

NDIS Access Changes

National Legal Aid | 2 October 2026



Prepared for: **Department of Health Disability and Ageing**

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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<http://www.nationallegalaid.org.au>

NDIS Access Changes Consultation

National Legal Aid (NLA) welcomes the opportunity to respond to the Department of Health Disability and Ageing (the Department)'s consultation paper¹ on the design of changes to the National Disability Insurance Scheme (NDIS) access process.

NLA represents Australia's eight Legal Aid Commissions and is the largest provider of legal assistance to people with disability, including through the NDIS Appeals Program².

As NLA previously advised the Senate Community Affairs Legislation Committee in our submission³ on the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026, NDIS reforms should strengthen fairness, transparency and accountability, and must not diminish access to supports or review rights. Reforms must not create new barriers for people with disability who already face significant disadvantage.

Access to the NDIS is often a life-changing decision. People must have clear information about why decisions are made, what evidence was relied upon, and how decisions can be reviewed.

NLA's experience in the NDIS Appeals Program demonstrates that complex eligibility assessments and evidentiary requirements frequently require independent advocacy and legal assistance to ensure fair outcomes. With the substantial reforms to the NDIS, we are concerned that appeals in the Administrative Review Tribunal (ART) will further increase. In 2025-26, of the 1,806 NDIS access matters finalised in the tribunal, over half (55%) of the decisions under review were changed⁴; indicating the critical role of independent review to ensure fair access to the scheme.

NLA's responses to the consultation questions are provided below. We look forward to the opportunity to also contribute to the further engagements planned by the Department on the design of eligibility thresholds, transition arrangements and implementation processes.

We are available if the Department would like to discuss any of the matters raised further; please contact NLA@nationallegalaid.org.au.

¹ Department of Health Disability and Ageing, [NDIS Access Changes Consultation - Public Consultation Paper](#) (Consultation Paper, 31 August 2026).

² Department of Health Disability and Ageing, [NDIS Appeals Program](#) (Website, n.d.).

³ National Legal Aid, [NDIS Amendment \(Securing the NDIS for Future Generations\) Bill 2026](#) (Submission to the Senate Community Affairs Legislation Committee, 4 June 2026).

⁴ Administrative Review Tribunal, [ART Caseload Report 2025-26](#), (Report, 2026).

Responses to the consultation questions

Guiding Principles

1. Do the draft guiding principles provide the right foundation for a future NDIS access process?

The proposed guiding principles provide a strong foundation. NLA supports the principles relating to human rights, lived experience, equity, accessibility and transparency in the future NDIS access process.

2. Should any principles be added, removed or changed?

NLA recommends principle 7 be expanded to expressly address review rights and procedural fairness. NLA recommends **principle 7 be “continuous quality improvement, oversight and accountability”**. Effective review rights are critical to ensuring accountability and public confidence in the scheme. ART, Guidance and Appeals Panel (GAP) and Federal Court decisions should be actively incorporated into operational guidelines to ensure consistent, predictable and lawful decision-making.

NLA recommends that **principle 3. Evidence-based and consistent** be amended to expressly recognise the value in evidence from the person themselves, as well as treating practitioners, family members and carers engaged with the person. It should also expressly recognise the need to ensure that greater consistency and standardisation, does not come at the expense of individualised decision making.

NLA also recommends that **principle 5. Equitable, inclusive, and safe** expressly recognise structural barriers that affect access to healthcare, assessments and supporting evidence, particularly for First Nations people, people living in rural and remote areas, culturally and linguistically diverse communities, and people experiencing disadvantage. In the explanation of this principle “regardless of” should be replaced with “that take into consideration”, to accurately reflect the meaning of equity: *“It should deliver consistent outcomes ~~regardless of~~ that take into consideration disability type, age, gender, cultural background, geographic location or other personal characteristics”*.

Access decision-making process design

3. What do we need to consider when designing an access decision-making process that is fair, consistent, transparent, disability-informed and evidence-based?

NLA is concerned that overly standardised approaches to functional capacity assessments risk excluding people whose disability impacts cannot be easily captured

through uniform assessment tools. Functional capacity assessments should complement, rather than replace, evidence from treating practitioners, participant experiences and other relevant sources.

As NLA recommended previously⁵, and in line with the NDIS Review Recommendation 3: Provide a more consistent and fairer participant pathway⁶, functional capacity assessments and the access decision making-process should:

- recognise environmental, social and personal factors that affect how disability is experienced;
- accommodate fluctuating, episodic, psychosocial and degenerative conditions;
- avoid reliance on a single point-in-time assessment;
- focus on the capacity of someone to reliably complete tasks when they need to, not just when they are feeling able to
- ensure assessors and decision-makers be suitably trained and qualified in interpreting medical and allied health evidence;
- incorporate culturally safe practices;
- be trauma-informed and as much as possible avoid processes that risk retraumatising applicants; and
- ensure the assessment process is genuinely accessible for people to participate in; particularly for people with communication, cognitive and psychosocial disabilities.

Fairness is achieved not by requiring every applicant to navigate the same pathway, but by ensuring access pathways adapt to the functional impacts of disability. The design and decision-making process requires tailored consideration of access for:

- First Nations people with disability;
- people in regional, rural and remote locations;
- children transitioning between systems;
- people who are dependent on social workers, government agencies or other social support systems to navigate the application process;
- people experiencing family violence, homelessness or justice system involvement or are in crisis; and
- people with limited informal support networks.

Importantly, applicants should be given opportunity to respond to a preliminary view of the Agency before any adverse final determination is made, with time to allow for other supporting evidence to be submitted to assist with a disability-informed process.

⁵ National Legal Aid, *NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026* (Submission to the Department of Health Disability and Ageing, 4 June 2026) 4.

⁶ Commonwealth of Australia Department of Prime Minister and Cabinet, *Working together to deliver the NDIS: Independent Review of the National Disability Insurance Scheme: Final Report*, (Report, 2023) 91.

Applicants should be assisted in gathering and submitting evidence if required. Decision makers should seek clarification where information is incomplete rather than treating the absence of a particular report format as evidence that a criterion is not met.

NLA is also concerned about the increasing use of operational requirements and administrative processes that are not reflected in legislation, rules, operational guidelines or publicly available materials. Applicants should be able to understand the complete access process by reference to publicly available resources. Reliance on unpublished forms, internal procedures or informal practices can create inequitable outcomes, particularly where awareness of those processes depends on access to specialist advocacy or legal assistance. Procedural requirements that affect access to the scheme should be publicly documented, consistently applied and capable of review.

4. How could the access decision-making process, including referral pathways, be designed to reduce administrative burden and make it easier and more equitable for people with disability, their families and carers to understand what information is needed and how decisions are made? How could this support a proportionate approach to minimise the assessment burden on persons who are clearly eligible with very significant functional impairment?

Legal Aid practice experience shows that people experiencing disadvantage often face difficulties obtaining specialist reports due to cost, workforce shortages, long waiting lists or geographic location. This is of particular concern when access to treatment or assessments becomes a prerequisite for NDIS eligibility.

The process should therefore:

- minimise unnecessary specialist reporting requirements;
- maximise use of existing evidence from treating practitioners;
- provide funded assistance to gather evidence where required⁷;
- use plain language communications and a range of accessible formats (not only online forms or portals that rely on internet access and digital capabilities);
- provide culturally appropriate and trauma-informed support throughout the application process;
- establish clear referral pathways to advocacy and legal assistance services for further support.

The process for applying for NDIS access must be clearly explained and transparent for applicants. As recommended in the NDIS Review, the application process should:

⁷ Commonwealth of Australia Department of Prime Minister and Cabinet, [Working together to deliver the NDIS: Independent Review of the National Disability Insurance Scheme: Final Report](#), (Report, 2023) 87, 91.

- “mak[e] it clearer what information is required and why”
- “give real-time guidance where additional information is needed or there are issues with information entered” and
- Alongside dynamic online forms, make “enhancements to existing verbal or printed access request options to give applicants more choice in how they apply for NDIS access”⁸.

For people who are clearly eligible with very significant functional impairment, the process should enable streamlined access pathways; for example, through hospitals or community health services. Further, where available evidence clearly establishes access, the person should not be required to undergo any additional assessments or steps in the access process simply because the process ordinarily requires it or is because it is standardised practice.

5. *What should be considered to ensure the access decision-making process, as well as referral pathways, works well for all disability cohorts including people with communication, cultural, cognitive, degenerative, fluctuating, episodic or complex support needs?*

Assessment tools and decision-making frameworks must be sufficiently flexible to capture real-world support needs. As in our responses above, the design of the access decision-making process must be tailored to respond to the access needs and lived experience of specific disability cohorts.

The process should include consideration of:

- Communication aids/ alternative communication methods,
- Culturally safe processes,
- Accessibility for people experiencing homelessness or institutionalisation (including in custodial settings);
- Rural and remote communities,
- A trauma-informed approach and the way in which an inaccessible or unduly burdensome access process could be retraumatising.

Evidence requirements

6. *What factors and evidence should be considered when determining whether an impairment is permanent or likely permanent, including whether appropriate treatment is likely to improve the functional impact of an impairment?*

NLA remains concerned about approaches that make NDIS eligibility contingent on a person's ability to access treatment. In our previous submission, we noted that requiring individuals to undertake all "appropriate treatment" risks embedding inequity

⁸ Commonwealth of Australia Department of Prime Minister and Cabinet, [Working together to deliver the NDIS: Independent Review of the National Disability Insurance Scheme: Final Report](#), (Report, 2023) 37.

because access to treatment is often affected by geography, finances, cultural safety, availability of services and other barriers beyond an individual's control.

Evidence requirements for NDIS access decisions should therefore:

- take account of barriers to accessing treatment;
- recognise participant choice and autonomy regarding treatment;
- take into account that the personal cost (including expense, time, impact on work/family/carers, side effects of treatment) of treatment may outweigh the benefit for the person;
- avoid assumptions that treatment is practically available simply because it exists in the public system in Australia;
- recognise that some impairments remain permanent despite treatment improving functional outcomes. Improvement or stabilisation in functioning should not necessarily be taken as evidence that a person's impairment is not permanent; and
- allow permanence to be established through a range of evidence sources, including treating specialists, allied health practitioners and longitudinal evidence of disability.

The access process needs to make clear what the expectation is under the “appropriate treatment” test to limit people engaging in treatment that they don’t need, that is not required to meet the legal test, and that will put unnecessary strain on the health system. People who currently have access also need to know what the expectation is around all “appropriate treatment” so they can take steps to meet the criteria and reduce unnecessary anxiety around the scope of the requirement.

NLA recommends the making of rules similar to those that exist for the disability support pension relating to “reasonable treatment”, being treatment that: “(a) is available at a location reasonably accessible to the person; (b) is at a reasonable cost;(c) can reliably be expected to result in a significant functional improvement; (d) is regularly undertaken or performed; (e) has a high success rate; and (f) carries a low risk to the person.”⁹

⁹ [*Social Security \(Tables for the Assessment of Work-related Impairment for Disability Support Pension\) Determination* 2023 8 \(7\)](#)