact. The linking of permanency to treatment that may materially improve, reverse, or alleviate the impact of an impairment is untenable when considered against the core principles and design of the NDIS. The current legislation provides a logical, stepped approach which first considers the permanency of the impairment and then the impact of that impairment and need for NDIS supports under ss 24(c)–(e) and 25(b)–(d). In making permanency contingent on undertaking appropriate treatment and whether that treatment will materially improve, reverse, or alleviate the impact of the impairment(s), the criterion no longer functions as an assessment of the endurance of the impairment as distinct from the impact of the impairment.

Many NDIS-funded supports are, by deliberate design, directed toward improving, reversing or alleviating the impacts of a participant's impairments. Notwithstanding the importance of capacity building supports in the lives of people with disabilities, improvement in a person's functional capacity does not, as a matter of course, negate that they continue to experience the impairment on a permanent basis nor does it mean they will no longer have substantially reduced functional capacity. In practice, this means the proposed amendment effectively collapses the distinction between an impairment and its functional impacts, creating an additional functional capacity test within the assessment of permanency. This is likely to create considerable difficulty for decision-makers to implement, lead to inconsistency in decisions, and generate a significant number of review applications. The existing access criteria in current legislation should be retained. The proposed amendments do not achieve the certainty the Government appears to seek and are likely to generate significant litigation.

It is also unclear why changes to the access criteria are necessary in light of the amendments proposed in Schedule 1, Part 9. Both purport to address the same issue - that the NDIS was not intended to replace other support services. NLA recommends that any changes to legislation are limited to what is actually necessary for Government to achieve its stated purpose and avoid overlapping provisions.

Key terms are undefined

The proposed amendments rely on key terms that are not defined and are open to broad interpretation. In particular, “improve”, “reverse”, and “alleviate” are not defined. These concepts are inherently broad and do not provide the level of certainty the Government appears to be seeking. It is therefore difficult to apply the proposed test across a wide range of scenarios and reliably predict outcomes. For example, many enduring conditions (including chronic pain, fatigue syndromes, psychosocial disability, and some neurological conditions) are managed through ongoing symptom relief and functional support rather than treatments which may achieve something close to a cure. It remains unclear to what extent symptom relief or improved functional capacity would be treated as improving, reversing or alleviating the impacts of an impairment.

The Bill includes a note recognising that some permanent impairments may require ongoing treatment to maintain functional capacity. However, a note is not operative law and may not provide meaningful protection where the primary test requires that all appropriate treatment has been undertaken. There is a lack of clarity as to when treatment shifts from being something a person must undertake to satisfy access criteria, to ongoing treatment to maintain functional capacity.

“Materially” is similarly not defined in the legislation. While the Explanatory Memorandum suggests that it means noticeably or significantly, this introduces further uncertainty. “Noticeably” represents a substantially lower threshold than “significantly”, creating scope for inconsistent interpretation and application. This further undermines the capacity of the amendments to provide certainty of outcomes. The Bill also includes an amendment to subparagraph 25(1)(c)(i) to replace ‘mitigating or alleviating’ with ‘reducing.’ The purpose of this amendment is purportedly to differentiate the provision from the assessment of permanency, however the drafting does not clearly achieve this. The terms “mitigating”, “alleviating”, and “reducing” are difficult to differentiate and have substantial overlap in meaning.

As drafted, the proposed amendments are likely to lead to inconsistency in application and significant uncertainty in how they will operate across different circumstances. This introduces ongoing uncertainty as to the operation of the provisions, with key aspects likely to be resolved through litigation rather than clearly defined in the legislation. This will impose a significant burden on participants and the Agency, as well as the ART and the Federal Court, in terms of time, cost and complexity. It may also result in unpredictable outcomes for both participants and the Government.

Amendments embed inequity and remove choice

Proposed s 25A(2) expressly provides that treatment may be considered appropriate regardless of whether a person’s individual circumstances restrict access to that treatment, including financial circumstances and geographical location. This approach entrenches inequity. Access to the NDIS will depend not only on a person's disability needs but on their capacity to locate, fund and sustain engagement with treatment pathways — a barrier that falls disproportionately

on those experiencing poverty, geographic isolation or cultural barriers to healthcare. Participants in rural and remote areas often face provider shortages and long waitlists; participants with limited financial means may be unable to fund treatments or reports not covered by Medicare or the PBS; and some participants may be unable to access culturally safe services or have other barriers such as family and domestic violence.

The result is a gateway to the NDIS that is less equitable. Access will depend not only on disability needs, but on a person's capacity to locate, access, fund, and sustain engagement with treatment pathways. As discussed in Part 9, the proposed amendments are also likely to have a disproportionate impact on Aboriginal and Torres Strait Islander peoples, particularly given documented disparities in access to healthcare and disability services, and the specific risk that aged care may be prescribed as an alternative support system.

Legal Aids' casework experience suggests that relatively few review matters turn on a person being unable to access treatment due to geographic or financial barriers and that the threshold applied by the ART and Federal Court is relatively high. This indicates that the existing framework already operates with an appropriate and limited discretion while still fairly accommodating the individual circumstances of prospective participants. The exception provided by the proposed s25A(3)(a) for those who cannot undertake a treatment for medical reasons is very narrow. It does not sufficiently accommodate a person's autonomy and choice, particularly in situations where treatment may be invasive, culturally inappropriate, of limited benefit, or disproportionately risky, invasive, or burdensome in light of expected outcomes.

As discussed in Part 1, NLA is concerned that the delegation of key eligibility criteria to NDIS Rules limits parliamentary scrutiny and creates uncertainty for participants. This concern applies with particular force here, where the Rules will determine what constitutes 'all appropriate treatment' – a threshold that will be determinative of whether a person can access the Scheme at all. Where the Parliament is asked to endorse a new permanency framework, the key parameters and safeguards should be clear in the text of the Act, rather than left for Rules to be made later. Where rule making powers are provided, they should be subject to appropriate parliamentary scrutiny, including disallowance, and be exercised consistently with s4(9A) of the Act, including through consultation with relevant stakeholders.

NLA recommends:

31. **That Schedule 1, Part 8 – *Tightening meaning of permanence to reduce access where an impairment can be treated* – of the Bill not proceed. NLA does not consider there are any changes to the current drafting that would rectify the significant issues presented by Schedule 1, Part 8.**

Part 9 – Eligibility based on access to other services

The Bill introduces a new NDIS eligibility requirement that the person meets the 'alternative support requirements' (s 21(1)(d) and s25B). The alternative support requirements will prevent access to the NDIS for people:

- if they have an excluded impairment, based only on their eligibility for a compensation scheme or support from other service systems;
- if they fall within a particular class of people or a particular circumstance applies to them.

The alternative support requirements are a fundamental and unnecessary departure from the vision of the NDIS to 'complement, not replace, supports provided though other service systems',[11] which will result in loss of NDIS support for existing participants and deny eligibility for future prospective participants. The NDIS Review reinforced that people with disability require support from the NDIS and other service systems.[12] The alternative support requirements significantly constrain the NDIS' ability to provide complementary support for people who require support from multiple systems.

The NDIS is designed to provide a lifelong foundation for support for people who meet its eligibility criteria - other service systems are subject to change over time and vary between jurisdictions and depending on location. The NDIS works best when it sits at the centre of these systems and co-ordinates to deliver supports, considering the person's individual needs and the support available in their community. The NDIS should meet reasonable and necessary disability support needs that other service systems do not meet. This will ensure participants' needs are met holistically across service systems and prevent duplication of support. In addition, the requirements give government extensive rule-making powers to create future unknown exclusions to NDIS eligibility based on a person falling within a class, circumstance or having a particular impairment.

The stated rationale for these changes is to prevent people from receiving duplicate supports. However, the Impact Analysis also states that concurrent access is already considered during planning, when duplication is identified and funding is reduced. The current legal framework already addresses this issue through four key mechanisms:

1. A support will not be funded under the NDIS if it is already provided through a compensation scheme or another service system, because it would not be considered reasonable and necessary.

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[11] *Impact Analysis* (n 1) 199.

[12] Department of the Prime Minister and Cabinet, *Working Together to Deliver the NDIS — Independent Review into the National Disability Insurance Scheme: Final Report* (Report, October 2023) 66 https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf ('[the APTOS] assumes people with disability will be supported by the NDIS or another system. In reality, they need support from both ... Clear responsibilities and effective coordination between agencies are critical for all people with disability').

2. The *NDIS Act* and associated rules allow the NDIA to require compensation claims, reduce plans to account for compensation payments, and recover NDIS amounts from those payments.
3. The NDIS supports definitions specify which supports are the responsibility of other service systems and therefore cannot be funded as NDIS supports.
4. Rule 7(3) of the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (Cth) allows the NDIA to refuse funding for a support that is more appropriately provided through general service systems or support services.

The Government can also amend the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (Cth) to create more specific exclusions for supports that are available under compensation schemes.

NLA recommends:

32. That Schedule 1, Part 9 – Eligibility based on access to other services – of the Bill not proceed.

Inequity to exclude people with impairments caused by motor vehicle accidents and work-related injury from the NDIS

The alternative support requirements explicitly deny access to people with impairments caused by motor vehicle accidents and work-related injury where a State or Federal law provides for compensation or other benefits for the impairment (unless they have another impairment that meets the access requirements that is not excluded). These are framed in the Explanatory Memorandum as systems which could 'reasonably meet the needs of a person', or 'where the service system has a responsibility for meeting the needs of a person'.[13] In practice, there is no obligation under those schemes to meet the person's disability support needs as illustrated in Charlie's story, in their own words below.

Charlie's* story: After my car accident, the TAC couldn't cover crucial disability supports

I was involved in a car accident that left me paraplegic. I was living in a house that had no space for carers, overnight support, no space for my wheelchair or for my kids to stay over. There were safety issues with the way doors opened, mould from flooding and the whole place was not suitable for my disability. Victoria's Transport Accident Commission only provided overnight support on weekends and were not able to provide support for disability housing. I had to appeal to the Administrative Review Tribunal, and with the help of Legal Aid, I was able to get Specialist Disability Accommodation funding through the NDIS, and my quality of life has improved. I now have clarity and stability; my mental health has gotten better; and I can see my folks and brother all the time.
*Pseudonym

[13] Explanatory Memorandum (n 7) 6.

This issue was also identified in *Mizzi v National Disability Insurance Agency* [2025] [2025] ARTA 2155 where the ART had to consider whether a reasonable and necessary support was potentially available through the WorkSafe Victoria scheme:

"It is probable WorkSafe Victoria's liability will continue in respect of Mr Mizzi 's 1986 injury. It does not follow and it cannot be assumed this would cover all the impairments to which Mr Mizzi 's disability is attributable and his related disability support needs. Where a causal connection between the support Mr Mizzi requires and his compensation injury is not proved, the support would not be funded or provided by WorkSafe Victoria."

In contrast, the NDIS focuses on a person's disability support needs in the context of the broad principles and mechanisms in the NDIS Act, and can provide a wider range of disability supports.

Chapter 5 of the NDIS Act is entirely dedicated to compensation payments. Its provisions, in combination with related rules, provide extensive and clear powers to the NDIA to require people to claim compensation, reduce reasonable and necessary supports to account for compensation payments and recover NDIS amounts paid. The proposed exclusion of impairments caused by motor vehicle accidents and work-related injury will create a deep inequity. It will prevent people who otherwise meet the stringent NDIS access criteria from accessing the same range of supports as other participants who have the same impairment. The Impact Analysis notes that there are just over 8,000 NDIS participants receiving compensation payments, and only around 3,000 are on State compensation schemes.[14] Given the existing mechanisms to prevent concurrent access to supports, any financial sustainability achieved seems to arise only from unfairly preventing access to supports that people are eligible for under the NDIS, but would not be under the relevant compensation scheme.

Causation for an impairment too limiting

Proposed s25B refers to whether an impairment was caused by a particular injury or accident, when there may be cases where the injury or accident exacerbates or contributes to a pre-existing impairment, or where a subsequent non-compensable incident causes further impairment. There will be scenarios where the compensation scheme will not sufficiently address the person's disability needs because the compensation amounts are limited to the impact of the injury or accident. To ensure that people in this circumstance can access supports for their impairment that are not able to be compensated, this provision should be amended so that it is only engaged where the incident or accident is wholly caused by, or is the sole cause of the impairment. Consistent with this, we also recommend removing part (b) of the proposed definition of "work-related injury" which relates to aggravation of an existing injury.

[14] *Impact Analysis* (n 1) 220.

NLA recommends:

33. That, if Schedule 1, Part 9 is retained, ss 25B(2) and (3) of the Bill be amended to state that the "impairment was wholly or solely caused", and that the definition of "work-related injury" in s 9(b) be removed.

Broad powers through Rules to prevent access across a wider range of categories and excluded impairments

The alternative support requirements contain broad powers for government to deny and revoke NDIS access through the creation of Category A rules. S 25B provides three broad powers to make rules on different bases that exclude people from the NDIS by prescribing or declaring:

- a class of persons that the person must not be in (s 25B(1)(a)) (prescribed classes)
- circumstances that the person must not fall within (s 25B(1)(b)) (prescribed circumstances)
- impairments because an alternative support has been declared for the impairment (s25B(1)(c)) (excluded impairments).

In order to satisfy the alternative support requirements, a person must not fall within a prescribed class or circumstance. If their impairment is excluded, they must have another impairment that meets the access requirements.

The creation of rules under s 25B will have significant impacts, particularly if exercised in the manner contemplated by the Explanatory Memorandum (i.e. prescribing service systems like aged care, or particular impairments such as chronic health conditions).[15] Rules may also prescribe additional service systems, covering justice or hospital settings. The requirements that states and territories agree to the making of such rules and that the Minister is satisfied that it is not appropriate to fund or provide a support for the impairment through the NDIS under s 25B(6), are not sufficient safeguards to the exercise of such power.[16] These broad rule-making powers effectively mean that there is no limitation around the power's exercise and will leave people with disabilities with significant uncertainty about future decisions to prescribe further circumstances or impairments that will exclude them from the NDIS.

In addition, the rule-making power to exclude impairments allows for the identification of particular supports for an impairment, or particular support services as supports that would 'not be appropriate to fund … through the NDIS'.[17] This would mean a person with a particular support need arising from an impairment, or who has access to a particular support service, could be

[15] Explanatory Memorandum (n 7) 66.

[16] See National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (Cth) sch 1 item 99; *National Disability Insurance Scheme Act 2013* (Cth) s 209(4).

[17] National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (Cth) sch 1, proposed ss 25B(4)–(6).

denied access to the NDIS altogether. If the focus is to prevent funding particular supports in a person's plan, then this power already lies with the Minister when defining NDIS supports. In our view, there is no basis for precluding access to the NDIS altogether for categories of people who might have a support need that could be met by another service system. It runs the risk of people with significant disability needs being excluded from the NDIS, despite requiring additional different supports under the NDIS.

A key focus of the NDIS Review was improving co-ordination to assist people who require support across multiple systems. This rule-making power instead amplifies the likelihood of people falling through the gaps, especially people experiencing social and economic marginalisation. The broad rule-making powers under s 25B were also not considered as part of the Impact Analysis. As such, its potential impact on the community has not been publicly considered or modelled, even though the interaction between service systems is one of the key complexities of the NDIS. Indeed, such modelling is infeasible on a practical basis given the extensive scope for rules under s 25B to preclude access.

As noted in the NDIS review:[18]

"Without sufficient planning and integration, people with disability can experience not only complexity and inconvenience, but also negative health outcomes and risks to safety and wellbeing…instead of using the entry of the NDIS to encourage much needed, more sophisticated program intersection protocols and collaboration opportunities, the [Applied Principles and Tables of Support to Determine Responsibilities of the NDIS and other service systems] have reinforced program boundaries and the one dimensional, transactional approach of the old disability systems."

Given the complexity and impact of rule-making powers under s 25B, specific changes should only be contemplated following parliamentary hearings, enforceable consultation, broad engagement with the disability community and detailed impact assessments. We emphasise that the Bill should be amended to remove Schedule 1, Part 9 of the Bill, or in the alternative, that the rule-making powers under ss 25B(1)(a), (1)(b) and (4) of the Bill be removed and s25B be limited to motor vehicle accident and workers' compensation schemes.

NLA recommends:

34. **That, if Schedule 1, Part 9 is retained, the Bill be amended to remove the rule-making powers under ss 25B(1)(a), (1)(b) and (4), and that s 25B be limited to motor vehicle accident and workers' compensation schemes.**

[18] *Working Together to Deliver the NDIS* (n 12) 66.

Discriminatory impact on First Nations people with disability

The Explanatory Memorandum notes that Rules could be made to exclude impairment by declaring aged care as an alternative support.[19] We are deeply concerned about the disproportionate impact this would have on First Nations people with disability.
As part of the Australian Government's Closing the Gap commitments, First Nations peoples are able to access support through the Aged Care system from age 50. The Impact Analysis recognises that NDIS participants are able to access more funding under the NDIS than under the Aged Care system.

The case of *Court and CEO, National Disability Insurance Agency (NDIS)* [2025] ARTA 1560 makes clear the practical consequences of this in terms of people needing to contribute to the cost of aged care services.[20] An Applicant, Ms Court, raised this fundamental injustice in a recent ART matter:[21]

"[It is] [h]ighly concerning if efforts like this to close the gap between indigenous and non-indigenous health and life-expectancy outcomes inadvertently create a two-tiered system whereby indigenous people with disability over the age of 50 are only able to access the very limited supports available under the aged care system, whilst non-indigenous Australians of the same age and with the same functional impairments are able to access funding reflective of the full extent of their disability support needs through the NDIS."

Ms Court is a 59-year-old Aboriginal woman with spinal spondylosis and related chronic pain conditions. The ART found she otherwise met the criteria for the NDIS eligibility, but refused access purely based on her eligibility for aged care supports. This decision was made even though funding was capped under the relevant aged care scheme, and Ms Court was required to make a co-contribution to access support. The ART's legal approach in this case was subsequently found to be incorrect as a result of the Federal Court's decision in *NDIA v Sutherland* [2026] FCA 3. In *Sutherland,* the Federal Court found it was not permissible to refuse access to the NDIS on the basis that some of a person's support needs could be met by another service system. The government now seeks to overturn the effect of this decision through s 25B.

It is crucial that any rules under s 25B do not have a discriminatory impact on First Nations people with disability by forcing the acceptance of supports under the Aged Care system prior to 65.

NLA recommends:

35. **That the Government ensure that any rules related to aged care allow First Nations people under 65 who are receiving an aged care package to access any additional supports under the NDIS.**

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[19] Explanatory Memorandum (n 7) 66.

[20] *Impact Analysis* (n 1) 186.

[21] *Court and CEO, National Disability Insurance Agency* [2025] ARTA 1560, [35].

Evidentiary requirements for excluded impairments will create barriers

Proposed ss 25B(1)(c) introduces a complex legal test for excluded impairments that will require detailed evidence from medical and health practitioners. This requirement will turn on identifying 'excluded impairments', the cause of the impairment and whether there is eligibility for compensation.

If a person has an excluded impairment, to be eligible for the NDIS, they will need to provide evidence that they have another impairment that is not excluded and satisfies the disability or early intervention requirements. This will create barriers to people experiencing social and economic disadvantage to confirm their NDIS eligibility. For people living with interrelated and compounding impairments, there may be practical and financial barriers to obtaining the required evidence.

It may not be possible for medical and health practitioners to isolate the impact of one impairment. For example, an occupational therapist may not be able to isolate the functional impact of a pre-existing psychosocial impairment and an acquired brain injury caused by a workplace or motor vehicle accident, to demonstrate that the person has a substantial reduction in functional capacity based on the pre-existing impairment alone. Where a motor vehicle accident has compounded a pre-existing impairment or caused cognitive impairment, significant medical evidence may be required to demonstrate the pre-existing impairment alone_satisfies the disability or early intervention requirements.

NLA recommends:

36. **That the Bill be amended to ensure that, if a person has impairments that overlap with excluded impairments, assessment for access is undertaken as if the excluded impairment provisions do not apply.**

Schedule 2 – Fraud measures

Review rights and safeguards

NLA recognises the importance of ensuring the proper use of Scheme funds. Compliance and enforcement powers must be exercised in a way that does not adversely impact participants who are not engaging in deliberate fraudulent conduct. Expanded investigative and enforcement powers risk unintended consequences for participants where processes are not sufficiently tailored to the circumstances of people with disability. Robust safeguards must be in place to protect participants.

As currently drafted, Schedule 2 imposes strict and substantial record retention requirements for self-managing participants and their nominees over a lengthy period of time, 3 or 5 years, which may be difficult for many participants to meet in practice. This is especially true for those experiencing unstable housing, family violence, hospitalisation or other significant life disruptions. Notably, under the proposed amendments, participants who fail to retain records (regardless of the circumstances) will owe a debt to the Agency. The legislation must provide reasonable exceptions to the record retention debt provisions – particularly where participants can demonstrate their entitlement to the NDIS amounts by other means, or where they have a reasonable excuse for non-compliance.

In addition, as noted in Schedule 1 Part 4, there is currently no process under the NDIS Act for a participant to request a review of a decision that a debt should be raised (s 99 specifies that only the decisions **not to** waive or write off debts are reviewable). Clear pathways to challenge and seek review of debt decisions are critical, as we saw in Robodebt, as per our Recommendation 16 above.

We also consider the special circumstances waiver provisions should be aligned with similar provisions for special circumstances waiver in social security law introduced by the *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025*. These would permit waiver of a debt on the basis of special circumstances where the debt resulted:

- from the participant's (or their formal representative's) false statement or a failure to comply with the NDIS Act, but that failure was justified; or
- the debt resulted from another person's false statement or failure to comply, and either the participant was not aware, or it was justified in the circumstances for the participant (or their formal representative) not to correct the false statement or failure to comply.

These are important protections to increase the flexibility to waive debts where there is coercion or family violence, or a participant or their representative has been the subject of fraud.

The introduction of civil penalties for failure to comply with the record retention provisions – in addition to the mandatory debt provisions – will doubly penalise participants and nominees for the same conduct, without any exception for reasonable excuse or inadvertent non-compliance.

The proposed creation of a civil penalty for people failing to comply with information gathering powers in s53 of the Act is also made without any safeguards for inadvertent or accidental non-compliance. People required to provide information may face barriers to compliance, including cognitive impairment, psychosocial disability, language barriers, or significant life stressors such as hospitalization or family violence. They also may not in fact have the information, or have custody or control of a document, which the CEO requires.

The imposition of civil penalties in these circumstances risks penalising conduct that does not involve deliberate wrongdoing. Consideration should be given to limiting the application of penalties to situations involving intentional or reckless non-compliance. This can be achieved by amending the proposed s53(3)(b) to read "the person intentionally or recklessly refuses or fails to comply with the requirement without reasonable excuse."

We further note that the amending legislation already proposes measures to suspend a participant's plan or revoke access for failure to comply with information requests from the NDIA. Subject to NLA's comments in relation to Schedule 1 part 7 relating to revocation and suspension, NLA considers the potential for suspension is sufficient deterrent to achieve the protective intention of the amendments.

NLA recommends:

37. **That the Bill be amended to allow for a special circumstances waiver in similar circumstances to those introduced for social security debts by Schedule 2 of the *Social Security and Other Legislation Amendment (Technical Changes No. 2) Act 2025*.**[1]

38. **That s 182(4) of the Bill be amended to include a reasonable excuse provision in relation to the record retention requirements, and to allow participants to demonstrate their entitlement to an NDIS amount in question by other means.**

39. **That s 53(3)(b) of the Bill be amended to limit civil penalties to situations involving intentional or reckless non-compliance.**

40. **That the Bill be amended to align the record retention requirements for plan nominees under s 45B(8) with the requirements for participants, noting that nominees may do any act that a participant may do under, or for the purposes of, the Act (s 78).**

Unclear requirements for plan nominees

Proposed s83(3A) requires a plan nominee to inform the Agency of an event or change of circumstance likely to affect their ability to act. As currently drafted, this provision will create

challenges for nominees trying to understand what is required for compliance. It is likely to cause stress and difficulty, particularly with the potential for a nominee to be suspended or cancelled for noncompliance. Nominees are often family members, and may themselves have a disability, be NDIS participants, or face other barriers, such as language. Without guidance in the proposed Act, it is difficult for nominees to assess when a circumstance is one that requires informing the Agency. For example, if they are obliged to inform the Agency of changes in providers, structure of supports, going on a holiday or during a short period of hospitalisation. As the proposed section imposes a positive obligation on nominees, it must be clear to nominees what they are required to do.

NLA recommends:

41. **That clear operational guidelines be developed, alongside educational efforts, to ensure plan nominees understand their obligation to inform the NDIA of an event or change of circumstance likely to affect their ability to act.**

42. **That s 90(5A) of the Bill be amended to include a new subsection — "(c) and it is reasonable in the circumstances to do so" — to provide protection in instances where there is a reasonable excuse, inadvertent or unintentional non-compliance, or where removing the nominee would create an unacceptable risk of harm to the participant.**

Allocation of compliance functions between the NDIA and the NDIS Quality and Safeguards Commission

Schedule 2 introduces new powers and functions for the NDIA to undertake enforcement and compliance activities. The legislation invests the new powers in the NDIA rather than the NDIS Quality and Safeguards Commission who are the ordinary compliance authority under the Act. The Commission has its own compliance and enforcement tools which can include suspending or cancelling provider registration, seeking injunctions and civil penalties, and banning persons or providers from providing NDIS supports and services.

Under the current model, enforcement and compliance powers will be held by both NDIA and the NDIS Commissions. The proposed amendments will further delineate the compliance and enforcement responsibilities. Under a dual oversight model, complaint raising and reporting processes must be clear and accessible to participants and anyone seeking to raise a concern. All persons should be able to easily identify the appropriate forum. Incorrect referral and duplicate applications are likely to exacerbate already significant delays experienced by the Commission. The relevant body (whether the NDIA or the NDIS Commission) should hold necessary powers to undertake their duties as identified in the NDIA Act. The relevant agency must be appropriately funded to carry out its enforcement and compliance functions under this new dual oversight model.

NLA recommends:

43. That the Government further consider how the proposed amendments in Schedule 2 to introduce new powers and functions for the NDIA to undertake enforcement and compliance activities will work within the current regulatory framework shared with the NDIS Quality and Safeguards Commission.

Schedule 3 – Governance arrangements

Part 2 – Automated decision-making

The Bill proposes to permit the use of automated decision-making ("ADM") to facilitate a significant and untested departure from administrative law principles, namely ensuring that decisions made under the NDIS have proper oversight and are reviewable. NLA considers this comprehensive move towards ADM for the nature of decisions made under the NDIS to be inappropriate. The Bill provides that CEO decisions determined to be "evaluative determinations" could instead be made by computer programs. Evaluative determination decisions can include decisions involving exercise of discretions, states of mind being formed and evaluative judgements being made. The Bill specifies three CEO decisions of this nature, as well as allowing for more to be specified by the Minister through future determinations.

The proposed changes are subject to certain weak frameworks and ineffective safeguards. The primary protective measure provided in the Bill is a standard operating procedure instrument that sets out the way in which decisions are to be made, and that there is the option for the CEO to override computer made decisions. In our view, these provisions will provide little or no protection against the potential negative effects of ADM for NDIS participants.

Given the complex, technical and huge ramifications of the changes in the Bill that provide for ADM, NLA urges the government to ensure these reforms are significantly amended to consider evidence from experts on the use of technology, automated decision making in a way that balances the needs of communities and upholds rights. NLA has had the benefit of considering the submission and recommendations made by the Human Technology Institute at the University of Technology Sydney ("HTI submission") in relation to Schedule 3 - Part 2 of the Bill to the Community Affairs Legislation Committee on 29 May 2026. NLA share HTI's concerns in their submission, and endorses the recommendations put forward by HTI.

Use of computer programs to make consequential decisions outside the ADM framework

Further, NLA is concerned about the use of computer programs to make consequential decisions outside the ADM framework. The Explanatory Memorandum and the notes in proposed s59B refer to a category of administrative decisions that arise as an "outcome through the operation of law" that the NDIA intends to make using computer-programs automatically without regard to its new ADM framework. It provides as an example the new automated plan renewal process under s50A. This suggests the NDIA is leaving substantial scope for ADM, and/or the use of technology in other decision-making, to be used in ways that are not transparent or regulated, and in circumstances where review rights are non-existent.

The specific reference to s50A suggests that the NDIA intends to use computer programs to automate plan renewals and gives an indication of the scope of ADM being contemplated by the

NDIA. Characterising such decisions as “outcomes through the operation of law” is deeply concerning. While some of the elements of a s50A plan renewal decision could be made automatically (the replacement of the 12-month anniversary end date), there are additional elements of these decisions that should include consideration and discretion, including whether to remove one-off funding from the plan if it hasn’t been spent, and contemplating other alterations to the plan foreshadowed by the yet-to-be-made rules. Plan renewal decisions are also not reviewable decisions, so a failure to engage with the statutory criteria would not be capable of remedy on review. A review right should be a minimum requirement for any decision or outcome that will impact a participant and may be made by a computer program.

We are also concerned that characterising certain administrative decisions as merely the “outcome through the operation of law” might impact debt raising powers, with debts raised automatically without proper consideration of statutory criteria. We saw the impact of automated debt raising in the operation of the Robodebt Scheme in relation to social security where debts were raised that were not even compliant with the now proven to be unlawful Robodebt methodology (such as double counting of the same employer), penalties and interest were applied without regard to circumstances, little or no explanation of the debt was available, and systems were designed so that any discretion was always exercised in favour of the decision-maker. In the context of the Robodebt scheme, there was at least provision for people to be able to seek a review of their social security debt under social security law. This is not the case under the NDIS Act. Debts must be raised with human oversight. Participants’ circumstances must be taken into account, clear information must be provided about why a debt was raised, and effective review rights must be available. Learnings from the operation of the Robodebt Scheme and its huge impact on people and communities, as documented by the reports of the Royal Commission into the Robodebt Scheme demonstrate the devastating consequences that can occur when these safeguards are absent.

NLA recommends:

44. **That the Bill be amended in accordance with the recommendations contained in the submission to the Community Affairs Legislation Committee by the Human Technology Institute at the University of Technology Sydney dated 29 May 2026, aimed at safeguarding the quality of decisions made using computer programs and automated decision-making, and mitigating their detrimental impact.**

45. **That the Bill be amended to prohibit the use of computer programs to take administrative action where the decision made, or the outcome of the operation of the law, is either:**

    (a) a decision or outcome that is not reviewable under the Scheme; or
    (b) a decision or outcome that results in a debt.

Schedule 4 – New framework planning

Participant review rights

The NDIS Act must provide clear and effective review rights. That is essential to fairness, accountability and the proper administration of the Scheme.

NLA's previous submissions[22] have identified serious concerns about the limited review rights available under the new framework planning model. Legal Aids consistently report that the current review model is complex, highly technical and difficult to navigate, and this was confirmed by the independent 2025 evaluation of the NDIS Appeals Program[1]. This creates jurisdictional confusion and delays, which in turn:

- cause avoidable harm to people with disability, their supporters and providers
- are not well understood by NDIA staff
- drive unnecessary cost and inefficiency across the NDIA and the ART.

The Bill proposes further changes to the new framework planning model. This provides a critical opportunity to the Government to address the adequacy of the review rights that sit alongside that model.

Under the current legislation, the decision about what supports are reasonable and necessary forms part of the decision to approve a plan. Under the new framework, however, budgets within a statement of participant supports are determined by the support needs assessment (SNA) and the resulting report. Importantly, the report and its recommendations do not form part of the reviewable decision itself. If a participant seeks review, the reviewer is limited to considering whether a replacement SNA should be ordered, whether the budget method rules were applied correctly, and certain operational features of the plan, such as plan management, funding periods, and restrictions or conditions on supports. This is a significant narrowing of review rights. Even if an internal reviewer or the ART concludes that a participant's budget is inadequate, the only available outcome is to require a further SNA. There is no power to direct what the new assessment must consider, no power to require particular findings to be reflected in the replacement report, and no power to correct the supports in the plan itself even where the existing supports are clearly inadequate or the original assessment was wrong. In practice, this creates a real risk of repeated reassessment without an effective remedy.

This marks a clear departure from the old framework. Under the new framework, participants will have no effective avenue through internal review, the ART or the courts to secure changes to supports that are not appropriate or sufficient to meet their needs. An effective review framework

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[22] National Legal Aid, Submission to Senate Community Affairs Legislation Committee, *Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024* (17 May 2024); National Legal Aid, Submission to Department of Health, Disability and Ageing, *NDIS Rules: New Framework Planning* (6 March 2026).

must allow findings about a participant's support needs to be tested, corrected and supplemented. A reviewer, including the ART, should be able to consider the needs assessment report as one source of evidence, but should not be bound by its conclusions.

A practical example of the impact of the inadequate and inefficient review processes that will result from the amendments in the Bill is outlined below.

Example: impact of inadequate and inefficient review and appeal processes

Under the new s48(3), if a participant experiences a change to their support needs they can apply for an unscheduled plan reassessment. Under the Bill's mandated response times for decision making, they may have to wait 90 days before a decision is issued by the NDIA. If after the expiration of the 90 day period, the NDIA decides that the participant has not met the conditions provided in the new s48A, the participant must then request an internal review of this decision - which is again subject to the mandated response time of 90 days. By this time the participant has been attempting to secure support for a period of 6 months. They will, upon receiving the internal review decision, have the option of proceeding with an external review application to the ART with the only outcome available being a decision that the NDIA should do the reassessment. The ART cannot direct the NDIA as to:

- how the reassessment should happen or
- whether the requested support/s should be provided in the Statement of Participant Supports (SOPS).

If, after the plan reassessment is completed the NDIA reaffirms the original decision not to approve funding for the requested supports in the SOPS, the participant must then recommence the protracted review process. This "review loop" result in delays, and places participants at risk of not being able to obtain the supports they require to meet their impairment needs in a timely way with risks to safety and wellbeing.

The current internal review, plan reassessment and change of circumstances review processes within the NDIS Act are technical and complex and not compatible with the provision of accessible and responsive services to people with disability. This Bill will exacerbate these existing challenges.

NLA recommends:

46. That the Bill be amended to include requirements in s 32D(6) for a decision-maker to:

- **(a) be satisfied that the needs assessment report reflects the participant's need for supports under the NDIS; and**
- **(b) be satisfied, having regard to the needs assessment report and any other information, that the reasonable and necessary budget provided under the plan meets the participant's need for supports under the NDIS.**

Rule-making powers

The concerns NLA has identified in Parts 1, 2 and 8 about the delegation of key matters to NDIS Rules apply with equal force to Schedule 4, which confers broad rulemaking powers in relation to new framework planning.

In particular, it enables NDIS rules to prescribe key elements of the budget-setting process, including the method for working out funding amounts in a participant's reasonable and necessary budget (proposed s 32K(1A)), and to specify matters such as the identification of supports, levels of need, and corresponding funding amounts (proposed s 32K(3B)–(3E)). The rules may also prescribe matters that must or must not be taken into account in a support needs assessment (proposed s 32L(4)) and broader requirements relating to assessments and supports (proposed ss 32L(2) and 32H(2)(e)). Schedule 4 makes clear the intention and form of the rules will be prescriptive and create rigid parameters on the amounts a participant may be funded. This is separate and in addition to the already extensive criteria which determine the provision of NDIS supports.

To date, there has been inadequate information and consultation on proposed rules. Without visibility of the rules, neither NLA, people with disability, nor sector experts can assess whether they will operate lawfully, fairly or consistently in practice. This concern was highlighted in NLA's prior submission, *NDIS Rules: New framework planning, National Legal Aid submission to Department of Health, Disability and Ageing* (6 March 2026). This already opaque process combined with the addition of the rule making powers in Schedule 4 of the Bill raises serious concerns that matters which will be determinative of participants' NDIS budgets are being delegated without proper consultation.

NLA recommends:

47. That the Bill be amended to provide a safeguarding mechanism in the NDIS Act to ensure adequate human oversight and discretion and to give effect to the NDIS Act's Objects and Principles. This could be done by incorporating discretionary ranges and a manual adjustment mechanism into the rules where the budget methodology does not produce a budget that adequately provides for a participant's demonstrated support needs.

48. That the Government hold further, targeted consultation that includes adequate provision of information, including draft Rules, assessment tools and sample documents (including sample support needs assessment (SNA) budget method outputs, and notices) to assist stakeholders to meaningfully test the legality, fairness and operation of the proposed rules. This should include:

- **(a) draft copies of all proposed rules relating to new framework planning;**
- **(b) the full budget setting method, including any structured decision-making model or algorithm, showing clearly how the model operates and how particular factors will be weighed and converted to flexible or stated funding amounts;**

(c) **the documents that will be provided to participants explaining how their specific flexible and stated funding amounts have been determined; and**
(d) **the documents explaining how the changes will operate in practice, including examples of: notices of impairments; notices to have a new framework plan; support needs assessments; support needs assessment reports; and statements of participant supports.**

49. **That the Government consider transitional rules allowing additional consultation and testing before rules are finalised, noting that the current timeline may not permit proper scrutiny of the proposed amendments before they commence.**

50. **That the NDIA and Department of Health, Disability and Ageing (DHDA) collect and publish robust data relating to the transition to new framework plans to ensure any systemic risks can be identified early, including:**

(a) **how many participants have commenced the transition to new framework plans, and at what stages of the process they currently sit;**
(b) **the characteristics of participants transitioning, such as age, location, and whether they are First Nations; and**
(c) **the nature of changes observed by the NDIA between old framework plans and new framework plans, including whether budgets have increased, decreased or remained stable, and whether participants have experienced changes to key supports or lost access to supports previously available under their old framework plans because those supports were not included as stated supports.**

Movement away from individualised planning – risk of harm

The proposed amendments to s32K enable the use of prescribed methodologies to determine funding, including by reference to defined levels of support needs and the imposition of funding caps, including at amounts less than the actual cost of the support. These changes indicate a shift toward a standardised model of planning. Such an approach will not adequately capture the complexity and variability of participants' circumstances. It is also unlikely to meet the objects and principles of the Act in s 3–4 or give effect to s 31, which requires plans to be individualised, facilitate tailored and flexible responses to the individual goals and needs of the participant, and to take into account their circumstances and preferences.

Of particular concern is that a specified funding amount may be less than the actual cost of a support (proposed s 32K(3C)) or potentially capped at an amount less than the actual cost of a support (proposed s 32K(3D). The proposed amendments do not limit how much less than a support cost a specified funding amount or funding cap may be, not do they provide a limitation on the categories of support the reduction cannot be applied to. This means it is open to the Agency to reduce the funding amount available for a support to $0 across any area of the NDIS. Such a power introduces a form of means testing into the NDIS, whereby participants who can

afford to supplement all or some of the cost of the support will continue to have their needs meet. However, where a participant cannot afford to cover a gap created by these powers, they will either lose access to supports or have reduced access to support, irrespective of their demonstrated need.

This represents a significant departure from the principle that the Scheme is not means tested, should provide supports tailored to the individual needs of the participant, and will provide all eligible Australians with serious disabilities with the supports that they need. The change is likely to disproportionately affect participants with limited financial means and presents a real risk to participant safety where an individual is unable to access adequate funding to meet their support needs. In order to prevent serious harm, participants unable to afford services are likely to present at hospitals for admission.

NLA recommends:

51. **That the Bill be amended to remove ss 32K(3C) and 32K(3D) to ensure that a funding amount cannot be less than the actual cost of providing or acquiring the support, or group or class of supports.**

52. **That, if ss 32K(3C) and 32K(3D) are retained in their current form, the Bill be amended to ensure that participants who are subject to a funding reduction for their flexible or stated support funding amounts as a result of new provision s 32K(3B) can seek an exemption where there is an impact on their functional capacity or a risk to their own or another person's safety, health or wellbeing.**

Narrowing support needs assessments

Schedule 4 proposes a requirement that SNAs identify needs arising *directly* from impairments for which the participant meets the access criteria. This approach mirrors the proposed changes in Schedule 1 Part 3, which would amend s34(1) (aa) and remove statutory language and legislative notes that presently recognise that a participant's disability support needs may be affected by a variety of factors. Accordingly, NLA's submissions in relation to Schedule 1 Part 3 are relevant to Schedule 4 and are also relied upon here.

The proposed "arising directly from" qualification is too narrow and risks creating an artificial distinction between a participant's qualifying impairment and their other impairments, comorbidities, environmental barriers and personal circumstances. In practice, support commonly arise from the interaction of multiple factors, and it may be difficult or impossible to identify a single impairment as the sole or immediate source of need. As discussed in Part 3 above, the Federal Court in *Eastham* [2026] FCA 147 warned against being too prescriptive about how causal connection between an impairment and a support need is established, recognising that "logic and commonsense must play a part".[23] The provisions in Schedule 4 seek to reverse

[23] *Eastham* (n 6) [81].

this approach in the context of SNAs, creating the same risks of inconsistent and unfair outcomes identified in Part 3.

A requirement to isolate a direct causal connection, which has already been found to be inherently contrary to commonsense,[24] is likely to produce inconsistent and unfair outcomes, particularly where participants have complex or overlapping conditions. There is insufficient information available about the SNA tool and how it will be used by assessors to provide any assurance that it is capable of undertaking the complex task of accurately identifying the source of a need.

NLA recommends:

53. T That the Bill be amended to remove the addition of "directly" in s 32L(2).

54. That any NDIS rules relating to the support needs assessment and the support needs assessment report make clear that a support may be reasonable and necessary where the qualifying impairment is a material or contributory cause of the need, even if the need is also affected by another impairment, comorbidity, environmental factor or personal circumstances.

Qualifications and independence of assessors

The proposed amendments provide that an assessment must be undertaken by an Agency staff member, a consultant engaged by the Agency under s171 or persons prescribed by the Rules. They do not include any express requirement that assessors have appropriate qualifications or relevant expertise. This is inconsistent with the recommendation of the NDIS Review, which stated that *"the assessment should be completed by a skilled and qualified Needs Assessor who is a trained allied health practitioner or social worker, or similar, with disability expertise... In complex cases, a multi-disciplinary team could be involved."*[25]

NLA recommends:

55. That the Bill be amended to include an express requirement that assessors are appropriately trained or qualified, having regard to the nature of the participant's impairments and support needs, as follows:

(a) ss 32L(4B): the Minister must, by legislative instrument, determine one or more classes of qualifications for the purposes of this subsection; and

(b) ss 32L(4C): a person must not undertake an assessment under ss (4A) unless the person holds at least one qualification determined under this subsection.

[24] *Eastham* (n 6) [87].

[25] *Working Together to Deliver the NDIS* (n 12) 88.

Schedule 5 – Transitional rules

Schedule 5 confers a broad power to make transitional rules: the scope and operation of which are not currently defined in the Bill. While NLA recognises the need for flexibility in managing transition to a new legislative framework, it is administratively precarious for such broad delegation to occur without oversight, even on a temporary basis. Greater clarity is required as to the types of arrangements the Government intends to implement through these Rules. Currently it has not communicated how the transitional arrangements are intended to operate in practice. In the absence of this detail, it is difficult to assess the potential impact on participants or the adequacy of existing safeguards.

Given the breadth of the rule-making power, consideration should be given to enhanced parliamentary scrutiny and appropriate safeguards. This may include, for example, disallowance, or mechanisms to ensure appropriate consultation with stakeholders. Due to the lack of transparency on proposed transitional rules, NLA is not in a position to recommend specific safeguards. The transition to new framework plans represents a significant shift in the way planning and budgeting decisions are made under the NDIS. As with any substantial system reform, these changes are likely to generate confusion, apprehension and practical difficulties for people, particularly in the early stages of implementation. Ensuring that participants are supported, informed and protected throughout this period is therefore critical.

NLA recommends:

56. **That the Government commit to working with people with disability and the disability sector in a timely and meaningful manner to secure the NDIS by strengthening trust, safeguards and rights. This must include robust and accessible consultation processes to ensure that the consequences of these reforms are understood and planned for, before any transitional rules are enacted.**

Other considerations

Risks for vulnerable participants

Unforeseen consequences will emerge as the new laws and processes are tested in real situations. At this stage, it is unclear how new framework planning will impact funding levels, continuity of supports, continuity with providers, decision-making timeframes, or other aspects of the participant experience. The transition will present substantial risks for vulnerable participants, particularly those who rely on stable supports, have complex or intersecting needs, or face barriers to engaging with the NDIA. Given the scale of change, individualised transition planning should be developed (with particular consideration for high-risk participants such as in circumstances where the majority of care is provided by high-intensity supports), including proactive outreach, dedicated case management, and tailored communication about how the new planning model will apply to their circumstances.

Access to information and independent support

Participants need access to clear and timely information including plain-language resources, Easy Read materials, and translated information. Participants must have meaningful opportunities to speak with the NDIA directly to ask questions about their circumstances, raise concerns, and receive guidance about how the changes will affect them. Equally important is the need for ongoing access to independent, expert disability advocates and legal services throughout the transition. Without adequate advocacy and legal assistance, many participants may struggle to understand their rights, navigate new processes or challenge incorrect decisions.

The need for data transparency

Robust data collection and public transparency throughout the rollout is essential. Significant uncertainty remains regarding how the transition will occur on the ground, which participants will move first, and how the new arrangements will interact with existing practices. Without access to accurate and timely data, systemic problems may not be identified until significant harm has occurred.

Risk of unintended consequences

This Bill proposes very substantial changes that will limit access to the Scheme, cut supports, automate crucial decisions and reduce people's review rights. Many of the details of these changes will be left to future rules and Ministerial determination, with life-changing implications for people with a disability. The current timeframes for inquiry into, and consultation on, this Bill are unreasonable and inadequate. The proposed reforms to the NDIS are significant, complex and will impact people's daily lives and futures. The Government and

Parliament must allow sufficient time to genuinely consult on amendments, safeguards and implementation to reduce the risk of unintended consequences - including for safety.

NLA recommends:

57. **That the Senate Community Affairs Legislation Committee's inquiry timeframe on the Bill be extended to allow genuinely accessible hearings, engagement and consultation with the disability community.**

58. **That the Bill be amended to include a legislative requirement for an independent review, by an appropriately skilled and qualified reviewer, of the operation of the amendments, to be undertaken 12 months after the Bill's commencement and in close consultation with people with disability and the disability sector. The review must include the impacts of the amendments for people with disability seeking to access the Scheme, participant outcomes, review and appeal rights, and systemic impacts resulting from any increase in people seeking review or appeal of NDIA decisions.**

Ensuring access to advocacy support and legal assistance for NDIS reviews and appeals

The measures in this Bill will increase the number, complexity and urgency of disputes concerning access to the Scheme, continued eligibility, budget plans and funded supports. This will drive increased demand for internal reviews, matters before the ART and the legal assistance required to ensure those processes operate fairly and efficiently. The measures in the Bill are likely to generate increased rates of contested NDIA decisions and corresponding review and appeal activity. Treasury modelling indicates that new NDIS eligibility rules will cut 241,000 participants from the Scheme in four years.[26] An increase in demand for review and appeal of NDIA decisions will be an immediate and predictable consequence.

Significant uncertainty now exists for NDIS participants, many of whom will seek review of complex supports decisions in anticipation of future reassessments and reductions in supports. The reforms are also likely to increase demand in the 2026-27 financial year and beyond in the review system, particularly for access and reassessment matters which will be progressively implemented from 1 February 2027. The independent 2025 evaluation of the NDIS Appeals Program[1] confirmed that the NDIS review process is difficult for people to navigate without assistance - this will be exacerbated by the measures in this Bill. Review and appeal of NDIA decisions will become more complex and costly if the Bill passes in its current form. Ensuring access to advocacy and legal assistance will therefore be a critical safeguard to support participation and fairness while contributing to greater efficiency for applicants, the NDIA and the ART – particularly during the transition to new framework plans. Legal and advocacy

[26] Dan Jervis-Bardy, 'New NDIS Eligibility Rules Will Cut 241,000 Participants from Scheme in Four Years, Documents Reveal', *The Guardian* (online, 28 May 2026) https://www.theguardian.com/australia-news/2026/may/28/ndis-document-reveals-241000-disability-participants-cut-in-four-years.

assistance also supports the early resolution of matters, including by filtering out unmeritorious claims which would otherwise increase ART backlog.

In light of the measures proposed in this Bill, NLA urges Government to ensure people with disability have access to necessary advocacy and legal support in relation to reviewing decisions under the NDIS (including through the NDIS Appeals Program) through urgent and continued funding of the advocacy and legal assistance sector to meet the expected surge in demand for review and appeal of NDIA decisions. Without additional investment, there is a serious risk of a significant increase to the already substantial unmet legal need among people seeking review or appeal of NDIA decisions. The limited funding for the Program already means that most ART applicants in NDIS appeals matters are unable to access legal representation. ART Annual Reports show that NDIS appeals have more than doubled since 2023-24 and currently, legal representation is limited to approximately 18% of people who lodge those appeals.

The approximately $5 million baseline funding allocated to Legal Aids for the Program is in comparison to NDIA expenditure of approximately $60.7 million to external law firms in 2024-25 to represent it at the ART, which raises significant equity concerns. If additional funding is not provided, participants will have to navigate an increasingly technical review process without assistance, the NDIA will face more unresolved or poorly prepared disputes, and the ART will see increasing numbers of self-represented applicants in an already pressured jurisdiction. Costs will not be avoided but displaced elsewhere, with poorer outcomes and reduced efficiency overall.

NLA recommends:

59. That the Government release any modelling that has been undertaken on the systemic impacts of the proposed reforms, including increased demand on the ART.

60. That the Government closely monitor the impact of the reforms on demand for review and appeal of NDIA decisions, in close partnership with disability advocates and legal assistance providers.

61. That the Government ensure people with disability have access to necessary advocacy and legal assistance during the transition to the new framework, and in relation to reviewing decisions, through urgent and continued funding of the advocacy and legal assistance sector.

Ensuring certainty and security for current NDIS participants

NDIS participants who met the access requirements for ongoing supports under the NDIS should not be facing removal from the Scheme due to radical changes to the access requirements. These provisions should be grand-parented, ensuring that anyone who has access under the current criteria can only have their eligibility tested against these criteria. Like other members of the

community impacted by other budget measures, they deserve security around their ability to plan for the future, particularly when it goes to the heart of their capacity to survive and thrive.

NLA recommends:

63. **That the Government consider grandfathering provisions to ensure that any changes to the disability criteria for access do not operate retrospectively to apply the new criteria to people who are currently on the NDIS. This would be in line with the Government's approach to implementing budget measures, and other significant changes impacting on people with disability, such as the changes to the disability support pension in 2006.**