NDIS Rules: New framework planning

National Legal Aid submission to Department of Health, Disability and Ageing

6 March 2026

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

What do we do?

Legal 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 legal assistances. 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

National Legal Aid (**NLA**) welcomes the opportunity to contribute to the Department of Health, Disability and Ageing's (**DHDA's**) consultation on NDIS New Framework Planning (**NFP**) Rules. Legal Aids are the largest providers of legal services to people with disability across Australia and have been funded by the government to provide specialist legal assistance and representation for NDIS appeals since 2016 through the NDIS Appeals Program.

NLA is concerned that critical materials and detail including the Support Needs Assessment (**SNA**) tools, the Budget Method rules, and draft plan variation rules have not been released by government, preventing meaningful consultation and risking harmful implementation. NLA urges immediate publication of all remaining draft rules, assessment tools, and sample participant documents, followed by further public consultation to test the legality, fairness and operational impacts of what is being proposed. If such mechanisms are still in development, DHDA should ensure sufficient time allocated for adequate consultation before implementation occurs.

On NLA's assessment of the current proposed rules, there is a significant limitation on what can be reviewed by the NDIA and the Administrative Review Tribunal (**ART**) compared to the current legislative framework, with remedies limited to a replacement SNA. To ensure participants can meaningfully access and enforce their review rights, NLA recommends:

- the NDIA adopt a policy requiring decision makers to give effect to all findings and recommendations made in internal or external reviews when conducting a replacement SNA to reduce reassessments;
- the NDIA provide participants with full visibility of SNA tool outputs and budget inputs;
- ensuring that public materials accurately reflect the legal framework and participants' rights;
- the Australian government commit to provide an additional $7 million per annum to retain and expand the NDIS Appeals Program as essential infrastructure supporting fairness, accountability and lawful decision-making.

The transition to NFP presents heightened risks for participants with complex needs, communication barriers or unstable supports. NLA recommends individualised transition planning, funded access to independent advocacy and legal assistance, robust and regular public reporting on transition metrics, consistent terminology, and raising the minimum transition age so participants aged 16–18 move with child cohorts rather than adults.

The SNA and the subsequent budget is a significant change in the way that the NDIS identifies and funds a participant's support needs. As a result, clearer rules and safeguards for the SNA process and needs assessment reports are required, along with a budget method that embeds human oversight, discretion and transitional "no worse off" protections, careful use and narrowing of stated supports to preserve flexibility and choice, and spending rules that respect participant preferences, avoid broad restrictions tied to NDIA arranged providers, and include robust safeguards where requirements are imposed.

Across the scheme, given Legal Aids' experience in Robodebt, we are concerned about the transparency of internal decision-making tools and any contemplated use of automated decision-making (**ADM**) without sufficient review procedures or safeguards. ADM should not proceed without standalone public consultation and a clear governance framework that guarantees human oversight, discretion, and the ability to challenge automated outcomes.

Recommendations

Consultation and collaboration

1. The DHDA should immediately release all remaining draft Rules, assessment tools and sample documents (including sample 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 arrived at
    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.
2. The DHDA should undertake a second round of targeted consultation once the draft Rules and tools are available, to ensure sufficient consultation and testing has occurred before the rules are finalised.
3. The Minister should make transitional rules allowing additional consultation and testing before rules are finalised, noting that the current timeline may not permit proper scrutiny on the proposed amendments before they commence.

Review rights and access to justice

4. The NDIA should adopt a policy requiring decision makers to give effect to all findings and recommendations made in internal or external reviews when conducting a replacement SNAs to reduce reassessments. This could be achieved by incorporating such a direction into the Operational Guidelines or delegations.
5. The NDIA should provide participants with all information used in the SNA and budget-method process, including the SNA tool outputs, guidance used by assessors, and budget-calculation inputs. This information is required to ensure participants understand how their budget was determined and can meaningfully participate in any review.
6. The DHDA and NDIA should publicly release and/or provide explanatory material to support all internal decision-making tools and guidance relating to SNAs, needs assessment reports, and the budget method. The information provided should clearly set out what factors are considered, how they are weighted, and what discretion exists.
7. The NDIA should review all currently published materials relating to NFP to ensure these do not contain inaccurate statements about partial SNAs and review pathways that may mislead participants.

Increased demand for legal assistance

8. The Australian Government should provide an additional $7 million per annum to retain and expand the NDIS Appeals Program, to support the increase in demand for legal assistance resulting from the introduction of NFP and the resulting legal complexity for participants.
9. The Australian Government should recognise funded access to specialist disability legal assistance be recognised as an essential component of new framework planning, including for participants navigating the SNA process, review rights, and plan variations.
10. The DHDA should consider the impact of new framework planning on legal assistance demand in its implementation planning, including through data collection and monitoring of legal assistance service pressures during the transition period.

Transition

11. The NDIA should develop individualised transition plans for participants, and tailored for those at heightened risk (e.g., those with high-intensity supports, complex comorbidities, limited communication capacity, or unstable supports). This is critical to minimise support gaps, distress and adverse outcomes.
12. The Australian Government should provide funded access to disability advocacy and legal assistance for all people seeking to access to or supports under the NDIS to assist participants to navigate changes to assessment, spending rules and review rights and to meet increase in demand resulting from introduction of new framework planning and resulting legal complexity for participants.
13. The NDIS and DHDA should collect and publish robust data relating to the transition period 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, whether they are First Nations, etc.
    c. The nature of changes the NDIA is seeing between old framework plans and new framework plans, including whether budgets have increased, decreased, or remained stable; and key supports have changed or the participant has lost access to supports from their previous plan because they have not been included as stated supports
    d. Current timeframes between stages (e.g. how long from being notified of their transition until a support needs assessment is conducted; how long to produce a support needs report; how long for approval of a statement of participant supports).
14. The NDIA should raise the minimum transition age for young people so that participants aged 16–18 transition with child cohorts, not adults. This is important as participants in this group face rapid reassessments and providing a minimum age will reduce unnecessary reassessment burden.

15. The DHDA and NDIA should adopt consistent, clear terminology for transition groups. The current inconsistency creates confusion across the disability and provider sectors.

Notice of Impairments

16. The NDIA should cease use of "primary" and "secondary disability" terminology across all NDIA systems and forms, including updating the Access Request Form to allow listing of all impairments, not a capped number or diagnostic hierarchy.
17. The NDIA should co-design with the disability community a process for determining how impairment categories for Notice of Impairments will be determined for participants who accessed the NDIS before 1 January 2025.
18. The DHDA should amend the proposed Notice of Impairments Rules to include procedural fairness safeguards when the CEO proposes to vary a notice. The safeguards should include provision of written notice, the opportunity to provide evidence, and clear disclosure of any new information relied on.
19. The NDIA should publish co-designed Operational Guidelines to provide greater clarify to participants on the variation process, ensuring the process is accessible to people with disability by allowing applications for variation by phone, email, or in writing, and ensuring participants are appropriately supported to provide any information or documents required. The Operational Guidelines should stipulate clear timeframes within which the NDIA will decide on variation requests.
20. The Notice of Impairment (NoI) Rules should allow a participant to make an application for variation in so far as it relates to a different impairment to that being considered by the CEO or already decided on and subject to a review. Alternatively, the NoI Rules might make provision for a participant the amend an application that is still before the CEO. NLA suggests the latter would also make the application process more accessible to participants who may make errors in an application or wish to make changes after receiving professional advice.

Support Needs Assessment process

21. The NDIS rules should require assessors to consider how the SNA can be conducted in the most appropriate and supportive manner. NDIA should co-design the SNA process.
22. The NDIS rules should set clear expectations for how assessors and decision-makers approach information-gathering, including the weight to be given to different types of evidence.
23. The NDIS rules should establish a clear process that gives participants multiple opportunities to share information, and participants should be assisted to understand what types of additional information may be helpful.
24. The NDIS rules should provide that where an assessor identifies insufficient information to complete an accurate assessment, the NDIA must obtain additional reports from allied health providers or other relevant professionals using powers under section 6 of the NDIS Act. This

should be at no cost to the participant, to ensure participants from different socioeconomic backgrounds have equal access to comprehensive assessments regardless of their means to obtain reports independently.

25. The NDIS Rules should require that the assessor be a trained allied health practitioner, social worker, or similar professional with disability expertise.
26. The NDIS rules should support an individualised, participant-centred approach to ensure assessors do not rely on assumptions based on diagnosis, age, location, or similar factors.
27. The NDIS rules should require needs assessment reports to be sufficiently detailed so participants can understand what information was considered, what factual findings were made, what supports are recommended, and the reasons for those conclusions.
28. The NDIS rules should provide that participants are put on notice of the contents of a draft needs assessment report, with an opportunity to correct factual errors and provide missing information before the report is finalised.
29. The NDIS rules should clarify that, for the purpose of the N*ational Disability Insurance Scheme Act 2013* ('the Act') section 32L(5), 'as soon as practicable' means 28 days, and for section 32L(6A) of the Act, 'as soon as practicable' means 7 days.
30. The NDIS rules should provide that the CEO must decide a replacement assessment is required where there is a material error or relevant information was not considered in a participant's needs assessment.
31. The NDIA Operational Guidelines, and where appropriate the NDIS rules, should set out a clear process for consulting participants on whether a replacement assessment should be required.
32. NDIA operational guidelines, and where appropriate the NDIS rules, should provide for participant choice in how they participate in a replacement assessment, and should identify options that minimise unnecessary repetition or additional materials being required, including whether a reassessment should be conducted by a different assessor.

Budget method

33. The DHDA should ensure the budget methodology adequately provides for human oversight and discretion to give effect to the NDIS Act's Objects and Principles. This could be done by incorporating discretionary ranges and a manual adjustment mechanism where the budget methodology does not produce a budget that adequately provides for a participant's demonstrated support needs.
34. That Australian Government should implement transitional safeguards to ensure no participant is worse off under a new framework plan unless there is clear evidence a previously funded support is no longer required. This is particularly important for participants with stable, long-term support needs.

Stated supports

35. The DHDA should consider narrowing the general criteria for declaring supports as stated to ensure participant flexibility and choice is sufficiently provided for. In particular, the “harm/safety risk” criteria should be limited to significant or immediate risks that cannot be managed through less restrictive means such as operational guidance or plan conditions. The “high-cost” limb should specify a defined monetary threshold (or indexed bands) to promote consistency and avoid arbitrary application.

Spending rules

36. The NDIS rules should explicitly require decision makers to give effect to a participant’s stated preferences where reasonably practicable, and to establish that no less-restrictive approach could adequately manage any identified barriers before imposing restrictions. Departure from a participant’s preference should only occur where there is clear evidence demonstrating the need to do so.
37. The DHDA should not prescribe a circumstance in the NDIS rules that would restrict a participant’s flexible funding where the NDIA has arranged (directly or indirectly) for a provider to deliver supports.
38. The NDIS rules should provide robust safeguards governing the exercise of the section 32H(2)(b) discretion. At a minimum, the decision maker should be satisfied that the situation cannot be managed by less-restrictive means, and that any proposed provider arrangement is safe, fair, culturally safe where relevant, and aligned with the participant's stated preferences where reasonably practicable.
39. The DHDA must urgently explore options to establish a fit-for-purpose safeguarding framework governing NDIA-provider arrangements, to avoid reliance on participant-level funding restrictions as de-facto market stewardship tools.
40. The NDIA should cease current operational practices of imposing "default" funding periods, and any departure from a participant's preference should occur only where there is evidence supporting the need to do so.
41. The should be no requirement for certain ‘prescribed circumstances’ to exist in order for participants to access capacity-building supports.
42. The DHDA should not introduce any rule requiring consideration of whether the participant meets the disability requirements, the early intervention requirements, or both, as this creates differential treatment based on access pathway rather than individual needs.
43. That DHDA should adopt NLA’s recommendations relating to matters to be taken into account as set out in the **Annexure: Technical considerations – Draft Spending Rules.**

Plan variations

44. The DHDA should publish draft plan-variation rules and conduct further consultation before finalising them. This is critical to ensure plan variation powers are used consistently, provide for procedural fairness for participants, and enable participants to respond to changed circumstances in a timely manner.

Consultation process and ongoing collaboration

National Legal Aid (**NLA**) welcomes the opportunity to contribute to this consultation and provide feedback on the Fact Sheets, Discussion Paper, and Explanatory Documents provided by Department of Health, Aged Care and Disability (**DHDA**).

However, stakeholders have not been given the opportunity to review or comment on key components of new framework planning (**'NFP'**), including: the support needs assessment tools; the budget method rules; replacement needs assessment and reports; and proposed changes to the NDIS Support Rules.

Without visibility of the assessment tools and the budget method rules, it is not possible for NLA, people with disability, or sector experts to provide informed feedback and test whether the rules will operate lawfully, fairly, and consistently in practice.

The new framework plans will start from mid-2026 for some participants. This does not allow sufficient time for the finalisation of the rules or further, meaningful consultation. It may therefore be appropriate for DHDA to consider transitional rules to allow further time to test and consult before their finalisation. This is the process which operated for the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

NLA would welcome ongoing consultation as the rules and associated tools are refined in order to ensure that the New Framework Plans are operating lawfully and fairly for participants.

Recommendations

1. The DHDA should immediately release all remaining draft Rules, assessment tools and sample documents (including sample **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 arrived at
    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.

2. The DHDA should undertake a second round of targeted consultation once the draft Rules and tools are available, to ensure sufficient consultation and testing has occurred before the rules are finalised.
3. The Minister should make transitional rules allowing additional consultation and testing before rules are finalised, noting that the current timeline may not permit proper scrutiny on the proposed amendments before they commence.

Review rights and access to justice

While the DHDA's *Factsheet – Reviews and appeals under the new way of planning* ('**the Review Factsheet'**) states that "review pathways stay the same," the substance of what can be reviewed and what outcomes are possible is materially different from the current legislative framework.

a) Limitations on review rights and considerations for the NDIA

For new framework plans, the NDIA delegate and the **ART** will no longer be able to make decisions about the funding amount in a Statement of Participant Supports (**SOPs**). On review, the decision-maker will be limited to determining whether to order a replacement SNA, whether the budget-method rules were correctly applied, and matters relating to a plan's operation (such as plan management type, funding periods, and any restrictions or requirements placed on supports).

This narrowing of review rights means that even where the ART finds a participant's budget inadequate, the only remedy is to order another assessment. There is no power to direct what the replacement assessment must consider or what conclusions must be reflected in a replacement needs assessment report. In practice, this creates a risk that participants will be placed on a reassessment cycle with no guarantee of a different outcome.

To reduce this risk and promote efficient, trauma-informed resolution, we recommend the NDIA adopt a policy to implement all findings and recommendations made by a reviewer or the ART when conducting a replacement SNA, even where those findings are non-binding. This would provide meaningful human oversight without exceeding statutory limits, support consistency, and reduce repeat reviews.

b) Information to be made available to participants

The *National Disability Insurance Scheme Act 2013* (**'the Act'**) requires the CEO to provide participants a copy of their SNA report as soon as practicable after the SNA is completed. However, the Act does not provide for the provision of other information related to the SNA, such as the assessment tool outputs, the guidance used by assessors, or the budget-calculation inputs.

To ensure participants understand decisions and can meaningfully participate in any review, the NDIA should provide participants with all information used in the SNA and budget-method process.

For transparency, NLA recommends NDIA make available any internal guidance or tools provided to their staff or contractors regarding conducting the SNA, producing the SNA report, or applying the budget method.

c) Misleading Language in NDIA materials

We are concerned that the language used in the *Review Factsheet* is, in parts, misleading or legally inaccurate, and may give participants an incorrect understanding of their rights.

Examples include:

- ***"The review pathway stays the same" -*** this phrasing obscures the fact that while the mechanism for review remains consistent, the scope of review and the orders that can be made upon external review are considerably narrower. Participants may reasonably expect the same level of merits review available under current planning, when in fact their review rights are substantially more limited.
- ***"Replacement SNA can be done in whole or in part" -*** sections 32L(7)(e)–(f) of the Act provide that the replacement needs assessment and subsequent needs assessment report are taken to replace the existing assessment report entirely. There is no legislative provision for a partial replacement, creating confusion about what participants can expect.
- ***"Participants can request a replacement assessment as part of internal review" -*** this phrasing implies that participants must wait until after their plan is approved to request a replacement assessment as part of an internal review. However, section 32L(7) of the Act contemplates that participants may request a replacement assessment at any time during the planning process, not only after a plan decision has been made.

These mischaracterisations create false expectations about the scope and accessibility of review rights under the new framework.

Recommendations

4. The NDIA should adopt a policy requiring decision-makers to give effect to all findings and recommendations made in internal or external reviews when conducting a replacement SNA, to reduce reassessments. This could be achieved by incorporating such a direction into the Operational Guidelines or delegations.

5. The NDIA should provide participants with all information used in the SNA and budget-method process, including the SNA tool outputs, guidance used by assessors, and budget-calculation inputs. This information is required to ensure participants understand how their budget was determined and can meaningfully participate in any review.
6. The DHDA and NDIA should publicly release and/or provide explanatory material to support all internal decision-making tools and guidance relating to SNAs, needs assessment reports, and the budget method. The information provided should clearly set out what factors are considered, how they are weighted, and what discretion exists.
7. The NDIA should review all currently published materials relating to NFP to ensure these do not contain inaccurate statements about partial SNAs and review pathways that may mislead participants.

Increased demand for legal assistance

Legal Aids are the largest providers of legal services to people with disability across Australia. The Australian Government has funded a national NDIS Appeals Program through Legal Aids since 2016, providing specialist legal advice and representation to people with disability navigating appeals at the ART and Federal Court.

a) Current demand is already critical

Demand for NDIS legal assistance is already at a critical level and continues to grow.
Despite this, approximately 63% of NDIS appeals matters before the ART remain unrepresented, in stark contrast to the NDIA, which has legal representation for all matters and may also brief barristers.

b) Why the new framework planning will increase demand

The introduction of new framework planning will materially increase demand for legal assistance services across multiple fronts. The changes to assessment processes, review rights, spending rules, and plan structures will generate significant new legal complexity for participants – many of whom are among Australia's most disadvantaged. Participants will require specialist legal assistance to:

- understand their rights in relation to the SNA process, including what information is being considered and what outcomes are possible;
- navigate the narrowed review pathway, including decisions about whether to seek a replacement SNA and what that process entails;
- challenge incorrect or inadequate budget decisions where the methodology has been incorrectly applied;
- understand and respond to impairment notices, including variations proposed by the NDIA; and

- navigate new spending rules, funding periods, and restrictions placed on their plans.

This existing inequity will be compounded by the complexity of new framework planning. Without adequate, ongoing funding for legal assistance, the new framework risks creating a two-tier system where only those who can afford private legal representation can effectively challenge decisions.

Recommendations

8. The Australian Government should provide an additional $7 million per annum to retain and expand the NDIS Appeals Program, to support the increase in demand for legal assistance resulting from the introduction of NFP and the resulting legal complexity for participants
9. The Australian Government should recognise funded access to specialist disability legal assistance as an essential component of new framework planning, including for participants navigating the SNA process, review rights, and plan variations.
10. The DHDA should consider the impact of new framework planning on legal assistance demand in its implementation planning, including through data collection and monitoring of legal assistance service pressures during the transition period.

Transition to new framework plans

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, particularly in the early stages of implementation. Ensuring that participants are supported, informed and protected throughout this period is therefore critical.

a) 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.

b) Access to information and independent support

Participants need access to clear and timely information including plain-language resources, Easy Read materials, and translated information. Additionally, it is critical that participants 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 their particular circumstances.

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.

c) 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.

d) Young people transitioning at 16

The NDIA currently treats age 18 as a significant developmental and life-stage transition requiring reassessment of supports. Participants who undergo an I-CAN or SNA at age 16 may require a new assessment at 18, when functional capacity, independence, family responsibilities, and support needs typically change. This creates a risk of multiple assessments within a short timeframe, causing instability and assessment fatigue. Raising the minimum transition age so that participants aged 16–18 transition with child cohorts, not adults, would reduce unnecessary reassessment burden.

e) Inconsistent terminology

The explanatory material uses the terms "cohorts", "classes", and "groups" in relation to the transition to new framework plans. It is unclear whether these terms are intended to be synonymous or represent different concepts. Clear, consistent terminology is essential to prevent confusion among participants and the broader disability sector.

Recommendations

11. The NDIA should develop individualised transition plans for participants, and tailored for those at heightened risk (e.g., those with high-intensity supports, complex comorbidities, limited communication capacity, or unstable supports). This is critical to minimise support gaps, distress and adverse outcomes.
12. The Australian Government should provide funded access to disability advocacy and legal assistance for all people seeking to access to or supports under the NDIS, to assist participants to navigate changes to assessment, spending rules and review rights, and to meet increase in demand resulting from introduction of new framework planning and resulting legal complexity for participants.
13. The NDIS and DHDA should collect and publish robust data relating to the transition period 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 (age, location, whether they are First Nations, etc.)
    c. The nature of changes between old and new framework plans, including whether budgets have increased, decreased, or remained stable; and whether key supports have changed or the participant has lost access to supports from their previous plan
    d. Current timeframes between stages (e.g., from notification to SNA; from SNA to report; from report to plan approval)
14. The NDIA should raise the minimum transition age for young people so that participants aged 16–18 transition with child cohorts, not adults. This is important as participants in this group face rapid reassessments. Providing a minimum age will reduce assessment burden and risk of inconsistent or unstable supports.
15. The DHDA and NDIA should adopt consistent, clear terminology for transition groups. The current inconsistency creates confusion across the disability and provider sectors.

Notice of Impairments

The requirement for the NDIA to issue a Notice of Impairments was introduced by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*, through the insertion of section 32BA into the Act. Prior to these amendments, the Act contained no mechanism requiring the NDIA to specify which impairments led to a participant meeting the access criteria.

While the policy intent behind impairment notices is to increase transparency and align access with future support-planning processes, the transition to this new framework has already caused significant confusion among participants, advocates, clinicians and frontline NDIA staff.

Participants who accessed the NDIS before January 2025 were not provided impairment notices nor was any comparable information provided at the time they joined the Scheme. Because impairment notices did not previously exist, many participants have never had all of their impairments assessed, particularly where a single impairment satisfied access requirements. Decision makers were previously not required to record or even turn their mind to whether each impairment met access criteria.

Existing participants are now concerned about whether all of their impairments have been "recognised" by the NDIA; whether additional impairments that manifested or worsened after gaining access will be acknowledged; whether they will be required to re-prove they meet the access criteria; and how the NDIA will determine which category or categories of impairments to include on the notice. This uncertainty poses risks, including potential cessation or delay in obtaining appropriate supports while participants seek variation of their impairment notice.

a) Primary/ secondary disability

The NDIA's practice of assigning participants a "primary disability" and "secondary disabilities", despite these terms never appearing in the NDIS Act or Rules has compounded confusion. Many participants believe that the NDIA funds supports only for their "primary" disability, even though the Act requires assessment based on impairment and functional impact, not diagnosis.

As at 24 February 2026, the Access Request Form requires applicants to identify one "primary disability" and up to two "other disabilities," with a hard limit of three entries. This is inconsistent with: the *Working together to deliver the NDIS, Independent Review into the National Disability Insurance Scheme, Final Report* ('**the NDIS Review**'), which recommended abandoning the primary/secondary disability construct and adopting a whole-person, needs-based approach[1]; and sections 24–25 of the Act, which assess impairments, not diagnostic labels.

[1] *Working together to deliver the NDIS, Independent Review into the National Disability Insurance Scheme, Final Report,* October 2023, Action 3.3, page 92.

Participants contacting Legal Aids often report being told incorrect information or being subject to concerning decisions. For example, Legal Aids report participants being told: they can only receive supports for their "primary impairment"; they must submit a new access request for new impairments, despite already being participants who satisfied section 21; they cannot be funded certain supports as a particular diagnosis was not listed at the time of access; they do not meet the access criteria for certain conditions despite previous correspondence suggesting they did; or certain diagnoses had been "removed" and they could not access supports for those conditions.

This messaging is incorrect, creates unnecessary administrative burden, and causes distress for participants who fear losing existing supports or being required to “re-prove” longstanding impairments. The NDIA should co-design a process for determining the impairment categories to be listed on notices for existing participants, including how participants can engage in the process and provide additional information if they wish.

b) How impairment categories may create confusion

Section 32BA(2) of the Act specifies that the notice must provide the category or categories of impairments in relation to which the participant meets the access criteria. This means that the impairments themselves will not be listed on the notice – rather, only broad categories.

This has the potential to create confusion where a participant has multiple but distinct impairments under the same category. It is also unclear how a scenario like this impacts a participant's review rights: it may be the category included on an impairment notice is agreed with, but the decision maker’s consideration of which specific impairments led to the listing of that category may be disputed.

This distinction matters because the Act now requires: (a) supports to be linked to impairments that meet the access criteria (section 34(1)(aa)); (b) budgets to be worked out only by reference to needs arising from such impairments (section 32K); and (c) needs assessment reports to identify support needs linked to impairments that meet the access criteria (section 32L).

NLA is concerned that flexible budgets may be driven by the impairment notice itself rather than the full evidence of a person’s impairments. Clear information is needed on how the notice will influence both flexible and stated supports so participants can understand the impact on their plan, and assess whether seeking a review of the notice is necessary.

Decision makers should not be reliant on the notice of impairments when making decisions. The statutory tasks required by section 34(1)(aa), section 32K, and section 32L of the NDIS Act are distinct from notices of impairment. Accordingly, circumstances specified in the rules pursuant to section 32BA(5)(a)(ii) should include where a SNA or needs assessment report identifies an impairment in relation to which a participant meets the access criteria.

c) Variation of impairment notices and procedural fairness

The DHDA proposes that the CEO may vary a notice if the CEO becomes aware of an error in a participant's notice of impairments, or becomes aware of information about an impairment or impairments which is relevant to a category or categories that should be stated in the notice. These circumstances are proposed to sit alongside the requirement that the CEO is satisfied that a statement in the notice is not, or is no longer, correct (section 32BA(5)(b)).

The Act also provides at section 32BA(5)(c) that the CEO may only vary a notice if any other conditions specified in the NDIS rules are met. However, the proposed rules as provided in the *Explanatory document – Notice of impairments* (***NoI Rules***) do not contain any other conditions. The *NoI Rules* also do not contain any details regarding a prescribed form or what information or documents may be required (section 32BA(6)(a)-(b)). This is a significant procedural fairness gap.

d) Restrictions on when application may be made

The DHDA propose that an application for variation may not be made where a participant has made an application for a variation and a decision has not been made, or where the participant has sought a review of the CEO's decision under section 32BA(5) of the Act and the review has not been finalised.

NLA is concerned about lack of decision-making timeframes leading to extended delays for participants and prolonged periods where participants are unable to make further variation requests, even if a request relates to a different impairment. Section 32BA(5) of the Act makes no provision for a deemed decision, which leaves a participant without remedy until a decision is made.

Recommendations

16. The NDIA should cease use of “primary” and “secondary disability” terminology across all NDIA systems and forms, including updating the Access Request Form to allow listing of all impairments, not a capped number or diagnostic hierarchy.
17. The NDIA should co-design with the disability community a process for determining how impairment categories for Notice of Impairments will be determined for participants who accessed the NDIS before 1 January 2025.
18. The DHDA should amend the NoI Rules to include procedural fairness safeguards when the CEO proposes to vary a notice. The safeguards should include provision of written notice, the opportunity to provide evidence, and clear disclosure of any new information relied on.
19. The NDIA should publish co-designed Operational Guidelines to provide greater clarify to participants on the variation process, ensuring the process is accessible to people with disability by allowing applications for variation by phone, email, or in writing, and ensuring participants are appropriately supported to provide any information or documents required. The Operational Guidelines should stipulate clear timeframes within which the NDIA will decide on variation requests.
20. The NoI Rules should allow a participant to make an application for variation in so far as it relates to a different impairment to that being considered by the CEO or already decided on and subject to a review. Alternatively, the NoI Rules might make provision for a participant the amend an application that is still before the CEO. NLA suggests the latter would also make the application process more accessible to participants who may make errors in an application or wish to make changes after receiving professional advice.

Support needs assessment process

Participants and the sector would greatly benefit from further information about the SNA process and an opportunity to provide further feedback.

a) The assessment process must be accessible

The proposed framework places considerable emphasis on self-reporting during the SNA interview. This raises concerns for participants who cannot easily describe their functional limitations, face communication barriers, speak languages other than English, or require support to articulate disability-related needs. A process heavily dependent on self-reporting risks under-identifying support needs and producing insufficient budgets.

The assessment process must be accessible to all participants. The *SNA Rules,* when developed, should require assessors to consider how the SNA can be conducted in the most appropriate and supportive manner, with participant preferences followed unless there are compelling reasons not to do so. Relevant considerations may include:

- the format of the assessment (face-to-face, telephone, or on the papers)
- the location (NDIA office, participant's home, or another suitable venue)
- the number and duration of sessions
- the pacing and the structure – ensuring participants can take breaks where needed
- the availability of interpreters and any written material other languages
- what reasonable adjustments for a participant's disability needs may be required
- whether third parties such as family, carers or treating professionals should be present.

A trauma-informed approach should also be taken requiring assessors to adjust the pace of questioning, avoid repeated recounting of distressing experiences, and ensure participants feel safe and supported throughout the process. These expectations should be explicitly stated in the rules and reflected in assessor training and quality assurance. The NDIA should co-design the SNA process, including accessibility supports and reasonable adjustments

b) Information gathering and evidence weighting

Section 32L(4) of the Act provides that an SNA must have regard to information and reports requested under section 36(2), and may also consider any other relevant information held in NDIA records. To give clear effect to these obligations, the *SNA Rules* should set out expectations for how assessors and decision-makers approach information gathering and the weight given to different types of evidence.

The *SNA Rules* should specify the types of information an assessor would ordinarily consider, such as medical reports, allied health assessments, and statements from carers or family members, and require good reasons to disregard relevant material. This promotes consistency, transparency and fairness, particularly for participants who face barriers in articulating their needs verbally during the assessment.

Participants must also be supported to provide information in a way that is accessible and not overly burdensome. The *SNA Rules* should establish a clear process that gives participants multiple opportunities to share information: before the assessment, during the assessment (including verbally or through documents provided on the day), and after the assessment where issues arise that require clarification or additional evidence. Participants should also be assisted to understand what types of additional information may be helpful. This approach is consistent with the recommendations of the NDIS Review.[2]

NLA recommends more detailed information should be published about the assessment tools, the types of information that will be gathered from participants, and how this information will be translated into a budget that accurately reflects their NDIS support needs. NLA proposes to make further recommendations as additional information becomes available.

1. Assessor qualifications and expertise

From the information presently available, it appears that Needs Assessors will not necessarily be trained allied health practitioners, social workers, or other professionals with disability 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."[3] The lack of clarity regarding assessor qualifications is a significant concern.

Legal Aids frequently report that participants feel NDIA staff do not understand their disability or the functional impacts they experience. Unless Needs Assessors are suitably qualified or trained across a broad range of disabilities, this is likely to be a significant pain point during the rollout of New Framework Plans . Given the interpersonal, conversational nature of the assessment, a deep understanding of disability and how different support needs present is essential. Further information is needed to ensure that assessors will have the skills, training and qualifications required to conduct fair and accurate assessments.

Although it appears that allied health practitioners or similar professionals will not be used in most cases, NLA recommends that, at a minimum, for complex cases the rules should require that the assessor be a

[2] Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report*, October 2023, see page 88-89 and Action 3.4, page 93.

[3] Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report*, October 2023, page 88.

trained allied health practitioner, social worker, or similar professional with disability expertise. Ideally, the NDIS Review recommendation should apply to all participants.

NLA also recommends that the rules support an individualised, participant-centred approach to ensure assessors do not rely on assumptions about support needs based on diagnosis, age, location or similar factors. As the budget-setting method is likely to be prescriptive, it is critical that the support needs assessment accurately captures each participant's unique circumstances.

c) Automated decision-making concerns

It is currently unclear to what extent automated decision-making (**'ADM'**) tools are intended to be used to support the needs-assessment process. If the use of ADM is being considered, we submit that it should not proceed without a separate, thorough public consultation. This is essential to ensure the development of clear, transparent governance frameworks and decision-making rules, consistent with Recommendation 17.1 of the Royal Commission into the Robodebt Scheme.[4] This would help safeguard accountability, protect individuals' rights, and maintain public confidence in the assessment process.

d) Needs assessment report must be comprehensive and transparent

Section 32K of the Act provides that a participant's reasonable and necessary budget must be worked out by applying the information contained in the needs assessment report for the plan. This makes the report vital for ensuring a participant's funding is sufficient. It is therefore essential that the report is accurate, detailed and reflective of the participant's actual disability support needs.

NLA strongly recommends that the DHDA specify the information that must be included and requirements for the reports under section 32L(6)(a) of the Act. Reports should be sufficiently detailed to enable participants to understand what information was considered, what factual findings were made, what the recommended supports are, and the reasons for those conclusions. Without a transparent and comprehensible report, participants cannot meaningfully engage with review rights or properly understand how their budget has been constructed.

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[4] *Royal Commission into the Robodebt Scheme Report Volume 1*, Recommendation 17.1, Page 488.

The Commonwealth should consider legislative reform to introduce a consistent legal framework in which automation in government services can operate. Where automated decision-making is implemented:

- *there should be a clear path for those affected by decisions to seek review*
- *departmental websites should contain information advising that automated decision-making is used and explaining in plain language how the process works*
- *business rules and algorithms should be made available, to enable independent expert scrutiny.*

NLA submits that the requirements under section 32L that a report identify a participant's support needs arising from impairments in relation to which the participant meets the disability requirements or the early intervention requirements is a separate legislative task to identifying the category or categories to list in a notice of impairment. Accordingly, NLA recommends that the *SNA Rules* require an assessor to consider further information or evidence provided by the participant about the nature of their impairments, including any additional impairments, before the assessment report is completed. This ensures the report accurately captures the participant's circumstances and avoids unduly restricting considerations to the notice of impairment.

e) Participants should review draft reports before finalisation

Section 32L(6A) of the Act provides that the CEO must give the participant a copy of the needs assessment report as soon as practicable after receiving it. However, there is no legislative guidance on whether participants may review or comment on a draft report before it is finalised. NLA recommends that the *SNA Rules* make provision for participants being put on notice regarding the contents of a draft needs assessment report and allowing the opportunity to correct factual errors and provide further information before the report is finalised and their budget is created. This safeguard would significantly reduce the risk of error and minimise the administrative burden to the NDIA with regards to support needs reassessments. It is consistent with the approach envisaged by the NDIS Review, which states: *"A comprehensive assessment of need is undertaken by a skilled assessor. This will include a discussion of the risks in a participant's life and what safeguards could be put in place in response. Participants will have as long as they need to ensure they are understood and will be able to view the assessment and add missing information before the budget is set.... Skilled Assessors will use self-reporting and strength-based interviews to assess needs."*[5]

NLA also recommends the rules provide that for the purpose of section 32L(5) 'as soon as practicable' will be understood to mean 28 days in most cases. This should allow sufficient time for consideration of further information and preparation of the report after the completion of the support needs assessment. We recommend the rules also provide for notice to be given to the participant should more than 28 days be required. For the purpose of section 32L(6A) 'as soon as practicable' will be understood to mean 7

[5] Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report*, October 2023, 90

days. A short timeframe is appropriate as the necessary information will already be available and internal mechanisms for automation make the sending of correspondence quick and easy.

As noted previously in this submission, participants and the sector would greatly benefit from further information about the needs assessment report and an opportunity to provide feedback on a sample report.

2. Replacement assessments and when they should be required

Section 32L(7A) of the Act provides that the NDIS rules may make provision for determining whether a replacement needs assessment should be undertaken, however the information provided for in this consultation process did not include a copy of any proposed *SNA Rules*. NLA strongly recommends that participants and relevant stakeholders be given opportunity to consider the *SNA Rules,* once drafted, to ensure that they - provide procedural fairness; do not unduly restrict the rights of participants to access reassessment; limit the need for additional materials to be provided to support reassessment requests; and acknowledge the financial, physical or other barriers a participant may experience in undergoing reassessment.

3. Circumstances warranting replacement assessment

Given the lack of detail in the information available, the suggestions in this section are provided for consideration only and do not constitute a final opinion in the absence of sufficient information to provide a more detailed response.

NLA recommends that the *SNA Rules* provide that the CEO must decide that a replacement assessment should be undertaken in circumstances where:

- the CEO becomes aware of a material error in a participant's SNA or needs assessment report
- the CEO is aware of information which is relevant to the participant's disability support needs arising from impairments in relation to which the participant meets the disability requirements or the early intervention requirements that has not been considered in a participant's needs assessment report

NDIA operational guidelines, and where appropriate the NDIS rules, should also set out a clear process for consulting participants, including:

- providing adequate notice of the contents of a needs assessment report

- offering an opportunity for the participant to express views on whether a replacement assessment should be undertaken
- specifying the steps a delegate must take to obtain these views, including consideration of any accessibility needs
- allowing the participant to provide further information
- setting a timeframe within which a decision must be made on whether to require a replacement assessment.

Given that section 32L does not appear to permit a partial reassessment it is important that participants are explicitly warned, when asked for their views, that a reassessment may result in changes to aspects of the needs assessment report they are otherwise satisfied with.

NLA recommends DHDA consider the following circumstances and ensure the rules make adequate provision for them:

- whether there was a failure to follow the SNA processes as prescribed by relevant legislation, rules or operational guidelines (such as a failure to provide reasonable adjustments for disability)
- whether a SNA is incomplete or unreliable in the circumstances (such as if the participant was distressed or under undue influence)
- whether the needs assessment report contains ambiguous, borderline, or internally inconsistent findings
- whether the needs assessment report appears inconsistent with objective evidence without sufficient explanation
- where competing information is provided in a SNA (such as differing clinical recommendations) whether the needs assessment report clearly identifies which source is preferred and why
- whether the assessor failed to consider relevant information or considered irrelevant information
- whether new information has been provided after the assessment
- whether a participant's circumstances have significantly changed.

f) Conducting the replacement assessment in a participant-centered way

Although limited detail is available about the SNA, the information released to date suggests it may be a lengthy and demanding process. NLA is concerned about the impact of replacement assessments on participant wellbeing. Many participants, particularly those with cognitive impairments, psychosocial disability, or communication barriers, are likely to find repeated reassessment burdensome, stressful and potentially harmful. A process of this intensity risks causing distress, disengagement, and re-traumatisation for the people the Scheme is meant to support.

NDIA operational guidelines, and where appropriate the NDIS rules, should provide for participant choice in how they participate in a replacement needs assessment and look for options which may limit unnecessary repetition or the need for additional materials to be provided. We note that section 32L does not appear to allow for a partial reassessment, however, it may be possible to provide a process by which a participant can agree for answers or information to be reused from their original assessment. A specified timeframe should also be given within which a replacement needs assessment needs to be completed.

NLA strongly recommends that where the CEO must arrange for the replacement assessment to be undertaken, the rules should require consideration be given to as to whether the assessment be conducted by a different assessor, in line with similar provisions in sections 100(5A) and 100(5B) of the Act. In some circumstances this would be the more favourable option to ensure an assessor has no preconceptions or seeking opportunities to support their own previous findings. However, in some cases participants may feel better supported and less overwhelmed by not having to repeat the process and their story with a new assessor. We recommend the rules require the CEO to give effect to a participant's preference on this matter where reasonably practicable to do so.

Recommendations

21. The NDIS rules should require assessors to consider how the SNA can be conducted in the most appropriate and supportive manner. NDIA should co-design the SNA process.
22. The NDIS rules should set clear expectations for how assessors and decision-makers approach information-gathering, including the weight to be given to different types of evidence.
23. The NDIS rules should establish a clear process that gives participants multiple opportunities to share information, and participants should be assisted to understand what types of additional information may be helpful.
24. The NDIS rules should provide that where an assessor identifies insufficient information to complete an accurate assessment, the NDIA must obtain additional reports from allied health providers or other relevant professionals using powers under section 6 of the NDIS Act. This should be at no cost to the participant, to ensure participants from different socioeconomic backgrounds have equal access to comprehensive assessments regardless of their means to obtain reports independently.
25. The NDIS rules should require that the assessor be a trained allied health practitioner, social worker, or similar professional with disability expertise.
26. The NDIS rules should support an individualised, participant-centred approach to ensure assessors do not rely on assumptions based on diagnosis, age, location, or similar factors.

27. The NDIS rules should require needs assessment reports to be sufficiently detailed so participants can understand what information was considered, what factual findings were made, what supports are recommended, and the reasons for those conclusions.
28. The NDIS rules should provide that participants are put on notice of the contents of a draft needs assessment report, with an opportunity to correct factual errors and provide missing information before the report is finalised.
29. The NDIS rules should clarify that, for the purpose of section 32L(5), 'as soon as practicable' means 28 days, and for section 32L(6A), 'as soon as practicable' means 7 days.
30. The NDIS rules should provide that the CEO must decide a replacement assessment is required where there is a material error or relevant information was not considered in a participant's needs assessment.
31. The NDIA operational guidelines, and where appropriate the NDIS rules, should set out a clear process for consulting participants on whether a replacement assessment should be required.
32. NDIA operational guidelines, and where appropriate the NDIS rules, should provide for participant choice in how they participate in a replacement assessment, and should identify options that minimise unnecessary repetition or additional materials being required, including whether a reassessment should be conducted by a different assessor.

Budget method

Under the new framework, a participant's reasonable and necessary budget will be determined using a method prescribed in the *National Disability Insurance Scheme (Reasonable and Necessary Budget Method) Rules*, drawing on information contained in the Support Needs Assessment Report prepared under section 32L of the Act. This represents a significant shift from current practice, and there is insufficient information available for participants or stakeholders to understand how these budgets will be set.

a) The consultation gap

The DHDA has noted in its discussion paper that "More information on the budget method steps will be published to support this consultation process."[6] However, no further information has been published which limits the ability to provide meaningful feedback. Until information about the budget setting method is made publicly available, stakeholders cannot assess whether the methodology will produce reasonable and necessary budgets or adequately account for individual circumstances.

[6] Department of Health, Disability and Ageing, *New framework planning discussion paper,* pg 7

b) Concerns about automated decision-making

As stated above, there remains uncertainty about the extent to which dADM) tools may be deployed at different stages of the needs-assessment and budget-setting process. Should the use of ADM be under consideration, it is NLA's view that implementation should not proceed without a standalone, robust public consultation process. Such consultation should ensure the development of clear governance frameworks that guarantee human oversight, discretion, and the ability to depart from automated outputs where individual circumstances require it. This approach is consistent with Recommendation 17.1 of the Royal Commission into the Robodebt Scheme.[7]

c) The loss of meaningful budget review

A key concern is the absence of explicit review rights over the budget amount. Under the current system, participants can provide further evidence and seek merits review of an insufficient budget. Under the proposed model, as NLA understands it, participants may only change the budget amount by obtaining a replacement needs assessment, but there is no way as part of the review process to require changes to the inputs for the replacement needs assessment and no way to influence the resulting budget calculation.

On the information available, where an insufficient budget results from the methodology itself, there will be no mechanism for a participant to seek amendment. A replacement SNA is unlikely to change the outcome if a proscriptive budget methodology simply produces the same results. This represents a fundamental narrowing of review rights compared to the current framework, where the ART can substitute its own judgment about what constitutes a reasonable and necessary budget.

4. The need for discretion and flexibility within the budget methodology

As the draft rules have not been provided, detailed feedback cannot be given at this stage.

NLA understands the budget rules are likely to set out a strict method or formula to calculate a participant's reasonable and necessary budget. However, the rules must be drafted in such a way that

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[7] *Royal Commission into the Robodebt Scheme Report Volume 1*, Recommendation 17.1, Page 488

meets the objects and principles of the Act in Sections 3–4 and gives effect to section 31, which requires plans to be prepared with participants and to take into account their circumstances and preferences.

The rules should expressly account for the variables that impact support needs, such as location, provider availability and type, service delivery models, and other factors that affect the cost of delivering supports. Without explicit recognition of these variables in the budget methodology, participants in regional or remote areas, thin markets, or with complex support arrangements may receive inadequate budgets.

d) Transitional protections are essential

NLA further recommends a transitional safeguard allowing discretionary adjustment of the reasonable and necessary budget to ensure a participant is not worse off when moved to a new framework plan, unless there is clear evidence that a previously funded support is no longer required. This is particularly important for participants with stable, long-term support needs who have established effective support arrangements under their current plans.

5. Budget methodology must rely on accurate support needs assessments

NLA has outlined concerns above about the SNA and the reassessment pathway. As the budget tool will rely on inputs from the SNA report, it is imperative that the SNA results in an accurate understanding of a participants support needs and provides sufficient information to reliably inform the reasonable and necessary budget. If the SNA process is flawed, the budget methodology – no matter how well designed – will produce inadequate budgets.

Recommendations

33. The DHDA should ensure the budget methodology adequately provides for human oversight and discretion to give effect to the NDIS Act’s Objects and Principles. This could be done by incorporating discretionary ranges and a manual adjustment mechanism where the budget methodology does not produce a budget that adequately provides for a participant's demonstrated support needs.
34. The Australian Government should implement transitional safeguards to ensure no participant is worse off under a new framework plan unless there is clear evidence a previously funded support is no longer required. This is particularly important for participants with stable, long-term support needs.

Stated supports

NLA is concerned that the proposed criteria for declaring supports as stated is too broad. In particular, the "harm/safety risk" limb could capture a very wide range of supports (arguably, most supports). The DHDA should consider narrowing this consideration (e.g., to significant or immediate risk of harm). NLA also recommend the "high-cost" limb should specify a defined monetary threshold (or indexed bands) to promote consistency and avoid arbitrary application. The "significant integrity risk" limb requires some guidance and examples as to what DHDA intends to capture. Any risk assessment should be proportionate and considered in the context of any existing safeguards.

Recommendations

35. The DHDA should consider narrowing the general criteria for declaring supports as stated to ensure participant flexibility and choice is sufficiently provided for. In particular, the "harm/safety risk" criteria should be limited to significant or immediate risks that cannot be managed through less restrictive means such as operational guidance or plan conditions. The "high-cost" limb should specify a defined monetary threshold (or indexed bands) to promote consistency and avoid arbitrary application.

Spending rules

a) Participant choice and control

The *Explanatory Document - New framework plan spending rules* ('**Spending Rules**') acknowledges that participant preferences and wishes must be considered, consistent with the NDIS principle of choice and control. The NDIS Act goes further: section 31 requires that, to the extent reasonably practicable, plans are to be individualised, directed by the participant, and underpinned by the right of the participant to exercise control. They must also maximise the choice and independence of the participant and facilitate tailored and flexible responses to the individual goals and needs of the participant. In addition, sections 32D and 33 require that the Statement of Participant Supports (**SOPS**) is prepared with the participant. We also refer to the Objects and General Principles set out in Sections 3 and 4 of the Act, including that people with disability should be supported to exercise choice, *including in relation to taking reasonable risks*.

NLA considers this to mean participant preferences are not merely a factor to be weighed: the Act elevates participant views and mandates their involvement in developing the SOPS, including any decision to apply funding periods, restrictions, and requirements.

b) Restrictions and requirements linked to NDIA arranged providers

In the *Spending Rules*, DHDA proposes to prescribe a circumstance under section 32F(7)(c) of the Act that the CEO may restrict a participant's flexible funding where the NDIA has arranged (directly or indirectly) for a provider to deliver supports to identified participants. Section 32H(2)(b) of the Act further allows NDIA to impose a requirement that supports be provided by a specified person or class. In the *Spending Rules*, DHDA proposes that decision-makers are required to consider whether the Commonwealth or the Agency has entered any arrangements with a NDIS provider to provide supports. Taken together, these developments raise significant concerns.

Apart from questions about how use of these provisions will sufficiently align with sections 3, 4 and 31 of the Act, NLA submits they may also expose participants to risks. The NDIA's current approach to market stewardship appears to draw on a patchwork of instruments, such as the *NDIS Market Roles and Responsibilities*[8] document, with some protections provided for in existing legislative frameworks, such as laws relating to provider registration and the role of the NDIS Quality and Safeguards Commission. However, there is no single, clear, publicly available framework that explains how NDIA provider arrangements would be established and that sets out core participant protections such as:

- criteria for selecting providers
- oversight and performance monitoring expectations
- minimum workforce or continuity standards
- any obligation for providers to accept NDIA-referred participants
- standardised, participant protective service agreement terms
- contingency arrangements if a commissioned provider withdraws.

While the examples in the Spending Rules refer to co-design and working with participants, neither the current legislative framework nor NDIA operational guidelines provide a transparent process for how the NDIA will consult when making provider arrangements (for example: minimum notice requirements, opt-out pathways, consultation guarantees, and defined consultation standards and accessibility supports

[8] Commonwealth of Australia (Department of Social Services), *NDIS Market Roles and Responsibilities,* 2021

for effective participation). Participants should have access to clear information about their rights and what to expect in circumstances where the NDIA makes arrangements with providers.

The NDIA thin market trials evaluation9 supports taking a measured approach. Some interventions (such as Coordinated Funding Proposals) appeared effective under certain conditions, however, success in the trials was not uniform. Structural barriers such as workforce shortages, logistics and inconsistent demand continued to undermine service viability in many areas. These findings suggest that while targeted interventions can produce benefits, they are not guaranteed to succeed. The evaluation also noted a need "to clarify the roles of the NDIA and various market intermediaries in market facilitation." NLA suggests that where thin-market interventions are required, they should be managed through transparent procurement frameworks with explicit participant safeguards and opt-out pathways, rather than via funding restrictions.

We are also concerned about examples that contemplate class-based restrictions (such as for First Nations participants), which create a real risk that decisions are made by reference to protected attributes under discrimination law. Rules that limit spending or provider choice for First Nations participants do not align with the *NDIS First Nations Strategy 2025–30* commitments, including:

- Pillar 4: Respecting self-determination and agency of First Nations peoples
- Pillar 5: Creating cultural safety
- Pillar 7: Being flexible and collaborative
- Pillar 9: Achieving fairness through equity for First Nations people.

NLA recommends against prescribing a circumstance in the Spending Rules that would restrict a participant's flexible funding where the NDIA has arranged (directly or indirectly) for a provider to deliver supports. Compelling use of a provider through plan restrictions reduces choice and control and potentially exposes participants to quality and safety risks in the absence of a clear statutory framework governing NDIA provider arrangements.

The power to impose a requirement that supports be provided by a specified person or class is already embedded in section 32H(2) of the Act. NLA therefore recommends the *Spending Rules* provide robust

[9] NDIA, *Report: Thin Market Trials Final Evaluation,* August 2023

safeguards as to the exercise of this discretion. At a minimum, the decision-maker should be satisfied that the situation cannot be managed by less-restrictive means, and that the proposed provider arrangement is safe, fair, culturally safe where relevant, and genuinely in the participant's interests.

Finally, NLA recommends that the DHDA should urgently explore options to establish a fit-for-purpose safeguarding framework governing NDIA provider arrangements. This is necessary to manage risk and avoid reliance on participant-level funding restrictions and requirements as de-facto tools of market intervention.

c) Consideration of how a participant accesses the Scheme

The draft *Spending Rules* suggest that a relevant consideration when exercising various discretions in relation to when a restriction and/or requirement will be imposed, is whether the participant meets the disability requirements, meets the early intervention requirements, or both.

From the outset, the NDIS legislative framework has not differentiated the supports available to participants based on whether they meet the disability requirements or the early intervention requirements. Although these are distinct access routes, once a person becomes a participant, the Act places them on the same footing in developing a plan and accessing supports. NLA would not support subordinate rules attempting to create separate criteria or heightened scrutiny for early intervention participants where the Act itself does not do so.

d) Funding periods

The *Outline* section of the *Spending Rules* identifies two primary reasons for setting funding periods. The first is to assist participants to spend within the limits of their plan so that they do not 'run out' of funding before the end of their plan and the second is as a safeguarding measure protecting participants.

NLA would not agree with the premise that exhausting funds is typically a matter of participant mis-management or difficulties with spending within the limits of their plan. In the experience of Legal Aids assisting participants, the most common drivers are material changes in circumstances and/or plans that were funded at an inappropriate level, rather than budgeting failures by the participant. This is consistent with data from the ART which shows over 74% of matters in the 2024-2025FY were resolved by consent or with the decision under review being set aside. Only 102 of the 3,671 NDIS Plan decisions were the ART had jurisdiction were dismissed or affirmed by the ART.[i]

In relation to using funding periods as a protective mechanism for participants, NLA notes that the NDIA has a range of tools available to assist participants who may be at risk of financial harm or exploitation. We encourage the NDIA to consider the most appropriate mechanism for the circumstances. While limits on spending may be appropriate for some participants, any departure from a participant's preference should be justified with clear reasons, supported by appropriate evidence, proportionate to the identified risk, and subject to regular review to ensure the least-restrictive approach consistent with the participant's rights.

e) Restrictions on flexible funding

The draft *Spending Rules* state that the following prescribed circumstance will be introduced:

"The CEO will be permitted to apply a restriction where all of the following apply:

i. the participant needs particular NDIS supports to improve, maintain or slow the decline in, the participant's functional capacity and
ii. the participant is unlikely to acquire the particular NDIS supports if the provision of flexible funding under the participant's plan is not subject to a restriction."

This prescribed circumstance does not align with Sections 3, 4, and 31 of the NDIS Act which emphasise individualised plans, participant-directed planning, and choice and control. Nor does it align with the *NDIS Review* recommendations, noting *Recommendation 3.5:* that the NDIA should allow greater flexibility in how participants can spend their budget, with minimal exceptions; and *Recommendation 3.6:* that the NDIA should adopt a trust-based approach to oversight of how participants spend their budget, with a focus on providing guidance and support. NLA considers the prescribed circumstance relating to risk of physical, mental or financial harm already supplies an adequate, least-restrictive protection ensuring participants' wellbeing without diminishing their autonomy.

NLA submits that NDIA delegates are not well placed to make therapeutic judgments for participants. They rarely have the most current information about how supports are delivered or what outcomes are being achieved. This issue will increase as plans move to longer durations and a single SNA report becomes less relevant over time. The SNA is also not prepared by medical or allied-health professionals, and its purpose is to identify support needs -not to determine whether a therapy is clinically indicated or capable of improving or maintaining functional capacity. In practice, supports do not fall neatly into categories; for example, supports for daily living or community participation often also help participants build skills and independence. Ultimately, participants are best placed to understand their daily needs and priorities, supported by the ongoing input of their informal supports, NDIS providers, and treating professionals.

If DHDA proceeds with the intended prescribed circumstance, NLA recommends amending the proposed drafting to include " iii. that the participant will not be placed at risk of harm if funding under the participant's plan is subject to a restriction."

f) Further submissions

For further submissions relating to the *Explanatory Document - New framework plan spending rules* please refer to the **Annexure: Technical considerations – Draft Spending Rules**

Recommendations

36. The NDIS rules should explicitly require decision makers to give effect to a participant's stated preferences where reasonably practicable, and to establish that no less-restrictive approach could adequately manage any identified barriers before imposing restrictions. Departure from a participant's preference should only occur where there is clear evidence demonstrating the need to do so.
37. The DHDA should not prescribe a circumstance in the NDIS rules that would restrict a participant's flexible funding where the NDIA has arranged (directly or indirectly) for a provider to deliver supports.
38. The NDIS rules should provide robust safeguards governing the exercise of the section 32H(2)(b) discretion. At a minimum, the decision maker should be satisfied that the situation cannot be managed by less-restrictive means, and that any proposed provider arrangement is safe, fair, culturally safe where relevant, and aligned with the participant's stated preferences where reasonably practicable.
39. The DHDA should urgently explore options to establish a fit-for-purpose safeguarding framework governing NDIA-provider arrangements, to avoid reliance on participant-level funding restrictions as de-facto market stewardship tools.
40. The NDIA should cease current operational practices of imposing "default" funding periods, and any departure from a participant's preference should occur only where there is evidence supporting the need to do so.
41. The should be no requirement for certain 'prescribed circumstances' to exist in order for participants to access capacity-building supports'.

42. The DHDA should not introduce any rule requiring consideration of whether the participant meets the disability requirements, the early intervention requirements, or both, as this creates differential treatment based on access pathway rather than individual needs.
43. That DHDA should adopt NLA's recommendations relating to matters to be taken into account as set out in the **Annexure: Technical considerations – Draft Spending Rules.**

Plan variations

The information provided in the DHDA's consultation materials does not include a copy of the proposed rules relating to variations under the new framework. When draft rules become available, we recommend that they be released publicly and that stakeholders be given a further opportunity to provide detailed feedback.

Based on the information available and the variation provisions in section 47A of the Act, we welcome the availability of mechanisms to vary plans in appropriate circumstances without requiring a new SNA. We also support the inclusion of safeguards that allow a participant's budget to be adjusted where there has been a significant change in support needs, evidence of fraud or exploitation, or where a variation is necessary to prevent or lessen a threat to the participant's life, health or safety. These features are consistent with ensuring plans remain responsive, protective and administratively efficient. However, without the proposed rules, it remains unclear how these powers will operate in practice.

Recommendation

44. The DHDA should publish draft plan-variation rules and conduct further consultation before finalising them. This is critical to ensure plan variation powers are used consistently and provide for procedural fairness for participants, and enable participants to respond to changed circumstances in a timely manner.

Annexure: Technical considerations – Draft Spending Rules

NDIS Rules: New framework planning

National Legal Aid submission to Department of Health, Disability and Ageing

6 March 2026

National Legal Aid (**'NLA'**) makes detailed comment on the *Explanatory Document - New framework plan spending rules* ('***Spending Rules***') as part of the new planning framework, with a focus on ensuring that the *Spending Rules* are legally robust, clearly drafted and operationally workable. In particular, we assess whether the *Spending Rules* may unlawfully restrict statutory entitlements, create unfair or disproportionate barriers to supports, or have adverse impacts on marginalised and otherwise vulnerable participants. Our analysis also considers the extent to which the *Spending Rules* comply with the principles of administrative law, natural justice and human rights. These *Spending Rules* will play a central role in determining what constitutes a permissible spend under a participant's plan, how spending interacts with the "reasonable and necessary" support framework, and how the National Disability Insurance Agency ('**NDIA**') manages market settings and payment integrity. If drafted without sufficient clarity or safeguards, the *Spending Rules* risk reducing plan flexibility, generating avoidable disputes, increasing review and appeal activity, and shifting unmet need onto legal assistance, state service systems or families.

1. Funding periods

1.1 Matters to be taken into account—flexible funding and stated supports

The Department of Health, Aged Care and Disability (‘**DHDA’**) notes that, when determining funding periods, the CEO will be required to consider any preferences the participant has expressed in relation to the duration of a funding period We recommend the *Spending Rules* more firmly require that the preference of the participant be given effect to the extent that it is reasonably practicable to do so and that less restrictive approaches, such as education, are first considered.

DHDA also provides that when determining funding periods, the CEO will be required to consider whether a participant is at risk of fraud or financial exploitation. NLA agrees that protecting participants from financial harm is important, however, restrictions on funding periods should be used only where clearly supported by evidence relating to the individual participant and where less restrictive options are not available. We also note that the National Disability Insurance Scheme (**‘NDIS’**) has other existing safeguards under section 32F(7)(a), section 32H(2), Chapter 3, Part 2, Division 3 and Chapter 4, Part 3A of the *National Disability Insurance Scheme Act 2013* ('**the Act**’). NLA recommends that the *Spending Rules* require the most appropriate, least restrictive option in individual circumstances.

DHDA also indicates that the CEO will consider whether a participant would be “unlikely” to comply with section 46 of the Act (acquittal of NDIS amounts) when setting funding periods. NLA does not support the *Spending Rules* requiring a predictive assessment about potential non-compliance, particularly where the parameters of what to consider are not defined. NLA recommends that the rule be limited to considering any previous non-compliance and the circumstances of that non-compliance.

1.2 Supports for which funding periods do not apply

While we maintain earlier concerns about aspects of the proposed stated supports list, we note the approach to funding periods. National Legal Aid supports the exclusion of assistive technology assets, home modifications, medium-term accommodation, private vehicle travel, residential aged care and in-kind supports from funding period requirements.

NLA supports these exclusions and recommends that DHDA also consider the following:

- Assistance animals – ancillary supports, such as veterinary costs, may be unexpected and not easily divided amongst funding periods. Participants will likely need to utilise funding responsively.
- STA – this is a capped cost support and often required to be accessed on an irregular basis such as when a carer is ill or is subject to STA availabilities. Participants often are not guaranteed their preferred dates because the demand for STA exceeds its availability. Accordingly, it is appropriate that STA be exempt from funding periods.

2. Restrictions on flexible funding

2.1 Structure of the rules

The structure of section 32F(6)–(7) of the Act requires that restrictions may be applied only where a prescribed circumstance exists. In their current form, the proposed *Spending Rules* on restrictions to flexible funding do not clearly distinguish which considerations relate to what stage of the decision-making process. NLA recommends clearer delineation in the *Spending Rules* to ensure decision makers properly turn their minds to each aspect of the decision required by the Act and to provide greater transparency and certainty for participants.

2.2 Matters to be taken into account – general

We make comment on and suggested changes to some of the matters to be considered below:

The CEO will be required to consider any requests made, or preferences expressed, by the participant in relation to the restriction or the proportion or proportions.

NLA recommends that the *Spending Rules* explicitly require decision makers to give effect to a participant's stated preferences where reasonably practicable and to establish that no less-restrictive approach could adequately manage any identified barriers or risks.

The CEO will be required to consider the basis on which the total funding amount for flexible funding that will be provided under the participant's plan is calculated under paragraph 32K(1)(a) of the Act.

NLA refers to submissions made regarding the budget methodology.

The CEO will be required to consider the type of NDIS supports that would be the subject of the restriction.

NLA recommends tightening the wording so the *Spending Rules* require consideration of which supports, if any, it would be appropriate to make subject to a restriction. We recommend the *Spending Rules* prescribe the relevant factors for determining whether a restriction is appropriate at all, and the specific form and scope it should take. The current wording provides little guidance to decision makers and does not assist participants to understand how such decisions will be made.

The CEO will be required to consider the ability or capacity of the person (or persons) managing the funding for supports under the participant's plan to make decisions or to appropriately manage finances.

The Act already sets out who may manage funding and circumstances when a participant or other person must not do so (Chapter 3, Part 2, Division 3). The *Spending Rules* should be careful to not introduce a second capacity assessment that could operate inconsistently, or undermine, those provisions. Concerns relating to capacity may be better addressed through the existing legislative mechanisms rather than by restricting flexible funding. NLA recommends the *Spending Rules* refer to existing legislative provisions and require the least restrictive measure available to address any identified risk.

The CEO will also be permitted to consider any other matters that the CEO considers relevant. NLA acknowledges the practical necessity of this provision, but its breadth underscores the need for safeguards and makes it all the more important that the *Spending Rules* expressly require decision makers to give effect to a participant's stated preferences where reasonably practicable, and to establish that no less-restrictive approach exists that could adequately manage any identified risks or barriers.

2.3 Additional matters to be taken into account – circumstances relating to physical, mental or financial harm

We make comment on and suggested changes to some of the additional matters to be considered below:

The CEO will be required to consider whether the participant is or will be transitioning, or has transitioned, back into the community from a hospital, mental health, rehabilitation or justice setting.

While some participants returning to the community may face heightened risks, decisions should be based on the individual's actual circumstances and risk factors, rather than assumptions applied to broad groups. For example, a participant who is transitioning back into the community may be returning to a stable living situation, with strong ties to the community, and robust support networks. NLA suggests that the consideration as currently framed is too broad and offers limited practical guidance to decision makers. We recommend that the *Spending Rules* set out specific, objective factors to consider in determining whether a participant would be likely to suffer physical, mental or financial harm if the flexible funding were not subject to the restriction. For example, history and frequency of safety incidents and how these were addressed, unstable or hazardous living situations, limited informal support network, severe communication barriers, clinical evidence from medical or allied health providers, etc. The decision-maker should be able to identify the specific harm they consider the participant to be at risk of if a restriction is not applied and should consider whether that risk could be mitigated through less restrictive measures.

The CEO will be required to consider, if they are aware, whether the participant has previously been the subject of exploitation or undue influence in the management of the participant's legal or financial affairs.

This is too broad. We propose the *Spending Rules* also require consideration of how any such past exploitation or undue influence was addressed, and whether the risk remains current. NLA cautions against past incidents weighing automatically in favour of restriction. The NDIS Act already contains several mechanisms to address risks to the participant, including the provisions in Chapter 2, Part 2, Division 3. The *Spending Rules* should work coherently with any existing safeguards and consider which measure is most appropriate and least restrictive in the circumstances to manage risk.

The CEO will be required to consider the plan management type for the participant's plan and whether that type may mitigate the risk to the participant.

NLA agrees this is an important consideration for the protection of participants.

2.4 Additional matters to be taken into account – circumstances relating to acquittal of NDIS amounts exist

We make comment on and suggested changes to some of the additional matters to be considered below:

The CEO will be required to consider the history of compliance with section 46 of the Act

This consideration is unnecessary – it is already required by the legislation to consider whether section 46 has not been complied with.

The CEO will be required to consider any advice, guidance or other assistance previously provided by the Agency

We also suggest the *Spending Rules* require decision makers to consider how any advice, guidance or assistance was provided, including whether it was appropriate and accessible for the participant, so that generic communications are not treated as sufficient in all cases.

The CEO will be required to consider the history of compliance, with requests or requirements made under the Act to give or produce information or documents

NLA considers this factor outside the scope of what is contemplated by the legislation. The prescribed circumstance concerns section 46, and not compliance with broader information or document production obligations. While DHDA could choose to prescribe a circumstance relating to information and document obligations under section 32F(7)(c), such a factor is not relevant to the operation of section 46. As a restriction cannot be imposed unless a prescribed circumstance exists, the exercise of discretion must be confined to matters connected to that circumstance.

The CEO will be required to consider (if the CEO is aware) whether the participant or another person responsible for managing the funding for supports under any of the participant's plans, has engaged in any conduct involving fraud or the mismanagement or misapplication of funds or other assets.

NLA would consider the current wording of this consideration is overly broad and beyond the intention of the legislation. We recommend that the wording is more closely aligned with the prescribed circumstance, such as - that the CEO will be required to consider (if the CEO is aware) whether any non-compliance with s46 under any of the participant's plans, has been found to involve fraud or the mismanagement or misapplication of funds or other assets.

Considerations in regard to when section 46 of the Act was not complied with (exploitation, undue influence, genuine error, amount of funding)

NLA agree these are important consideration. We further recommend the *Spending Rules* require the CEO to consider:

- where the non-compliance was by the participant: whether the risk could be managed through other mechanisms – such as adjusting the plan management type or increasing supports for decision-making – rather than restricting flexible funding.
- where the non-compliance was by another person managing the funding: whether that person still holds management responsibility and, if so, whether the appropriate response is to vary or remove their authority instead of restricting the participant's funding.
- recency and pattern of behaviour: whether the issue was isolated or historic, whether it has recurred, and the length of compliant behaviour since the incident.

2.5 Additional matters to be taken into account – prescribed circumstances exist in relation to participants

2.5.1 Where the participant has requested restrictions be placed in their flexible funding

NLA supports giving participants the ability to request a restriction as this supports participants having choice and control. The suggested considerations (reason for requesting restriction, whether less restrictive methods could be implemented instead, details of the NDIS provider that would provide the support, and the proportion of funding to be restricted) appear sound. We recommend consideration also be given to whether the request has been made under coercion or undue influence as a protection for participants. Further, the *Spending Rules* should explicitly require effect to be given to a participant's choices where reasonably practicable and safe to do so.

2.5.2 To ensure a participant accesses capacity building supports

NLA does not recommend proceeding to make this a prescribed circumstance for the reasons outlined in the submission. If DHDA proceeds, NLA recommends amending the prescribed circumstance to include " iii. that the participant will not be placed at risk of harm if funding under the participant's plan is subject to a restriction."

In relation to the factors for consideration suggested in the support rules:

The CEO will be required to consider whether the participant meets the disability requirements, meets the early intervention requirements, or both.

For the reasons outlined in the Submission, NLA does not support this being a consideration.

The CEO will be required to consider the participant's age and stage of life.

The *Spending Rules* note that certain ages or life stages may be points at which supports aimed at improving, maintaining, or slowing the decline of functional capacity may have particular benefit, for example, when a participant is new to the NDIS, has recently acquired an impairment, or has a degenerative condition.

Participants should be given a meaningful opportunity to explore and choose supports when they first enter the Scheme or acquire an impairment. NLA recommends that no restrictions be placed on a participant's funding at these early stages, as there is unlikely to be sufficient evidence to suggest the participant is not engaging in capacity-building.

Furthermore, NDIA delegates are not well placed to make therapeutic judgments or to assess which supports are clinically indicated. NLA therefore recommends that the rules not direct decision makers to rely on a participant's age or stage of life, but instead to consider relevant, individualised clinical information about the participant's support needs. The Act requires plans to be individualised, and the considerations guiding restrictions should similarly be based on the participant's actual circumstances, rather than generalisations associated with age, diagnosis or life stage.

The CEO will be required to consider the informal supports, including peer supports, that are available to the participant.

The *Spending Rules* suggest informal supports could impact whether a participant is likely to access capacity building support, but does not explain the circumstances DHDA intends this consideration to capture. While informal supports can play a role in participant decision-making, they are only one of many relevant influences. As currently drafted, this consideration provides limited practical guidance and may not assist decision makers to determine whether a restriction is appropriate. Accordingly, NLA does not recommend its inclusion in the rules.

Recommended additional circumstances

In addition to the proposed matters for consideration, NLA recommends that the CEO should also consider what supports the participant is currently accessing, the benefits those supports provide, and whether restricting the participant's flexible funding may itself create or exacerbate risks of harm. For example, a participant may rely on their flexible budget to purchase essential daily living supports. If a restriction is imposed without a corresponding increase to their reasonable and necessary budget, the participant may no longer be able to afford the support hours required to manage safely day-to-day.

2.5.3 Where the NDIA has arranged a provider

We refer to the comments made in our submission and further note that DHDA has not provided any considerations which would guide a decision maker on whether to impose a restriction if the prescribed circumstance is met.

3. Requirements

3.1 Matters to be taken into account – requirement that supports be provided by specified person or persons in specified class

The CEO will be required to consider whether the Commonwealth or the Agency has entered into any arrangements with an NDIS provider to provide the supports.

Please refer to the comments made in the submission.

The CEO will be required to consider the nature of the supports

We would further recommend consideration be given to matters such as:

- the participant's views and their provider of choice (if known)
- whether the participant is unlikely to access the supports in an appropriate way should a requirement not be imposed.
- whether less restrictive options, such as education or decision-making supports, would be more appropriate
- whether existing legislative frameworks already sufficiently manage risk (for example the Specialist Disability Accommodation (**SDA**) rules already set out criteria, requirements and circumstances that apply to registered providers wishing to provide SDA supports).

The CEO will be required to consider whether, to appropriately and safely provide the supports particular qualifications, specialisations or experience are required; or particular requirements must be complied with

We further recommend consideration be given to the matters outlined above (participant's views and provider of choice, the need for a requirement, less restrictive options, existing legislative frameworks).

The CEO will be required to must consider whether a quote or scope of works for the supports has been provided by a particular NDIS provider

NLA recommends against this consideration. There are various reasons why a participant may choose to proceed with a provider different to the one they initially received a quote for. They may have found a preferable option. NLA recommend instead that consideration is given to a participant's preferred provider and whether there are any risks to the participant in using their provider of choice.

The CEO will be required to consider whether the participant meets the disability requirements, meets the early intervention requirements, or both.

Please refer to the comments made in the Submission. The Act does not support a two-path system whereby those who meet the early intervention requirements may be subject to different standards than those who meet the disability requirements. NLA does not support this being a consideration in determining whether to place a requirement on a participant's funding.

The CEO will be required to consider whether the provision of the supports by a particular NDIS provider would reduce the risk of fraud or unethical or dishonest practices.

NLA recommends against including this consideration in its current form. If a consideration of this kind is to remain, the language should be reframed to ensure the focus is on participant risk, rather than giving the CEO broad discretion to limit which provider a participant may use. A more appropriate formulation would be: "*The CEO will be required to consider whether the participant is at risk of fraud or unethical or dishonest practices should a requirement not be placed on the participant's funding*."

Although the example accompanying the proposed matter for consideration suggests that any requirement would be narrowly directed to preventing a participant from using a specific provider of concern, the current drafting is significantly broader. As worded, it could be permit the CEO to impose far more restrictive requirements, such as requiring a specific provider a participant must use or narrowing their choice of providers beyond what is necessary to address the identified risk. This raises concerns regarding participant autonomy, choice and control.

There is already a robust legislative and regulatory framework for managing fraud, unethical conduct and provider non-compliance within the NDIS market. These mechanisms are the more appropriate and proportionate means for addressing concerns about provider behaviour.

The CEO will be required to consider whether, during the provision of the supports, there would, or would likely, be an interim or ongoing need to use a regulated restrictive practice in relation to the participant.

NLA recommends against including this consideration in its current form. The *Spending Rules* note that if there is a likely to be a need to use a regulated restrictive practice while providing a support, it may be appropriate for the CEO to require the support only be provided by a specific provider or class of providers.

NLA considers the existing regulatory framework relating to restrictive practices sufficiently provides the protections participants need whilst leaving them free to choose their provider.

If there are more broad safety concerns, it would be more appropriate to have a consideration such as: "*The CEO will be required to consider whether the participant or another person would be at risk of harm should a requirement not be placed on the participant's funding.*" Consideration should also be given to:

- the participant's views and their provider of choice (if known)
- whether less restrictive options, such as education or decision-making supports, would be more appropriate
- whether existing legislative frameworks already sufficiently manage risk

3.2 Matters to be taken into account – requirement that specified process be undertaken before supports acquired or provided

We make comment on and suggested changes to some of the matters to be considered below:

The CEO will be required to consider whether the participant needs specialist advice to choose the supports, such as architectural or design work for home modifications

NLA recommends against including this consideration in its current form. The term 'specialist advice' is ambiguous and risks being interpreted inconsistently. Requiring participants to obtain such advice may also be prohibitive in practice, given the challenges many participants may face in arranging, understanding or funding these services. This type of consideration is more appropriately addressed within the support needs assessment, where the assessor can identify any required specialist input and ensure the participant's needs assessment report identifies what is required so that the budget includes adequate funding.

The example given (home modifications) is proposed to be a stated support under the new framework, and we expect most supports requiring specialist advice are likely to fall into this category. A clearer and more targeted formulation would be to require the CEO to consider whether a requirement is needed to ensure stated supports are accessed in a particular sequence, or whether certain stated supports should be obtained before others. This approach ensures any requirement is only imposed where necessary and provides clarity for participants.

The CEO will be required to consider the nature of the supports.

We further recommend consideration be given to matters such as:

- the participant's views and their provider of choice (if known)
- whether the participant is unlikely to access the supports in an appropriate way should a requirement not be imposed.
- whether less restrictive options, such as education or decision-making supports, would be more appropriate
- whether existing legislative frameworks already sufficiently manage risk

The CEO will be required to consider whether supports of that type require certification due to the complexity or risks associated with the supports

We further recommend consideration be given to matters such as:

- the participant's views and their provider of choice (if known)
- whether the participant's provider of choice has the certification required
- whether existing legislative frameworks already sufficiently manage the complexity or risks

The CEO will be required to consider whether the participant's impairments require the supports to be provided in a certain manner.

NLA agrees this is an appropriate matter for consideration. However, we recommend that the wording be refined to read *"The CEO will be required to consider whether a requirement is needed to ensure supports are provided in a certain manner where the participant's impairments require the supports to be provided in* that *manner*." This maintains the intent of the proposed provision, but appropriately focuses decision making on whether a requirement is actually necessary in the circumstance to achieve the intended outcome, rather than unintentionally creating a presumption that the need for a particular mode of support delivery should result in the imposition of a requirement.

The CEO will be required to consider whether quotes or cost estimates for the supports need to be evaluated to ensure they represent value for money, having regard to both the benefits of the supports and the costs of alternative supports.

NLA does not support this being included as a consideration in its current form. The drafting is unclear as to what precisely the decision maker is being directed to consider - whether it is the need to impose a requirement that the participant obtain a quote or a requirement that a specified process (the evaluation of a quote) be undertaken before the supports are acquired or provided. The *Spending Rules* do not provide guidelines on what a decision maker should consider in determining which supports would require quotes. For example, is the decision maker being asked to consider the nature or price of the support, whether the support has been identified in the support needs assessment as requiring a quote, the participant's capacity to evaluate quotes for themselves, or whether the participant would be at risk of harm if left to choose their own provider?

In addition, the *Spending Rules* also do not explain how quotes are to be evaluated, by whom, or what procedural steps apply if a quote is deemed unsuitable (including rights of review or what supports will be offered to help participants obtain alternative quotes). This creates a real risk that participants could face a second hurdle to accessing supports already identified as necessary in the support needs assessment.

If the intention is that the NDIA will have a determinative role in accepting or rejecting particular quotes, NLA recommends the evaluative criterion not be framed as "value for money, having regard to the benefits of the supports and the costs of alternative supports." That formulation suggests a comparison between a participant's quoted support and *different* supports, rather than an assessment of whether the quote reflects a reasonable market price for the provision of the support recommended. Decision makers and participants must have clarity about the process for evaluating quotes. As drafted, this consideration offers limited guidance to decision makers and is likely to cause confusion to participants. It also has the effect of creating a decision within a decision which a participant cannot review.

3.3 Matters to be taken into account – requirement that specified conditions be satisfied before supports acquired or provided

The explanatory document explains that the matters to be taken into account will be:

1. the nature of the supports;
2. the participant's age and stage of life;
3. any anticipated changes to the participant's situation or circumstances.

3.4 Specified requirements

CEO may require that the support acquired or provided must be in accordance with the description of the support set out in the plan.

The *Spending Rules* do not identify any matters for consideration in determining when such a requirement should be imposed. NLA recommends that the *Spending Rules* specify only tightly defined circumstances in which a requirement of this kind would be appropriate, to ensure that participants' plans are not applied in an overly restrictive way. NLA further recommends that DHDA undertake additional consultation on any proposed matters for consideration, given the significant implications this requirement could have for participant flexibility and choice.

4. Some suggestions regarding language

NLA recommends a closer review of the *Spending Rules* to ensure language used does not misstate or misinterpret the law, such as in the following examples:

1. In the *Outline* section of the *Spending Rules* the summary of section 32F(7) refers to restrictions being imposed “where the participant is likely to experience physical, mental or financial harm (including risks of violence, abuse, neglect or exploitation).” The bracketed words do not appear in the statutory text of section 32F(7) of the *National Disability Insurance Scheme Act 2013* (‘the Act’). As interpretation of the Act is a judicial function, references to the Act in explanatory materials should reflect the exact legislative wording. In the same section it is noted restrictions may be imposed “where the participant has not complied with section 46 of the Act in relation to any of their previous plans.” However, we would encourage for accuracy that the language reflects the legislation: “section 46 (acquittal of NDIS amounts) has not been complied with in relation to any of the participant’s plans” noting that it may be a person other than the participant responsible for managing the plan.
2. In the *Authority* section of the *Spending Rules*, the summary of subsection 32F(6) of the Act notes the CEO is allowed, in certain circumstances, to restrict a participant’s flexible budget so that one or more specified portions of flexible funding can only be spent on specified NDIS supports. This explanation omits that the restriction will only apply during specified funding periods which is an important part of the section.
3. Further in the same section it is written that subsection 32G(3) of the Act provides that, “if a participant’s reasonable and necessary budget includes funding for stated supports, the reasonable and necessary budget must include funding periods for those stated supports and/or certain requirements in relation to the acquisition or provision of those supports imposed under subsection 32H(1).” In the Act, section 32G(3) does not refer to section 32H(1). The former deals with funding periods whilst the latter deal with requirements.
4. The point on section 32H(1) provides "that the reasonable and necessary budget may specify that funding (either a portion of the flexible budget that has been restricted, or funding for a stated support) will only be provided where certain requirements are met.” It is unclear whether the description of ‘the flexible budget that has been restricted’ refers to restrictions

under subsection 32F(7) of the Act. Regardless, section 32H(1) of the Act does not state that requirements may only apply to flexible funding if that funding has been restricted.

5. In the Outline section of the *Spending Rules* it states that “This instrument will provide for the following additional circumstances... to ensure a participant accesses capacity building supports to improve or maintain a participant’s functional capacity and reduce their future support needs.” This wording is inconsistent with the structure of section 32F(6)–(7) of the Act which requires that restrictions apply only where a prescribed circumstance exist. The *Spending Rules* on Page 13 under the heading ‘Prescribed Circumstances’ provides different wording which better aligns with the requirements of the Act.