Law Council
OF AUSTRALIA

10 June 2026

Senator Dorinda Cox
Chair
Senate Legislation Committee on Community Affairs
Parliament House
CANBERRA ACT 2600

By email: Community.Affairs.Sen@aph.gov.au

Dear Chair

Inquiry into National Disability Insurance Scheme Amendment (Safeguarding the NDIS for Future Generations) Bill 2026

1. The Law Council of Australia thanks the Senate Legislation Committee on Community Affairs (the **Committee**) for the opportunity to comment on the *National Disability Insurance Scheme Amendment (Safeguarding the NDIS for Future Generations) Bill 2026* (the **Bill**).

2. This submission is informed by input from the Queensland Law Society and the Law Institute of Victoria. In the time available, the views in this submission regarding the Bill's proposed measures should be taken as preliminary only.

3. We also draw the Committee's attention to the concerns of the community legal assistance sector about the Bill, as expressed in a joint statement on 2 June 2026, which the Law Council has endorsed.[1]

Legislative process

4. At the outset, and as noted in other submissions,[2] the Law Council observes that the timeframe for consideration of such significant changes proposed by the Bill is unacceptably short.

5. The Law Council has become increasingly concerned by rushed legislative reform processes that have lacked adequate transparent public scrutiny. In our 2025 Call to Parties, we noted that good law-making processes underpin the rule of law and democracy in this country, and should not be taken for granted.[3] That is why, in July 2025, we published a *Best Practice Legislative Development Checklist* to assist with evaluation of law-making processes.[4]

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1 National Legal Aid, Community Legal Centres Australia, Law Council of Australia and NATSILS, *Joint statement: NDIS reforms risk real harm without proper consultation* (Joint statement, 2 June 2026).
2 See, eg, Submission 82.
3 Law Council of Australia, *2025 Federal Election: Call to Parties* (March 2025).
4 Law Council of Australia, *Best Practice Legislative Development Checklist* (July 2025).

Telephone +61 2 6246 3788 • *Email* mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612 • Level 1, MODE3, 24 Lonsdale Street, Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

6. The process for this Bill falls short of a number of points in the *Checklist*, including (most pertinently) adequate consultation with the disability community and other affected groups. As at March 2026, almost 775,000 Australians benefit from the National Disability Insurance Scheme (**NDIS**).[5] The proposed reforms are wide-ranging, with impacts for current and prospective NDIS participants. The truncated consultation process risks both undermining meaningful stakeholder engagement and early identification of any unintended consequences arising from the proposed measures.

7. The mere fact the Bill draws on the conclusions of the Independent Review into the NDIS[6] and related inquiries is insufficient, especially considering that Recommendation 25 of that Review was that there be consultation on amendments to relevant legislation to enact proposed reforms and, in particular, "deep public consultation and engagement … to understand and address potential concerns or unintended consequences" (Action 25.2).[7]

8. The rush to legislate through this Bill is also contrary to recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which emphasised the principles of co-design and co-production, including with respect to "each aspect of the design of services, systems, policies, laws and research."[8] Close consultation with, and active involvement with, people with disabilities in decision-making processes affecting them is also required under Article 4(3) of the Convention on the Rights of Persons with Disabilities (**CRPD**), among other obligations relevant to the Bill's proposed measures.

9. The Law Council acknowledges the importance of the NDIS's long-term financial sustainability and mitigation of fraud risks. We also appreciate that the Government has a keen interest in swift passage of the Bill given its instrumental role in connection with the 2026–27 Federal Budget.

10. However, these do not justify rushing the Bill through Parliament so rapidly that it cannot be properly scrutinised.

11. Given the complexities and human rights impacts associated with the reform proposals, the matters outlined below and concerns about the Bill in public commentary to date by many with lived experience, community and other key stakeholders, we strongly recommend further consultation be undertaken.

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5 NDIS, *The NDIS in each state* (Web Page, 2026).

6 Explanatory Memorandum, 2; Independent Review into the National Disability Insurance Scheme, *Working together to deliver the NDIS* (Final Report, December 2023).

7 Independent Review into the National Disability Insurance Scheme, *Final Report: Working together to deliver the NDIS*.

8 Royal Commission Final Report, *Executive Summary,* 16.

Proposed measures

12. In the limited time available, we have identified several issues for the Committee's attention, as set out below. Please refer to the list of recommendations at the end of the submission for a summary of the Law Council's concerns.

Underlying principles

13. The Law Council understands the Government's desire to address public concern around NDIS financial sustainability. Financial sustainability was one of three overarching terms of reference for the NDIS Review, and the NDIS Review is cited as the basis for many reforms in the Bill that seek to promote budget sustainability and mitigate fraud risks.

14. Schedule 1, Part 6 of the Bill would embed "financial sustainability" as an object under section 3 of the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**) and remove existing participant-centred principles enunciated under section 31 of the Act (for example, that plans are individualised, directed by the participant, and respect the autonomy of the participant).[9] The Explanatory Memorandum notes that financial sustainability "must be balanced against other objects of the Act and support equity and consistency in the determination of reasonable and necessary support for participants with similar needs".[10]

15. Notwithstanding the Government's explanation above, the Law Council is concerned about how these changes will operate in practice. For example:

    (a) Parts 1, 3 and 8 of Schedule 1 would remove an individual's environmental and contextual considerations as factors in decision making around access and plans. Ostensibly, this is to promote consistent decision making based solely on objective markers. However, this may only further entrench inequitable and inconsistent scheme access. Segregating disabilities into siloed categories, independent of a participant's broader diagnoses and circumstances, precludes a holistic understanding of how they, as an individual, navigate the world and what their needs require. The CRPD guides law makers to recognise that intersecting vulnerabilities compound barriers to engage in society and must be considered so that resources can be triaged to those who need them most.

    (b) The Bill would embed financial sustainability as an object and decision-making consideration in the NDIS Act without clear guidance about how this object interacts with other participant-focussed principles. For example, Schedule 3, Part 1 of the Bill provides the Minister with power to determine maximum funding for certain NDIS supports, with the principles and objectives of the Act and NDIS financial sustainability as guiding considerations. However, the Bill includes no guidance on the relative weight the Minister must apply to each consideration. The lack of such guidance may produce inconsistent decisions.

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9 *National Disability Insurance Scheme Act 2013* (Cth) ss 31(a)–(b).
10 Explanatory Memorandum, 47.

Permanence test

16. The Independent Review of the NDIS recommended "legislative changes to strengthen the operation of the permanence criteria".[11] The Explanatory Memorandum states that Schedule 1, Part 8 of the Bill seeks to "tight[en] the meaning of permanence to reduce access where an impairment can be treated".[12]

17. Part 8 would insert new subsections 24(5) and 25(1B), which would provide that an impairment or impairments are not permanent, or likely to be permanent, unless:

> a) *the person has undertaken all appropriate treatment for the impairment or impairments (if any); and*
>
> b) *any other treatment is unlikely to materially improve, reverse or alleviate the impact of the impairment or impairments; and*
>
> c) *the impairment or impairments are likely to persist for the person's lifetime.*

18. Proposed section 25A would define "appropriate treatment" as a treatment that is evidence-based; can reliably be expected to materially improve, reverse or alleviate the impact of the impairment or impairments; and is regularly undertaken in Australia. However, proposed subsection 25A(2) provides that (emphasis added):

> *Treatment may be appropriate treatment for a person's impairment or impairments* ***regardless of whether the person's individual circumstances restrict the person from accessing the treatment.***[13]
>
> *Note: a person's individual circumstances include the person's financial circumstances and geographical location.*

19. Legal practitioners have expressed concern that the new test for assessing permanence of impairments will impose barriers for NDIS participants, as it appears to assume different options are accessible and affordable.[14] Rather, applying objective standards to individual circumstances may mean that people with disability otherwise eligible for the NDIS, but who are unable to access "appropriate treatment" due to financial, geographical or other barriers, are denied access to supports they need. For example, an individual may live in a regional or remote area, and "appropriate" treatment may only be available in their capital city. They may not be able to afford to travel and/or take time off work to access such treatment. This could have a disproportionate impact on First Nations people, individuals from disadvantaged economic backgrounds, new residents who have limited understanding of services or how to access them, and others living in regional or remote areas. Practitioners are therefore concerned that the proposed amendment will have discriminatory effects in practice, which warrants detailed analysis of impacts of the proposed measure and potential mitigations prior to inclusion of this

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[11] Independent Review into the National Disability Insurance Scheme, *Working together to deliver the NDIS* (Final Report, December 2023) vol. 6, Recommendation 3.9.

[12] Explanatory Memorandum, 61.

[13] Emphasis added.

[14] See further Van Toorn and Dickinson, *The Government plans to tighten NDIS eligibility. Here's what's likely to change* (UNSW News, May 2026).

provision. The Law Council recommends that proposed 25A(2) be withdrawn, as it is likely to result in unfairness.

20. Practitioners further note that current or prospective participants may feel pressured to undertake surgical or pharmaceutical interventions despite the risks involved, or their personal circumstances, to demonstrate that they have undertaken all "appropriate" treatment. This may be contrary to principles of choice and control that are supposed to underpin the NDIS, and recognition under the CRPD that people with disability have rights to autonomy, as well as physical and mental integrity.[15]

21. In addition, it is unclear how an NDIS applicant/participant is to demonstrate that they have "undertaken all appropriate treatment". For example, it may be disproportionately burdensome (or impossible) to require an applicant to maintain records across many years to demonstrate a history of "appropriate" treatment.

22. We understand that the Bill is seeking to tighten the threshold for permanence following the decision taken by the Federal Court of Australia in *Davis*,[16] which was welcomed by those with lived experience of disability. This decision considered the meanings of the words "remedy" and "available". However, practitioners are concerned that the addition of new concepts in the Bill of "materially improve" and "appropriate treatment" will create confusion and lead to new appeals.

23. Finally, we note that reforms that tighten eligibility criteria for NDIS participants are likely to result in more care-giving burdens being shifted onto women in particular, who are already over-represented as carers for people with disability.[17] This may have additional flow-on effects, including on women's participation in the workforce and therefore national productivity.

Statutory timeframes

24. The Bill reduces NDIS claim submission timeframes for participants, and increases decision-making timeframes for the National Disability Insurance Agency (**NDIA**). This has the practical effect of placing additional burdens on NDIS participants, while easing burdens on the NDIA. The combined effect of these timing alterations is clearly inequitable and should be removed.

25. For example, Schedule 1, Part 5 would reduce NDIS claim submission timeframes from two years to 90 days.[18] This is a substantial, and arguably arbitrary, change. The Explanatory Memorandum states that claims older than 90 days are more difficult for the NDIA to verify, and that this will mitigate fraud risk.[19] This appears to be a legitimate goal, despite the lack of evidence of fraud which would justify this burden being placed upon claimants. However, it could be achieved by a more moderate reduction—for example, a statutory six-month timeframe may better

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15 CRPD articles 3, 12 and 14–17.
16 *National Disability Insurance Agency v Davis* [2022] FCA 1002.
17 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (Webpage, updated July 2024); NB also CRPD articles 6 and 16(2).
18 Bill, clause 89 (amending paragraph 45A(5)(a)).
19 Explanatory Memorandum, 107.

balance fraud mitigation with the provision of sufficient time for applicants/participants to submit necessary claims.[20]

26. Conversely, Schedule 3, Part 3 extends the timeframe for decision-making on access criteria requests under section 20(2)(a) of the NDIS Act from 21 to 90 days. This means the NDIA would have much longer to respond to a plan reassessment request (often called a change of circumstances application), which is the only mechanism available to participants to request an urgent change to their funded supports. This could place vulnerable participants at increased risk of harm before they are able to access those supports, without sufficient justification provided in the Explanatory Memorandum. Practitioners with expertise in this area emphasise this additional time relates to the threshold (i.e. a Yes/No decision) of whether to conduct a plan reassessment, not the reassessment itself. NDIA workflow or resourcing issues should be addressed separately to any legislative changes to timeframes under the Act.

Ministerial powers

27. The Bill generally increases reliance on Ministerial powers to achieve large scale and significant changes to NDIS budget and support spending by legislative instrument. This includes:

    - Schedule 1, Part 4—new section 34A would enable the Minister to make a determination by way of legislative instrument to reduce funding for groups of supports for the purposes of ensuring the financial sustainability of the NDIS;
    - Schedule 1, Part 5—new section 50A(3) would enable the Minister to make alterations, or a method to work out alterations, by legislative instrument when a participant's old framework plan is renewed by force of law; and
    - Schedule 3, Part 1, including—
        - new section 34B(2), which would enable the Minister by legislative instrument to determine an indexation factor for old framework plans; and
        - new section 45C, which would enable the Minister by legislative instrument to determine the maximum amount, or the method for determining the maximum amount, for the acquisition or provision of an NDIS support (or class of supports).

28. In particular, we are concerned about Schedule 1, Part 4 as it would reduce supports across entire support categories (rather than plan-by-plan assessment), and any such changes (since they would apply to a whole class of persons) would not be subject to merits review.[21] Affected participants would therefore have no effective mechanism to challenge support determinations. The determinations should also, at a minimum, be disallowable instruments. The lack of judicial or parliamentary scrutiny is particularly concerning given the breadth of Ministerial discretion afforded, and that NDIS participants are some of the most vulnerable members of the Australian community.

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[20] Note extended timeframes are provided under statutory frameworks for other groups such as veterans, to reflect their age and defence- or war-caused disabilities. For example, there is a 12-month timeframe for claims for certain benefits and allowances under sections 112 and 113 of the *Veterans' Entitlements Act 1986* (Cth).

[21] Explanatory Memorandum, 29.

29. There are serious risks of harm when supports are changed without proper and due consideration of individual needs and circumstances. Although the Minister will be required under proposed new subsection 34A(3) to consider the safety of participants when making a determination, we do not consider that to be a sufficient safeguard, noting the proposal does not mandate that regard be had to individual circumstances or the broader impacts on affected cohorts. Further, new subsection 33(2E) of the Act would allow the Minister, by legislative instrument, to specify a maximum amount of funding for supports, maximum intensity for provision of support, or a maximum ratio of worker to participant for provision of supports for an old framework plan. Practitioners have expressed concerns around the absence of individual recourse provisions in relation to these provisions, noting the negative impacts on families and participants who rely on certain streams of funding, such as community participation funding, to remain living at home.

30. We note further that proposed section 50A(3) does not include a requirement for prior consultation with participants or representatives for the group of participants before a framework plan is renewed.

31. Such a broad-brush approach to cuts affecting important services may also have implications for the enjoyment of a range of rights under the CRPD including accessibility (article 9), security of person (article 14), living independently (article 19), personal mobility (article 20), health (article 25), employment (article 27) and standard of living (article 28), and the principle of progressive realisation (article 4(2)). The Explanatory Memorandum provides the example that the Minister could make a determination that the funding component for assistance with Social, Economic and Community Participation will be reduced by 25 per cent.[22] While the legislation requires consideration of participant safety when setting the determination (and the changes come into effect when a participant's plan is reassessed or renewed), it would be also appropriate to require the measure to be necessary, justified and the least restrictive option available.

32. Overall, this new Ministerial power appears to constitute an arbitrary way to reduce funding for vulnerable persons with potentially significant implications for equitable access to essential supports and the rule of law. It is potentially also inconsistent with the philosophy of an insurance scheme designed to support individuals with special needs.

Changes to reasonable and necessary supports

33. The Bill would repeal and replace section 34(1)(aa) to provide that a reasonable and necessary support must be necessary to address needs of the participant arising directly from an impairment in relation to which the participant meets the disability requirements or early intervention requirements.

34. Legal practitioners are concerned that the change will reverse the Federal Court's decision in *Chief Executive Officer of the National Disability Insurance Agency v Eastham* [2026] FCA 147, which confirmed a whole-person approach to determining support provision.

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[22] Explanatory Memorandum, 32.

35. Practitioners are also concerned about the impact of these provisions, which fail to recognise the needs arising indirectly from a person's disability and will impose additional hardship on persons facing intersectional barriers (which, for women and girls with disabilities, is contrary to article 6(1) of the CRPD). Practitioners note the "arising directly" test may be difficult to satisfy for participants with multiple co-occurring conditions—for example, participants requiring clinical supports at the disability/health boundary, such as pressure wound management and PEG feeding. Critically, it is often not possible to distinguish which impairment is the cause of a particular support need. Under the proposed reform, where an impairment is seen to potentially arise from a health condition, the support may be disallowed. This will have significant impacts for affected individuals and for medical and health professionals where differentiation of the support requirement is difficult, or impossible.

36. This measure risks leading to confusion for all stakeholders, particularly where support requirements arise from interacting factors. In practice, practitioners report that participants often do not know what impairments have been recognised by the NDIA as qualifying impairments (under sections 24 or 25 of the NDIS Act). Disabilities are often listed as "primary" and "secondary" disabilities in participant profiles when there is no legislative basis for doing so (noting the legislation only requires consideration of a person's impairments). Requiring a direct connection between unknown or unstated impairments and support needs is accordingly impractical.

37. There is also the potential for increased impacts on court resources arising from appeals from decisions by the NDIA, and costs to the health system, both through supporting people in hospital who have not been able to access supports due to their inability to navigate the 'arising directly' test and barriers to accessing medical reports which seek to respond to this requirement. The Law Council recommends consultation about the change with stakeholders, including legal and advocacy organisations and medical and allied health professionals, to determine whether it should be amended or removed.

Redirection to other services and schemes

38. The Law Council is concerned that the Bill generally shifts burdens, responsibilities and obligations away from the NDIA and onto NDIS participants and their supporters. Practitioners are concerned about the practical effect these changes could have on people with disability.

39. For example, Schedule 1, Part 9 seeks to tighten eligibility for the NDIS where alternative supports are available through other services that can reasonably meet the needs of a person, or where the service system has a responsibility for meeting the needs of a person (for example, workers' compensation or motor vehicle accident compensation schemes).[23]

40. We understand the policy intent to redirect individuals to other schemes that may be more appropriate to address their needs. However, this shift risks a return to the pre-NDIS disability support system, which was regarded as "fragmented" and gave

[23] Explanatory Memorandum, 66.

people with disability "little choice and no certainty of access to appropriate supports".[24] It might also result in practical confusion about the suitability (and availability) of different schemes for different participants, and lead to increased administrative burden and costs for participants.

41. The serious risk of vulnerable Australians being unable to comprehend which support scheme is more appropriate for them might be abated by shifting the burden of application for assistance from claimants to the NDIA itself. The NDIA could enter into arrangements with the other providers to enable cross-claims upon those other providers on behalf of NDIS claimant clients.

42. If this amendment proceeds, we recommend that the NDIA be required to bolster cooperation and collaboration between schemes so that participants are directed expeditiously to the most suitable scheme. For example, this could be via a referral pathway to avoid participants re-applying afresh if their NDIS access request is denied, reducing waiting times for individuals who may require necessary and/or life-saving supports.

43. It follows that current participants who may lose eligibility to the NDIS due to these amendments should be prioritised. We also recommend that the Government create, after consultation with representative groups, accessible and easy to understand materials to explain and delineate clearly who should have access to various schemes. In addition, the redirecting of people with disability from one scheme to another must be accompanied by the appropriate redistribution and reallocation of resources across federal, state and territory schemes.

Retention of records

44. Schedule 2, Part 4 of the Bill would introduce a robust requirement on participants and providers to retain records and evidence relating to the payment of NDIS amounts. While the Law Council understands the need for stringent requirements on NDIS providers, the measures may also burden NDIS participants, particularly those without self-managed plans.

45. For example, new proposed section 45B(5) would require NDIS participants making payment claims to keep "a record" that relates to the claim or provision of an NDIS support for three years (or a shorter period prescribed by Rules). However, there is insufficient guidance about the specific records a participant must keep, and the level of detail required. For example, it is unclear whether "records" refers to invoices, or includes shift notes and rosters as "evidence" relating to the payment of the NDIS amount. In addition, three years may be unnecessarily long for, and administratively burdensome on, people with disability.

Penalties and powers

46. Schedule 2, Part 2 of the Bill expands NDIA monitoring and investigative powers to combat low- to mid-level fraud and non-compliance that does not warrant criminal investigation. This includes new civil penalty provisions, including parallel civil penalties to existing criminal offences, intended to deter providers and individuals from engaging in unlawful and non-compliant conduct. These penalties do not apply

[24] Productivity Commission, *Disability Care and Support* (Inquiry Report, 10 August 2011) 2.

to participants and their families or nominees. However, as the Bill recognises, any investigation will likely involve them. Further safeguards should be considered to ensure NDIS participants are not disadvantaged by the application of these provisions, given they are a uniquely vulnerable group.

47. For example, proposed sections 73ZSL and 73ZSM would require the Minister, via legislative instrument, to outline conditions that must be met before imposing penalties on participants and their families for non-compliance with requests made during an investigation. To better protect people with disability, it might be more appropriate to enshrine these processes in the primary legislation to ensure greater scrutiny.

48. Individuals who are non-compliant with certain provisions should also be given greater consideration where special circumstances justify it. For example, the penalties in this Bill could be aligned more closely with section 1237AAD of the *Social Security Act 1991* (Cth), which provides that all or part of a debt may be waived where the circumstances make debt recovery inequitable. Inequitable circumstances are likely to arise in the NDIS context. The NDIA should be empowered to protect individuals in these exceptional circumstances.

Automated decisions

49. Schedule 3 Part 2 of the Bill would insert a new section 59B entitled "Automation of administrative action". That section would authorise the NDIA to use computer programs to perform various administrative actions (including making decisions requiring evaluative judgments, the exercise of discretion, formation of a particular state of mind or anything else specified by the Minister in delegated legislation).[25]

50. Automated decision making without **clear, effective and immediate appeal/review rights** for those adversely affected is antithetical to the rule of law. In this respect:

    (a) Proposed subsection 59B(5) would "deem" an automated action to have been taken by the CEO. The Department of Health, Disability and Ageing and NDIA have jointly submitted to the Committee that, as a result of this provision, "merits and judicial review rights that would ordinarily apply to a decision under the Act will continue to apply irrespective of whether the decision is made by a human or by automated processes".[26]

    (b) However, we note significant concerns raised in other submissions that the use of automated decision-making permitted by the Bill departs from established administrative law principles of oversight and review, particularly given its use for decisions requiring evaluative judgments and discretion; limitations on review resulting from the CEO substitution power; and measures in the new framework with the effect of limiting access to external merits review.[27]

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[25] "Administrative action" is defined in proposed subsections 59B(3) and (4).

[26] Department of Health, Disability and Ageing and the National Disability Insurance Agency, Submission No 247 to the Senate Community Affairs Legislation Committee, *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* (2026) 17.

[27] See, eg, Human Technology Institute, Submission No 347 to the Senate Community Affairs Legislation Committee, *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* (29 May 2026).

(c) There is a substantive issue with judicial review of automated decisions raised by the decision of the Full Federal Court in *Pintarich.*[28] If such decisions are not actually "decisions" for the purposes of judicial review (a consequence that would flow from the majority judgment in *Pintarich*), a serious accountability gap exists that will need to be addressed by legislation.[29] The assertion in the Explanatory Memorandum that the availability of judicial review is unaffected by these amendments does nothing to resolve this question.[30] Until it is addressed by legislation of general application, it may need to be addressed by the insertion of appropriate additional review provisions in Bills such as the Bill that is the subject of the present inquiry. It is vitally important that new laws such as this do not undermine the established mechanisms of judicial review of government decisions.

(d) Legislative power to automate decisions should reflect the level of discretion or judgement required, and prohibit automation where the discretion is largely unfettered and judgement involves consideration of the participant's individual circumstances. Proposed subsection 59B(4) appears to be inconsistent with this approach.

51. In the timeframes available we have not had sufficient opportunity to consider these measures in detail or seek expert input, which again reinforces our strong recommendation at the outset of this submission about the need for adequate scrutiny and consultation processes.

52. Schedule 3, Part 2 of the Bill provides express authority to underpin NDIS administration and evaluative automation to authorise automated planning assessment tools like i-CAN. In addition to concerns previously raised by the legal profession over automated tools in the new framework planning process,[31] **it is important that the use of automated tools be carefully considered in light of the findings of the Royal Commission into the Robodebt Scheme**.[32]

53. The Bill does, at least, follow the Royal Commission's recommendation that any use of automation is expressly authorised in primary legislation. However, in the limited time available, practitioners have identified the following further concerns about whether automation tools will be employed in a safe, consistent, transparent and accountable way. It is important to address these concerns given that NDIS participants face significant health and wellbeing risks from misaligned access and plan determinations. Those concerns include:

(a) **Consequences of non-compliance**: Proposed sections 59E(3) and 59E(5) provide that failures to take "all reasonable steps" or to notify a person of the

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[28] *Pintarich v Federal Commissioner of Taxation* [2018] FCAFC 79.

[29] See VLRC, *AI in Victoria's Courts and Tribunals* (Report, October 2025), [5.203]-[5.209]; further Yee-Fui Ng and Maria O'Sullivan, 'Deliberation and Automation – When Is a Decision a "Decision"?' (2019) 26 *Australian Journal of Administrative Law* 21, 22; Kimberlee Weatherall et al, *Automated Decision-Making in New South Wales: Mapping and Analysis of the Use of ADM Systems by State and Local Governments* (Research Report, ARC Centre of Excellence on Automated Decision-Making and Society (ADM+S), 8 March 2024) 111.

[31] See Law Council of Australia, *NDIS rules: public consultation on new framework* (Submission, March 2026) 8.

[32] Royal Commission into the Robodebt Scheme, *Final Report*, July 2023, Vol 1.

automation of an administrative action do not affect the validity of the action taken by the operation of a computer program under an arrangement under subsection 59B(1). This provision would insulate non-compliant automated decisions from challenge on grounds of procedural invalidity, contrary to the stated objective of ensuring accountability and preserving review rights. The Committee may wish to consider the desirability of a sunset clause on these sections, or a qualification that ensures these sections do not apply in circumstances where non-compliance is systemic or reflects a fundamental defect in the automated program.

(b) **Expanding the scope of automated decisions**: Proposed section 59B(4) permits automation of discretionary, evaluative, and state-of-mind decisions, referred to as "evaluative administrative action". Proposed section 59D seeks to safeguard this 'administrative action' with a requirement that any standard operating procedure instrument must be "sufficiently objective". We suggest:

(i) section 59D should be amended to require that the instrument be simply "objective", or that it "involves factual determinations or arithmetic calculations suitable to be performed by a computer";

(ii) subsection 59D(4) should require that any computer program must reach an evaluative determination "only as outlined" in the standard operating procedure, not just operate "consistently" with it;

(iii) mandated human oversight for decisions materially affecting participants' lives would provide a greater safeguard, via the compulsory inclusion of business rules that govern human intercession or review; and

(iv) the Committee may also wish to consider a requirement for mandatory consultation with Disability Representative Organisations and Provider Representative Organisations when the NDIA CEO exercises these powers.

(c) **Transparency and scrutiny**: Parliament will be unable to disallow the standard operating procedure instruments in proposed section 59D. These instruments should be disallowable, or otherwise subject to mandatory independent review by an entity such as the Commonwealth Ombudsman. In addition, proposed section 59E should be amended to require that the annual report include data on the total numbers of automated actions, participant complaints, the median length of time taken to make a substituted decision following a complaint, and any external audit findings.

(d) **Awareness of review rights**: Proposed section 59E(4) only requires disclosure of automation where a notice is already required, but falls short of imposing a standalone notification obligation. A standalone, plain-language notification obligation and an express right to request human reconsideration of any automated reviewable decision would be more transparent and preserve the review rights of participants who may have limited digital literacy and greater access needs.

(e) **Independent Oversight**: Recommendation 17.2 of the Royal Commission into the Robodebt Scheme was to establish a body, or expand an existing body, with the power to monitor and audit automated decision-making processes.[33] As the Government has not implemented this recommendation, the Committee may wish to consider whether these reforms should coincide with legislation enabling a strengthened framework for the independent oversight, evaluation and case sampling of assisted and automated decision making. In particular, Part 2 does not prescribe a process by which parties have the right to make designated complaints or referrals regarding patterns of systemic inaccuracy in automated decision-making. The Commonwealth Ombudsman, the President of the Administrative Review Tribunal, as well as Representative Organisations, should be empowered to notify the NDIA where a systemic error is found in automation. The issue is also one appropriate for consideration by the Administrative Review Council.

54. Overall, the proposed automation of the relevant support-related decisions compounds the accountability and human rights risks that are already presented by the changes to discretions described above.

Suspension power and removal of review rights

55. Proposed section 40A provides that the NDIA CEO may suspend a participant's plan if the participant is not contactable, subject to certain conditions. This provision would disproportionately affect cohorts of people (such as those with psychosocial impairments or persons to whom English may be a second language) who may not have access to or be able to respond (due to their circumstances) to telephone calls or emails. This is extraordinarily punitive; any vulnerable participant who has their plan revoked unnecessarily would be forced to have the decision reviewed in order to have access restored. Consideration should be given to requiring the NDIA to make reasonable enquiries with the participant's family or noted supports to ascertain whether the participant requires referral to support or other services to enable a response to the information/report requests.

56. In addition, the Bill removes NDIS participants' rights of review in a number of ways. For example, a decision made under subsection 48(4) would no longer be a reviewable decision for the purposes of section 99 of the Act. This would eliminate a statutory "safety net" where the CEO fails to make a statutory reassessment decision within the timeframe provided for under the Act.

57. Without time to review the Bill further, it is critical that review and appeal rights, particularly to the Administrative Review Tribunal, should not be unduly limited—either directly or by the changing discretion afforded to NDIA delegates as decision-makers following the use of automated tools.

New framework planning

58. We are unable to comment on Schedule 4 to the Bill, which relates to new framework planning, in the time available. We refer the Committee to our relevant submission to the Department of Health, Disability and Ageing of March 2026.[34]

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[33] Royal Commission into the Robodebt Scheme, *Final Report*, July 2023, Ch 17.
[34] Law Council of Australia, *NDIS rules: public consultation on new framework* (Submission, March 2026).

Transitional provisions

59. Schedule 5, Item 1 confers a broad power on the Minister to modify by legislative instrument the operation of any amendments or repeals contained in the Bill for a period of 12 months.

60. We are concerned that the circumstances in which this power may be exercised are not appropriately constrained in the primary legislation. From a rule of law perspective, it is undesirable to include such a provision (with the character of a Henry VIII clause) which vests significant legislation-amending power in the Executive without the oversight of the Parliament.

61. It would be particularly undesirable if this power were used to amend the Act in response to Court decisions as they are handed down, which may contribute to legal uncertainty vis-à-vis the administration of the scheme.

62. The caveat that the rules are to prescribe matters of a transitional nature is not a sufficient safeguard.

Commencement

63. The commencement of the new provisions should be aligned with the availability of Thriving Kids foundational supports to ensure that access is not lost before the alternative system has been established.[35]

Broader justice implications

Access to justice and impacts on the justice system

64. The scale of the proposed reforms is significant and is designed to rein in the costs of the NDIS. It follows that a number of Australians will in all likelihood receive a less favourable outcome. This in turn will mean an increase in the number of people seeking legal advice about their situation.

65. The Law Council is concerned about the potential impact of these reforms on demand for the services of legal assistance sector organisations, including legal aid commissions and community legal centres. These services are already struggling to meet immense demand with limited resources. The Federal Budget provision of $14.7 million over two years from 2026–27 to extend the existing supplementary funding for the NDIS Appeals program is welcome and will help to provide access to critical legal support for people with disability. However, this funding is likely to be inadequate to meet the demand that would result if this Bill is passed.

66. The Law Council also urges the Government to implement a justice impact assessment mechanism to better capture and address the downstream effects of new laws and policies on the justice system.[36] As discussed throughout this submission, the current Bill is likely to have a significant impact on the justice system—including by giving rise to further merits review applications to the

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[35] DHDA, *Thriving Kids* (Website, updated 2026).

[36] Law Council of Australia, The Justice Project (Final Report, August 2018) recommendation 7.3; Law Council of Australia, Justice Impact Assessments (Policy Statement, 12 September 2013).

Administrative Review Tribunal[37] and putting additional pressure on the courts. A justice impact assessment mechanism would oblige the Government to identify such impacts in advance and help it to respond appropriately.

67. The Law Council again emphasises the need for adequate time to scrutinise the Bill and its proposed measures, including to properly assess these broader implications.

Recommendations

The Law Council recommends that:

- **the Bill be subject to further, adequate consultation, in line with the requirements of the CRPD, and also recommendations of the NDIS Review and the Disability Royal Commission;**
- **the Bill be amended to clarify that elevating "financial sustainability" to an object of the NDIS Act does not displace personal and contextual considerations in decision making around access and plans;**
- **the definition of "appropriate treatment" in proposed section 25A be reconsidered as it may discriminate against applicants who may not be able to access the relevant treatment due to financial, geographical or other barriers;**
- **the changes to statutory deadlines for participants and decision makers be reconsidered since they are unfair to participants;**
- **Ministerial powers under the Bill (particularly under Schedule 1 Part 4 and Schedule 5) to make determinations of broad application and even change the effect of the Act itself should be removed from the Bill, or else adequate provision should be made for consultation/review (such as making the relevant instruments disallowable by Parliament);**
- **the definition of "reasonable and necessary supports" in proposed section 34 be reconsidered, to ensure consistency with a whole-person approach to determining support provision consistent with relevant caselaw;**
- **Schedule 1 Part 9, which tightens eligibility, be amended to require more of the NDIA (eg in terms of referral pathways and guidance materials) to avoid a risk of a return to the pre-NDIS disability support system;**
- **the requirements in Schedule 2 Part 4 be reconsidered as they place too high a record-keeping burden on participants;**
- **penalties in Schedule 2 Part 2 take better account of individuals' circumstances (for example, by aligning them more closely with those in section 1237AAD of the *Social Security Act 1991* (Cth));**

[37] Access decisions result in more appeals than other types – see Law and Justice Foundation of NSW, *I would have given up without it: An evaluation of the NDIS appeals program legal services* (Report, June 2025).

- **clear and immediate appeal rights be inserted into the provisions of the Bill relating to automated decision making in line with the recommendations of the Royal Commission into the Robodebt Scheme, to uphold administrative law principles of oversight and review;**
- **bodies such as the Commonwealth Ombudsman and Administrative Review Tribunal should be empowered to notify the NDIA of potential systemic issues with automated decisions, an issue which is also appropriate for consideration by the Administrative Review Council;**
- **care be taken to make potentially significant decisions, such as under proposed section 48(4), reviewable by the Administrative Review Tribunal;**
- **commencement of the new provisions be aligned with that of the *Thriving Kids* foundational supports;**
- **further provision be made for legal assistance funding to address the increased unmet need that is likely to result from the amendments in this Bill, and**
- **the impact on the Administrative Review Tribunal and the Federal courts of the changes in this Bill be properly considered.**

Contact

68. Please contact Dr Adam Fletcher [redacted] if you have any questions about any aspect of this submission.

Yours sincerely



Tania Wolff
President