

9 June 2023

NDIS Review Secretariat
Department of the Prime Minister and Cabinet

Delivered via online submission (at <https://www.ndisreview.gov.au/have-your-say>)

Dear Review Panel,

Re: *Urgent clarification needed to distinguish NDIS Access and funding for reasonable and necessary supports as two distinct decision-making processes.*

We are writing to share our concerns about an approach increasingly applied by the National Disability Insurance Agency ('the Agency') to only fund supports which relate to an 'impairment' which the Agency considers meets the access criteria under the National Disability Insurance Scheme Act 2013 (Cth) ('NDIS Act').

We are a network of nationally funded disability advocacy organisations and community legal centres across Australia. On 2 March 2023, representatives of our group met with review panellists Kirsten Deane and Kevin Cocks in relation to this issue and thank them for their time.

This letter shares our concerns with all members of the Review Panel. It confirms the breadth of this problem, which persists despite our repeated attempts – at both individual and systemic levels – to address it.¹

The problem and proposed solution

We have set out the problem, and our proposed solutions, in the ***attached*** briefing paper.

In summary, the Agency's construction of the legislation is leading them to conclude that supports can only be provided for an 'impairment' which has previously been assessed as meeting the NDIS Act access criteria.

This narrow interpretation, in our view is contrary to the NDIS Act, the NDIS Rules and decisions made at the Tribunal (see in particular: [McLaughlin and National Disability Insurance Agency](#), a decision made on 12 March 2021, and more recently [HRZI and National Disability](#)

¹ We have exhausted other avenues to address this problem, including multiple complaints to the Commonwealth Ombudsman, and the Agency at various levels.

[Agency](#), made on 24 March 2023,² and [Spires and National Disability Insurance Agency \[2023\] AATA 1230](#), made on 17 May 2023.³)

The impact of the Agency’s conduct on NDIS participants is re-traumatising, costly, inefficient, and fails to address the often-complex interaction between a person’s various diagnoses and the supports they need as a whole person and across their lifetime.

Our recommendations are; firstly, for the Agency to amend the Operational Guideline headed “[Fair supports for your disability needs](#)” published on 20 April 2021 (just over one month after the McLaughlin decision) to correctly reflect the NDIS Act, case law and intent of parliament; and secondly, for all Agency staff, including local area coordinators, to be appropriately re-trained and monitored to reflect appropriate changes to the Operation Guidelines.

Case studies

We will provide case studies as separate online submissions to the NDIS Review to demonstrate the wide-ranging impact of this issue on NDIS participants, their informal and formal supports, advocacy organisations, the Administrative Appeals Tribunal and Agency itself.

We hope this information will enable the Review Panel to thoroughly consider this matter and provide recommendations to address it. We would be pleased to answer any queries you may have.

Sincerely,



Queensland
Advocacy for
Inclusion



Villamanta
Disability Rights
Legal Service Inc



Rights Information
and Advocacy
Centre



Darwin Community
Legal Service

Representatives of the above organisations are available for further comment, as follows:

- Andrea de Smidt, andrea@gai.org.au, (07) 3844 4200
- Naomi Anderson, Naomi.anderson@villamanta.org.au, 0481 091 061
- Rachael Thompson, rachael@riac.org.au, 0491 208 130
- Jessica Brugmans, Jessica@dcls.org.au, (08) 8982 1111

² HRZI and National Disability Agency at [49] ‘... once the person has passed through the gateway for access to the NDIS, as a participant the person would be able to obtain supports for their disability, including the three impairments to which it is attributable. The Tribunal adopted a construction of this kind in *McLaughlin* and in *Goodliff* and *National Disability Insurance Agency*.’

³ Spires and National Disability Insurance Agency at [27]: ‘The Tribunal will not read into the statute a requirement that is not expressed and would conflict with the letter and the spirit of the scheme which is intended to support people with disability for the duration of their lifetime.’

Signatory Organisations

The following organisations from the network have endorsed the submission.

- Action for More Independence and Dignity in Accommodation Inc (AMIDA)
- Action on Disability within Ethnic Communities Inc. (ADEC)
- Brain Injury SA
- Disability Rights Advocacy Service Inc (DRAS)
- Leadership Plus
- Uniting Communities Law Centre
- VMIAC

