

6 March 2026

Deputy Secretary for Disability and Carers  
Department of Health, Disability and Ageing

**Delivered via email:** [NDISConsultations@health.gov.au](mailto:NDISConsultations@health.gov.au)

Dear Deputy Secretary

**NDIS rules: Public consultation on new framework planning**

Queensland Advocacy for Inclusion (QAI) is a Disabled Peoples Organisation.

QAI is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland.

QAI has a dedicated NDIS appeals team that provides advice and representation for people with disability at all stages of their Administrative Review Tribunal (**ART**) appeal. We have had very limited time to prepare our feedback as the NDIS appeals service is experiencing unprecedented demand. The current demand on our service is directly attributable to poor decision making within the National Disability Insurance Agency (**NDIA**).

It is with our frontline experience supporting hundreds of participants and their families that we write to you with our feedback in response to the consultation on the new NDIS Framework Planning Rules (**the Rules**).<sup>1</sup>

The Rules will govern how the NDIA will make decisions in developing a new framework plan for a participant. In this short submission, we comment on our most significant concerns that must be addressed by the Rules:

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<sup>1</sup> QAI also endorses the submission provided by the Queensland Independent Disability Advocacy Network (**QIDAN**).

1. timely provision of impairment notices, preferably at least 6 months, prior to support needs assessments
2. consideration of environmental and other factors
3. replacement support needs assessments
4. safeguards in plan building, including prior notice of the start date of the new framework plan (at least 4-6 weeks' notice)
5. exclusion of Redress Schemes from the compensation rules.

We note that the absence of detail which we expected to be provided regarding the 'applicable method' referred to in section 32K of the *National Disability Insurance Scheme Act 2013 (NDIS Act)* has limited our ability to comment on the method for building a 'reasonable and necessary budget'. Once a draft of the Rules is released, we consider that further consultation on those drafts will be required.

### **1. Timely provision of impairment notices to participants**

The Rules will prescribe steps to be taken by the NDIA to facilitate the transition of participants with old framework plans to new framework plans, the first step of which is to notify and prepare a participant for their support needs assessment.

In our experience, assessments undertaken that do not consider all impairments with which a participant lives leads to inadequate understanding by the NDIA of the participant's support needs, and inadequate funding. Likewise, inaccuracies within the NDIA's system concerning a participant's impairments that are not remedied via data integrity checks prior to the assessment of a participant's support needs are also a concern.

In our practice, we have identified significant issues with the recording of impairments by the NDIA and a lack of transparency over a long period as to the impairments recorded on the NDIA's system. Furthermore, the NDIA has since its inception used 'diagnosis' as its recording tool for 'access'. For example, their system may state Autism Spectrum Disorder and then makes assumptions as to what impairments arise from the diagnosis, whether correct or not for that participant. For diagnoses which do not fit in the system, the NDIA has used terms like 'physical other'. In appeals, it is not uncommon for us to work with participants who have rare or poorly understood diagnoses, which have extremely complex and differing impacts on the person's function. It is often clear to us on review of their

documentation that the NDIA has failed to understand the full scope of the complexity of the impairments and how they affect the person.

The lack of sufficient NDIS-funded supports can have dire consequences, including homelessness, a loss of trusted and skilled support workers, abuse and exploitation, carer burnout, isolation, physical and mental deterioration. A roll-out of support needs assessments without prior confirmation of a participant's impairments (via issue of impairment notice under section 32BA of the NDIS Act<sup>2</sup>) will risk similar outcomes for participants as they receive their new framework plans.

**Example:** A person who has experienced a traumatic brain injury is recognised by the NDIA as having a cognitive impairment. However, the injury has also resulted in significant impacts to the person's physical functioning. Without the existence of the person's physical impairment being acknowledged before a needs assessment, the person's need for physical supports, including important low-cost AT and physical therapy may be overlooked or excluded.

**QAI recommendation:** the Rules prescribe that participants **must receive their notice of impairments** (issued under section 32BA of the NDIS Act) at **least 6 months before receiving** the notice of a needs assessment required for a new framework plan. This sequencing is critical to ensure that participants have sufficient time to review the notice, given its significance in shaping the support needs assessment and the participant's plan.

## 2. Consideration of environmental and other factors

We refer to the recent Federal Court decision *Chief Executive Officer of the National Disability Insurance Agency v Eastham*<sup>3</sup> which comes at a crucial time with the transition to new framework planning for participants. In this decision, the Court endorsed a commonsense approach to the application of section 34(1)(aa) of the NDIS Act, finding that this criterion will be met and a support can be funded so long as it is required, *at least in*

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<sup>2</sup> As far as we are aware, these impairment notices are yet to be issued by the NDIA to existing participants. Participants must first have an opportunity to confirm their impairments listed within the NDIA's system and an opportunity to exercise their right to request a variation of those impairments, if required.

<sup>3</sup> [2026] FCA 147.

*part*, because of an impairment which meets the disability and/or early intervention requirements.

The intent of the Legislature and this common-sense approach which recognises that a participant's support needs may be impacted by environmental factors and/or other impairments, **must** be preserved in the transition to new framework planning.

We provide this feedback on the basis that it is common for participants to live with multiple impairments, not all of which may be accepted by the NDIA as meeting the disability and/or early intervention requirements. Further, it is often difficult for participants and their treating practitioners to discern which support need arises due to which impairment. Finally, environmental factors can significantly impact a person's support needs and concerningly, in our experience, these environmental factors can be overlooked resulting in non-sensical and risk-laden outcomes, as the below example demonstrates:

**Example – Environmental Factors – Risk of Change:** A participant lives in a small accessible home, perfect for their needs, provided through public housing. The home is close to informal supports, and they have lived there for many years. It is affordable for the participant who is on the disability support pension. They are happy and living their best life. The participant requires a high level of support and supervision for 24 hours per day.

A functional assessment determines that through the night and for a small number of daylight hours it may be possible for the participant to share 1 support worker with another participant. Whilst theoretically that may be the case, it doesn't reflect the reality for that participant who is currently living alone in the Department of Housing property. In practice, to share a support worker as proposed by the assessment, the participant would need to give up their home and move into a larger home, which could be Specialist Disability Accommodation (at an additional cost to the NDIS) or a Supported Independent Living property (tying the participant's home to their support provider), and live with a co-tenant. Such a transition for a person with a significant disability has multiple risks: tenancy break down, loss of informal support, potential loss of long standing and trusted support workers, and trauma and distress for the participant who is being required to give up their much-loved home.

The Rules must require decision-makers to account for the actual circumstances of participants, including risks associated with proposed changes, such as the loss of a highly-supportive environment. This is required to ensure that the resulting outcomes and budgets for participants are not non-sensical.<sup>4</sup>

**QAI recommendation:** Rules established under section 32L of the NDIS Act concerning the support needs assessment must require the assessor to apply the comprehensive support needs assessment tool (I-CAN), the **personal and environmental circumstances questionnaire** and targeted assessment processes for all participants. The rules **must require a decision-maker to address the risks associated with a changed support model, including a change from an existing supported environment** (this needs to also be accounted for in any 'budget method').<sup>5</sup>

### 3. Replacement support needs assessment

Section 32L of the NDIS Act provides that the NDIA **may** decide a replacement assessment should be undertaken; however, the NDIS Act does not provide that the NDIA may do so on request of a participant.

The Rules should clearly provide that a replacement assessment may be requested by a participant. Further, the Rules should list the considerations the NDIA **must**, and **may**, make in deciding whether or not a replacement assessment is required.

**QAI Recommendation:** Given the above-stated concerns regarding the potential impacts of a failure by the NDIA to assume a whole-of-person approach to the support needs assessment, any inconsistency regarding a participant's impairments (between the support needs assessment, notice of impairments, or professional reports) should be a mandatory consideration.

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<sup>4</sup> Note, this example, is drawn from multiple examples of inappropriate funding packages resulting in a NDIS Appeal.

<sup>5</sup> The same consideration must be applied to the Rules established under s 32K of the NDIS Act in relation to the budget method. However, in the absence of an available draft version of the budget method, QAI calls for further consultation on this key component before its implementation.

#### 4. Safeguards in plan building

The new framework planning is a significant change for people with disability dependent on NDIS-funded supports. The Rules must provide mechanisms through which NDIA delegates are empowered to act to ensure participants are not left without the supports they need to undertake activities of daily living.

This is particularly important if the new framework plan results in reduction of support funding for a person, without any appropriate transition. Currently in our practice we are seeing cuts of over 50% to the core funding to participants plans, without any transition plan. We have observed participants who have their core funding dropped from a 1:1 ratio to a 1:3 ratio of care without any consideration of their environmental factors and the risks associated with a sudden drop in support funding. Invariably, in many of the appeals we work on, the participants funding is restored or at the very least increased; but not before the loss of trained, long term, trusted support workers, burnout of informal supports, significantly reduced community access, poor health outcomes and in the worst cases, hospitalisation.

New plans should not start without a prior notice period and if the budget reduces by more than 10%, the reduction needs to be managed in a stepped down manner through the plan period.

Further, the Rules must ensure participants receive their new framework plan **at least 4-6 weeks** before it commences. This is particularly important if there will be a change to the support model or additional restrictions in the new framework plan, when compared to the old framework plan.

**Example:** Currently a new plan can 'drop' without notice to the participant. They may not be aware for up to 24 hours that the new plan has started. At its best this can create an invoicing and payment issue. At worst, if the new plan is substantially (or sometimes just a little) different from the old plan, and NDIS-funded supports are reduced, the participant and their team need to be able to plan appropriately for those changes.

**QAI Recommendation:** Provision to be made for appropriate transition where a reduction in funding from the prior plan is greater than 10%.

At least 4-6 week prior notice of the start date for a new framework plan should be given to participants so they can see their new plan and plan for its start date appropriately.

## **5. Exclusion of Redress Schemes from compensation rules**

We hold concerns about section 32K(4)(d) specifically which goes to how the NDIA will treat ‘compensation payments’ which a participant does not receive because he or she entered into an ‘agreement’ to give up his or her rights to compensation.

The Rules must exclude any agreements associated with any State or Commonwealth redress schemes whereby individuals give up their right to apply for compensation. These schemes include, for example, the National Redress Scheme for people who have experienced institutional child sexual abuse<sup>6</sup>. These schemes, by their nature, are designed for redress only and cannot, and do not, cover the cost of supports required as a consequence of any impairments arising out of abuse.

The issue of compensation reduction amounts is very complex and proper and careful consideration will be required in the drafting of the Rules made to address section 32K(4).

### **Transitional NDIS Supports Rules**

We consider that the current *NDIS (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (Transitional NDIS Support Rules) need significant review and if they are to work appropriately with flexible budgets, they need to be easy to understand and apply. We also consider an element of trust and common-sense needs to be returned to the Scheme. Currently, we are seeing time, effort and money wasted on small low value items which provide significant benefit to participants. Some observations we have made of supports being refused under the Transitional Support Rules include:

- Headphones for people with severe sensory impairments,
- Meta Ray Band AI glasses for participants with a vision impairment (~\$600),

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<sup>6</sup> Other schemes include the Forde Redress Scheme in Queensland.

- Refusal to allow use of core funding flexibly for more domestic assistance (cleaning and yard maintenance) to free up family members to provide personal care assistance.

People with disability know what supports they need, and how to utilise their budgets to best meet their individual needs. If the concept of the 'flexible budget' is to work – this concept must be returned.

### **Next steps**

Thank you for the opportunity to contribute to this consultation. We look forward to engaging further with the Department, including in relation to required changes to the NDIS Transitional Supports Rules.

If you would like to discuss any of the above recommendations, we would be pleased to speak with you.

Yours faithfully,



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