Law Council
OF AUSTRALIA

Consultation on National Disability Insurance Scheme New Framework Planning and Supports

Department of Health, Disability and Ageing

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Introduction

1. The Law Council of Australia thanks the Department of Health, Disability and Ageing (**DHDA**) for the opportunity to provide a submission to its consultation on changes relating to new framework planning and support under the National Disability Insurance Scheme (**NDIS**).

2. The public consultation on new framework planning relates to the following rules:

   - NDIS Support Needs Assessment Rules – intended to "deliver a more consistent, equitable and transparent approach to determining participant budgets… using a structured, reliable and independently validated methodology delivered by trained and accredited assessors";[1]
   - NDIS Budget Method Rules – intended to provide transparency for how the National Disability Insurance Agency (**NDIA**) has determined a participant's total amount of funding;
   - Plan Variation and Reassessment Rules – which set out criteria for deciding whether to vary a plan under the existing permitted variations in the NDIS Act, and additional circumstances in which a participant's budget can be varied; and
   - NDIS Supports Rules for old and new framework planning.

3. A key objective of new framework planning is to move towards allocating budgets that are "person centred" rather than deciding funding based on the costs of individual supports. This approach is intended to improve the NDIS for participants by providing greater flexibility and enabling participants to exercise more choice and control over how they use their funding to meet their goals and needs.[2]

4. The public consultation also seeks feedback on updates to the NDIS Supports Transitional Rules. The proposed changes would:

   - reduce the number of support categories by introducing broader support categories;
   - align support categories with new framework planning needs assessment and budget setting;
   - use purpose-based descriptions rather than provider registration language
   - remove replacement supports; and
   - make minor changes to what is not a NDIS support.[3]

5. At the outset, the Law Council observes that a primary consideration for all NDIS consultations is the need for greater transparency regarding support needs assessments, targeted assessments, impairment notices, budget calculations, review

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1 Department of Health, Disability and Ageing, "New Framework Planning Rules Consultation Paper" (August 2026), 5 <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/consultation-paper---new-framework-planning_final-3.pdf>.

2 Ibid.

3 Department of Health, Disability and Ageing, "NDIS Supports Transitional Rules Consultation Paper" (August 2026), 6 <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/consultation-paper---ndis-supports_final.pdf>.

rights and participant safeguards. Participants cannot effectively exercise review rights or understand decision-making processes unless the assessment methodology, evidentiary requirements and budget framework are publicly available.[4] Assessment methodologies and budget calculation frameworks should ensure the framework remains transparent, accountable, accessible and procedurally fair.

6. The proposed new framework appears to assume participants will receive an accurate and sufficient support budget from the outset. However, in legal practitioners' experience, many participants initially enter the NDIS with limited evidence of their support assessment needs, limited capacity to engage with formal assessment processes, and limited or no informal supports to assist them with the supports needs assessment processes. These should also be factored in when considering improvements to this process.

7. The new framework should preserve flexibility and provide clarity, participant choice and timely pathways for addressing underfunded plans, urgent support needs and complex disability-related circumstances. In general, people with disability should be trusted to know what supports they need and how to utilise their budgets to best meet those needs.

8. DHDA has issued two separate Consultation Papers, one on the new Framework Planning Rules and the other on NDIS Supports Transitional Rules. This submission responds to each Paper.

[4] The Law Council notes there is an entrenched minimum provision of judicial review of decisions made by officers of the Commonwealth in the Constitution – *S157/2002 v Commonwealth* (2003) 211 CLR 476.

Responses – New Framework Planning Rules

Question 1 – What parts of the support needs assessment process need more explanation?

9. The Law Council considers that further explanation is required in relation to the following aspects of the support needs assessment process.

The "core needs" assessment tool

10. The proposed rules will identify information to be included in a support needs assessment report, including the "core needs" assessment. Legal practitioners have identified the need for transparency in respect of this tool.

11. Under the new framework planning rules, the core needs assessment will be undertaken with the assistance of a modified version of the Instrument for the Classification and Assessment of Support Needs (**I-CAN**) version 6. I-CAN has been developed in consultation with the disability community and is a tested form of needs assessment tool. The Law Council encourages DHDA to publish details of the technical specifications of this assessment tool and explain, in lay terms, how it is used to inform the assessor's decision.

12. It will also be important to clarify the extent to which an assessor (a human being) can exercise discretion when using the tool and override any decision made by it, including to manage any legal (and potential constitutional) risks of its use.[5] Without such transparency, it will not be possible for meaningful analysis of whether such technology is appropriately designed, legally compliant and operating in accordance with good administrative practice.

13. The assessment tool will collect a wide range of sensitive health information from the parties and therefore has significant privacy implications. These include the collection of personal information from affected individuals, the adequacy and validity of consent mechanisms, the collection and use of information from third parties, and the integrity, accuracy, currency and reliability of data used in automated processes. Further clarification will be important on how this data will be used, including how it will improve the assessment tool (for example, by aiding the speed or accuracy of assessments or helping to identify inconsistencies or changes across a person's condition over time).

14. These transparency requirements should be supported by appropriate accountability mechanisms. This should include a formal assessment of the data used by the assessment tool, as is required by the transparency obligations under Australian Privacy Principle (**APP**) 1.7. This APP relates to personal information and rights of

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[5] Professor Will Bateman, Submission no 536 to Joint Select Committee on Artificial Intelligence, *Inquiry of the Joint Select Committee on Artificial Intelligence* (28 September 2026), [22], [33], [39], [41] <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Artificial_Intelligence/ArtificialIntelligence/Submissions>.

review that provide for additional scrutiny and challenge in light of the use of automated decision-making.[6]

15. These measures are particularly critical given the inherent vulnerability of applicants for NDIS supports, some of whom may experience barriers to participation in administrative processes. In this respect, legal practitioners have raised concerns about the use of automated tools in comparable contexts. For example, in relation to aged care assessments, we understand that the Integrated Assessment Tool is currently the subject of a Commonwealth Ombudsman investigation, including into whether its design permits human reviewers to exercise professional judgement in assessments and whether review pathways are accessible and effective.[7]

Support needs assessments and impairment notices

16. It is important to explain to potential NDIS participants how support needs assessments interact with impairment notices. This issue is significant because support assessments must address needs arising directly from an impairment for which the participant meets the disability or early intervention requirements. The content of an impairment assessment may directly affect the supports that can be identified through a support needs assessment and ultimately funded in a participant's plan.

17. In particular, further explanation and clear guidance would be beneficial in relation to:

    - how support needs will be determined as arising directly from an impairment under paragraph 34(1)(aa) of the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**);
    - how assessors and delegates will distinguish disability-related needs from other needs;
    - the process to be followed if a participant disagrees with their impairment notice or wishes to seek a variation while the support needs assessment process is underway;
    - how the support needs assessment process will operate where a participant seeks to vary their impairment notice under subsection 32BA(6) of the NDIS Act;[8]
    - whether a support needs assessment will proceed while a variation request is pending, whether the assessment can be amended if an additional impairment is subsequently recognised, and what review rights will be available if a

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6 APP 1.7 was added to Schedule 1 of the *Privacy Act 1988 (Cth)* by the *Privacy and Other Legislation Amendment Act 2024 (Cth)* (the **Amendment Act**). The Amendment Act, and therefore the operation of APP 1.7, will commence on 10 December 2026 – see section 2 of the Amendment Act.

7 Australian Human Rights Commission, "Commissioners Welcome Ombudsman Probe of Automated Aged Care Assessments" (Media release, 22 April 2026) <https://humanrights.gov.au/about-us/media-centre/media-releases/older-peoples-rights/commissioners-welcome-ombudsman-probe-of-automated-aged-care-assessments>.

8 In this respect, legal practitioners have observed there is currently no approved form, published process, or operational guidance explaining how participants can request a variation of an impairment notice, the evidence that should be provided, or the criteria that will be applied in determining such requests. This is a matter that requires rectification. There is also no prescribed statutory timeframe within which requests to vary an impairment notice must be decided, creating uncertainty for participants whose support needs assessment and subsequent budget may depend on the impairments recorded in their impairment notice.

participant disagrees with either the impairment notice or the way in which it has been applied during the support needs assessment process; and
- the evidence required to support a variation request and the expected timeframe for a decision, so that the participant can meaningfully participate in the assessment and planning process.

Support needs assessments for applicants in specific circumstances

18. DHDA should clarify how the support needs assessment process will operate for participants:

    - in custody;
    - experiencing homelessness or unstable accommodation;
    - with psychosocial disability or trauma-related impairments;
    - with complex support needs affecting their ability to participate;
    - from First Nations or culturally and linguistically diverse communities;
    - living in rural and remote areas; and
    - requiring interpreters, Augmentative and Alternative Communication[9] or other reasonable adjustments.

Review rights

19. Another issue that requires further explanation is whether and how participants can challenge assessment outcomes that do not accurately reflect their actual level of functioning. This requires clear information regarding:

    - what happens if support needs assessment scores differ from clinical evidence and;
    - whether participants can seek review of the outcome of a support needs assessment or targeted assessment.
        - For example, participants with cognitive, intellectual, neurological or psychosocial disabilities may have limited insight into their own functioning, communication difficulties, trauma-related presentations, or other factors that may affect how they present during an assessment.
        - In these circumstances, clinical reports, Functional Capacity Assessments, behaviour support reports, evidence from treating practitioners, and information from family members, carers and support providers may provide a more accurate picture of the participant's day-to-day functioning and support needs than assessment scores obtained during a single assessment.
    - how inconsistencies between assessment scores and other evidence will be resolved, whether participants can submit additional evidence to challenge the validity or reliability of assessment findings, and whether review rights extend to the assessment findings themselves or only the resulting budget outcome.

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[9] Augmentative and Alternative Communication occurs when a person uses something other than speech to communicate. Sign language is one example. See Communication Hub, "Augmentative and Alternative Communication" (Web page, 2023) <https://www.communicationhub.com.au/CommunicationHub/Communication_Hub/Resources/Fact_Sheets/Augmentative-and-Alternative-Communication.aspx>.

Targeted assessments

20. Under the proposed Rules, targeted assessments "will be used where a more detailed assessment of a participant's needs is required" based on reports from a medical or allied health professional.[10]

21. Additional explanation would help clarify how targeted assessments will operate in practice, including:

    - what assessment tools will be used;
    - whether assessment tools will be publicly available;
    - whether participants can request a targeted assessment (and if so whether such a request will be considered);
    - what evidence is required before a targeted assessment will be conducted or what factors will be taken into account when considering whether a targeted assessment will be conducted;
    - whether a refusal to conduct a targeted assessment can be reviewed; and
    - whether alternative evidence can be provided where a targeted assessment is not undertaken.

22. It would be useful if guidance is published regarding the assessor's consideration of medical and other professional reports. This will be particularly important in cases where an assessor chooses to depart from an opinion contained within a report. Clear guidance would promote transparency, consistency and fairness in decision-making, particularly in cases of conflicting evidence.

23. Legal practitioners suggest participants should also be permitted to provide relevant medical, allied health or other professional reports for the purposes of a targeted assessment, regardless of whether such reports have been specifically requested by an assessor. Participants may have existing evidence that assists an assessor's understanding of the nature, extent and impact of their disability and support needs. Providing the information to the assessor would support more informed and accurate assessments.

Training and accreditation of assessors

24. A NDIA assessor is defined in the Consultation Paper as a "trained and accredited NDIA employee who undertakes a support needs assessment or replacement assessment for the purposes of section 32L of the [NDIA Act]".[11] However, the Consultation Paper contains little detail about what training and accreditation will be required for a person to be engaged as an assessor. The Rules should prescribe minimum professional qualifications and competency requirements for assessors, for example tertiary qualifications in the relevant field.

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[10] Department of Health, Disability and Ageing, "NDIS Supports Transitional Rules Consultation Paper" (August 2026), 6 <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/consultation-paper---ndis-supports_final.pdf>.

[11] Ibid.

Role of support persons during an assessment

25. The Consultation Paper notes that "participants can have a support person with them during the assessment, such as a family member, nominee or advocate".[12] Clear guidance should be developed and published regarding the types of assistance that support persons may provide during an assessment, noting that the nature and extent of any assistance may vary significantly depending on a participant's circumstances and support needs. Such guidance would promote consistency in the conduct of assessments and help ensure that participants, support persons and assessors have a shared understanding of the role that support persons can play in facilitating effective participation and achieving fair outcomes in the assessment process.

Use of evidence

26. There is limited detail in the Consultation Paper regarding the evidence that may be provided and considered in preparing a support needs assessment report. It would be helpful for participants to understand the types of evidence they may be permitted or expected to provide in support of their assessment. It would also be helpful to understand whether, and in what circumstances, the NDIA may independently obtain evidence, either of its own motion or on request, to inform an assessment. Further, participants should be afforded a meaningful opportunity to respond to any concerns or questions identified by an assessor before an assessment is finalised. Clear guidance on these matters at the earliest opportunity would allow applicants and assessors to prepare for assessments and help to enhance efficiency and ensure consistency and procedural fairness across different assessments.

New support categories

27. Legal practitioners report that the application of the current definition of "standard item"[13] may discourage participants from adopting solutions to their needs which may be straightforward, practical and more cost-effective than items developed specifically for the purpose of disability support. To address this, exclusions of standard items should be limited to items that do not deliver a distinct functional benefit to the person with disability. Further, participant feedback should be sought on whether the new categories can be easily understood and applied.

Other matters

28. Finally, further information should also be provided on the following matters:

    - the weight that will be given to clinical reports, allied health evidence, lived experience evidence and assessment scores;

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[12] Ibid, 7.

[13] The term "standard item" is defined in section 4 of the NDIS Transitional Rules as "an item that has not been modified or adapted to address the functional impairments of the participant or prospective participant" and is therefore not eligible for NDIS funding. The definition of this term is further discussed in a decision of the Administrative Review Tribunal, *Chief Executive Officer, National Disability Insurance Agency and Hyde (Guidance and Appeals Panel)* [2025] ARTA 2597 (5 December 2025).

- the outcome when a participant is unable to attend or engage in the assessment process because they lack informal or funded supports;
- how the needs of participants with complex disabilities will be met where the person is unable to complete assessment tools independently with an assessor;
- how support needs assessments will identify risks arising from unmet disability support needs, including homelessness, incarceration, hospitalisation, family breakdown, neglect, crisis and loss of essential functioning;
- how internal review rights apply to support needs assessments, targeted assessments and budget outcomes. In particular, it needs to be explained whether internal review rights extend to the findings and scores of a support needs assessment or targeted assessment, or whether participants are limited to challenging the resulting budget calculation; and
- whether therapists should continue preparing functional capacity reports and support needs reports, and how such reports will be used within the new framework.

Question 2 – What questions and feedback do you have about the draft template support needs assessment report?

29. The draft template Support Needs Assessment Report (the **Report**) should explain its purpose within the overall planning process and how it will be used to inform the participant's plan. At present, it is unclear how assessment findings and assessment scores translate into funding decisions.

30. The Report should include a simple explanation of the next stages of the process, namely:

    - the support needs assessment identifies a participant's disability-related support needs;
    - the assessment outcomes are then used to calculate a proposed budget; and
    - the final plan is developed through the application of the relevant legislative and policy framework.

    This information would help participants understand the purpose of the assessment, the significance of their assessment scores, and how those scores may affect the supports and funding ultimately included in their plan.

31. The Report should also:

    - identify the participant's impairment notice (provided under section 32BA of the NDIS Act), the impairments being assessed, and the process for seeking a variation of the impairment notice if the participant disagrees with it;
    - identify the assessor's qualifications, relevant experience and expertise;
    - clearly explain the evidence considered and the weight given to different sources of evidence;
    - identify unmet disability-related needs and any risks arising if those needs are not funded;
    - identify whether the participant requires support to implement and navigate their NDIS plan and provide a clear summary of assessment outcomes, assessment scores and how those outcomes will inform funding decisions;

- clearly explain how assessment findings, clinical evidence and other information are weighed where they point to different conclusions. This is particularly important for participants with cognitive, intellectual, neurological or psychosocial disabilities whose presentation during an assessment may not accurately reflect their day-to-day support needs;
- clearly explain what participants should do if they identify an error or omission and encourage participants to raise inaccuracies before their plan is approved;
- include, when providing information about next steps, expected timeframes for approval of the participant's NDIS plan; and
- clearly inform participants about their review rights, including whether they can challenge support needs assessment findings, targeted assessment outcomes and assessment scores, and whether they can provide additional evidence if they disagree with the assessment outcome.

Specific sections of the Report

32. The introductory sections of the Report could be significantly simplified to avoid repetitive information and reduce overall length. The Report should focus on the information most relevant to participants and clearly identify important dates, including the date of the current assessment and any previous support needs assessment.

33. The "About You" section of the Report should align with the information that will ultimately appear in the participant's NDIS plan, including information about the participant's circumstances, goals and support arrangements. This would provide an opportunity for participants to identify and correct errors before funding decisions are finalised.

Specific areas where simplification may be required

34. The following areas of the Report may require simplification or further explanation.

- The inclusion of “psychosocial recovery coaching supports” requires further explanation to ensure it is sufficiently clear to NDIS participants. It is unclear why this information is included in the assessment summary and whether identifying a need for recovery coaching has any implications for access to support coordination or specialist support coordination.
- The "Circle of Support" section should more clearly distinguish between informal, funded and mainstream supports and align with support information included in the participant's NDIS plan.
- The distinction between "your support needs" and "your targeted support needs" is unclear and may be confusing for participants. More accessible terminology and a clearer explanation of the difference between these sections would be beneficial.
- Greater clarity is required regarding how complex supports such as Specialist Disability Accommodation, Supported Independent Living (**SIL**), Individualised Living Options (**ILO**), Specialist Support Coordination, Intensive Core Supports, behaviour support and transition supports from custody will be assessed, and how decisions relating to these supports will be communicated.

- The “targeted support needs” sections appear to suggest that participants will still be required to obtain and submit significant amounts of external evidence to establish particular support needs. This creates uncertainty about the role of professional reports, therapist recommendations and targeted assessments within the new framework. Greater clarity is required regarding what evidence participants will still be expected to provide for a targeted assessment and how these assessments will interact with external reports and recommendations.
- The behaviour support examples are confusing and should be revised. For example, at the end of page 24 of the form, it records evidence that behaviour support may be required but nevertheless concludes that no behaviour support need was identified. Participants should be able to understand how evidence has been assessed and why a particular outcome was reached.

35. Some terminology used in the template form may be confusing for participants. For example:

    - “Partner in the community" could be interpreted as meaning a romantic partner rather than a NDIS “Partner in the Community” organisation. Consideration should be given to renaming this section and including the participant's relevant contact details.
    - "Guardianship, administrative or protection order" should be explained in plain language to assist participants to understand what is being referred to and why it is relevant.

Scoring system

36. The scoring reporting system used throughout the Report is difficult to understand. Scores should be explained in plain language, including what each frequency and support level score means and how the scores are used in decision-making.

Other matters

37. Where the Report states that information "did not meet requirements", it should explain:

    - what requirements were not met;
    - why the information was insufficient;
    - what additional information may be required; and
    - whether alternative forms of evidence can be considered.

38. Finally, consideration should be given to including a dedicated section identifying risks associated with unmet support needs, such as homelessness, hospitalisation, family breakdown, incarceration, deterioration in functioning or inability to safely implement the participant's plan.

Question 3 – In what circumstances do you think a replacement assessment should be arranged?

39. The Consultation Paper notes “if a participant is concerned about the assessment process or the report, the NDIA delegate will work with them to decide if a

replacement assessment is needed".[14] The circumstances in which a replacement assessment may be ordered will be determined under the Rules.

40. It is unclear whether arranging a replacement assessment is the only avenue to correct an error in the original assessment process or report. In the interests of efficiency of the scheme generally, and reducing burden on applicants, the Law Council recommends there should also be a less formal avenue for an applicant to raise concerns about minor factual or administrative errors, rather than requiring a replacement assessment to take place.

41. Feedback from the legal profession suggests that a replacement assessment should be available where:

- additional impairments are added to a participant's impairment notice;
- significant new evidence becomes available regarding support needs;
- the participant disagrees with the original support needs assessment outcome;
- the participant was unable to meaningfully participate in the original assessment because of factors such as being in custody, mental health issues, communication barriers, lack of support, trauma or crisis circumstances;
- the participant is released from custody into the community;
- a significant life transition occurs, such as release from hospital, stable accommodation being secured, or transition from alternative care arrangements;
- the original assessor lacked appropriate qualifications, experience, training or independence;
- a support person, informal support, treating clinician or other key source of information was not consulted at the time the original assessment was made;
- appropriate reasonable adjustments were not provided;
- the participant's presentation on the day of the assessment was atypical – for example he or she was having an unusually good day, was distressed, unwell or otherwise unable to accurately demonstrate support needs;
- it becomes apparent that funded supports are not meeting the participant's needs;
- prior to consideration of a plan reassessment or variation where support needs are disputed;
- the assessment contains factual errors or relies on inaccurate information; or
- the assessment failed to adequately consider behavioural support needs, justice-related disability support needs, substance-use related behaviours of concern, or home and living needs.

Question 4 – What information would help participants understand how a budget is calculated?

42. Participants need a clear explanation of how support needs assessment findings are converted into funding amounts. The budget calculation methodology should be

[14] Department of Health, Disability and Ageing, "NDIS Supports Transitional Rules Consultation Paper" (August 2026), 7 <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/consultation-paper---ndis-supports_final.pdf>.

publicly available in a standard and Easy Read format.[15] Worked examples demonstrating budget calculations for common participant circumstances would improve transparency and understanding. Participants should also be able to readily request additional information regarding the budget calculation process if they require it.

43. Greater transparency is also required regarding how the budget calculation process interacts with the requirements of section 34 of the NDIS Act. Participants should be provided with a clear explanation of:

    - how support needs identified through the support needs assessment are translated into a proposed budget;
    - how support needs attributable to impairments recognised under paragraph 34(1)(aa) of the NDIS Act are identified and funded;
    - whether the budget calculation methodology determines funding based solely on assessed support needs, or whether the reasonable and necessary criteria are applied before, during or after the budget calculation process; and
    - how decisions are made where assessed support needs, calculated budgets and the requirements of section 34 of the NDIS Act do not align.

44. Without this information, participants may struggle to understand why a support need identified during an assessment does not result in funding, why a calculated budget differs from the supports included in a plan, or what aspect of the decision-making process they may need to challenge if they disagree with the outcome. There should also be clear guidance regarding the interaction between impairment notices, support needs assessments and budget calculations. A simple explanation or visual representation of how support needs assessments, budget calculations and the legislative requirements in section 34 interact would significantly improve transparency and participant understanding.

45. Decision letters issued to participants should clearly explain:

    - assessment outcomes;
    - assessment scores;
    - accepted and rejected recommendations;
    - the rationale for funding decisions; and
    - available review rights.

46. Participants should be provided with explanations regarding how relevant risks such as homelessness, crisis, neglect, incarceration, family breakdown and loss of functioning were considered. Clear explanations are also needed regarding how participant safety is factored into budget decisions and support determinations, for example, where a supports needs assessment identifies a high level of need and the budget method calculation generates a budget insufficient to meet those needs.

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[15] For a definition of this term, see Australian Government, "Australian Government Style Manual: Easy Read" (Web page, 20 December 2024), <https://www.stylemanual.gov.au/content-types/easy-read>.

Question 5 – What questions and feedback do you have about the draft participant plan template?

47. The template[16] would benefit from being simplified, including through use of plain English. It is important that it is accessible for participants with cognitive, intellectual or psychosocial disabilities. Easy Read versions of plans should be available and provided alongside standard copies.

48. Plans should clearly identify:

    - recognised impairments;
    - the date of the support needs assessment that was used to develop the plan;
    - what funded supports have been approved;
    - how the budget was determined;
    - reasons why any requested supports were not funded; and
    - pathways for reassessments, variations and review requests.

49. The structure of the template could also be improved. The distinction between the "NDIS Budget" section and the "Funding Periods" section is confusing and seems unnecessarily duplicative. These sections could be consolidated so participants can understand both their funding allocation and any funding restrictions in one place.

50. The placement of funding period information should be reconsidered. Funding periods are a critical aspect of how a participant can access and use their funding. The current layout may result in this information being overlooked.

51. The explanation of what funding can be used for should be much clearer. Terms such as "flexible", "flexible with restrictions", "stated" or similar budget categories are likely to be confusing to participants without pre-existing NDIS knowledge. Wherever these terms are used, they should be accompanied by a plain English explanation and practical examples, such as: "You can use up to $X of this funding to pay for support workers, community participation activities and assistance with daily living, provided the support relates to your disability support needs and is a NDIS support." Participants should be able to easily understand what they can spend their funding on, what restrictions (if any) apply, and what approvals or evidence may be required before funding can be used for particular supports.

52. Different terms appear to be used to describe the same supports across different documents, which may create confusion. Consistent terminology should be accompanied by plain language explanations. Terminology needs to be consistent across NDIS plans, support needs assessment reports, pricing arrangements, support determination rules and the NDIS Supports Rules.

53. Greater consistency should be maintained between the participant's support needs assessment report and their NDIS plan, particularly in relation to goals, support needs, informal supports and other key participant information. This would help participants identify errors before planning decisions are finalised.

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[16] Available at <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/draft-participant-plan-for-new-framework-planning.pdf>.

54. The plan should also include a plain English explanation of how the application has been progressed from the applicant's support needs assessment to their approved plan. The current template presents the outcome of the planning process but does not explain how assessment findings, assessment scores, budget calculations and planning decisions interact. To that end, participants should be able to readily understand how their disability-related support needs were identified through the support needs assessment, how those assessed support needs were used to calculate a proposed budget, and how the final supports and funding included in the plan were determined.

55. Finally, consideration should be given to including a simple visual diagram or step-by-step summary within the plan. This would improve transparency, help participants understand how decisions have been made, and enable them to identify whether they disagree with the assessment findings, the budget calculation, or the final planning decision.

Question 6 – What feedback and questions do you have about plan variations and reassessments?

56. The Consultation Paper provides limited information regarding the circumstances in which a participant may seek a plan variation. To support applicants, the Rules should clarify when and in which circumstances this option may be available. Other points of feedback and clarification are outlined below.

Significant changes in support

57. Restricting reassessments to circumstances involving a significant change in support needs risks excluding participants whose original support needs were underestimated. Many participants receive limited initial plans because the (limited) supporting evidence provided for access purposes is not designed to establish detailed support requirements. Additional evidence often confirms pre-existing support needs rather than demonstrating a significant change.

58. Clarification is needed regarding how participants can access a replacement support needs assessment and what evidence is required. It is currently unclear how participants are expected to demonstrate a significant change in support needs before obtaining the very assessment needed to establish that change. It would be helpful for participants to know whether therapist assessments or updated I-CAN assessments can support reassessment requests.

Reassessment and variation processes

59. Legal practitioners report that they have significant concerns regarding both the accessibility of reassessment and variation processes and the proposed 90-day timeframe for determining plan variation requests. Plan variations are often required in response to urgent circumstances. A three-month decision-making period is inconsistent with the needs of participants experiencing homelessness, hospital discharge, release from custody, family breakdown, risk of harm, or significant deterioration in functioning or mental health. Consideration should be given to including expedited decision-making timeframes in the Participant Service

Guarantee[17] for urgent reassessment and variation requests where there is evidence of crisis, emergency or significant risk to a participant's health, safety, wellbeing or living arrangements.

Lodgement of requests

60. Legal practitioners are also concerned that the reassessment framework may be interpreted too narrowly in relation to who can lodge a request on behalf of a participant. Some practitioners have been unable to submit reassessment requests that are signed by participants and accompanied by written authority and consent authorising transmission of the request on their behalf. This suggests that the requirement for a participant to make a request may be interpreted as requiring them to personally lodge it with the NDIA.

61. In practice, many participants face significant barriers to directly lodging documents with the NDIA. Participants in a range of circumstances including people in custody, people without access to a phone, email or internet, people experiencing homelessness, and participants with cognitive, intellectual or psychosocial disabilities that affect their ability to communicate or engage with administrative processes may experience difficulties in complying with lodgement requirements. This may effectively deny participants access to advocacy and assistance from trusted professionals who are often essential to meaningful participation in NDIS processes.

62. Clarification is required on whether participants may authorise a trusted person or professional, such as a lawyer, advocate, social worker, support worker or trusted family member, to lodge reassessment and variation requests on their behalf without requiring the appointment of a nominee or guardian. Consideration should be given to establishing a simple process for recognising authorised representatives for this limited purpose, with appropriate safeguards to manage fraud and conflict of interest risks. Such a process would improve accessibility, uphold participant choice and control, and help ensure that vulnerable participants are not excluded from reassessment processes because they are unable to personally lodge a request.

Question 7 – What feedback do you have about changes to NDIS supports for old and new framework planning?

63. The Law Council has received the following feedback in relation to changes to NDIS supports for old and new framework planning:

- The new framework should not reduce flexibility for participants with complex support needs.
- Greater transparency is required regarding support determinations and how funding decisions are made.
- Further clarification is needed regarding how participant safety will be considered when support determinations may result in reduced funding. Safeguards should exist where participants may be placed at risk of neglect,

[17] "The Participant Service Guarantee sets clear timeframes for key NDIS processes". See National Disability Insurance Scheme, "Participant Service Guarantee" (Web page, 27 August 2026) <https://www.ndis.gov.au/about-us/service-charter/participant-service-guarantee>.

crisis, homelessness, incarceration, family breakdown or loss of essential functioning.
- Participants must retain practical avenues to challenge funding decisions and seek additional support where evidence demonstrates a plan is inadequate.

Question 8 – What impacts do you think will be experienced as a result of removing replacement supports?

64. Legal practitioners have identified two main potential risks with removing replacement supports. Firstly, there is a risk of reduced flexibility for participants whose approved support is unavailable or unsuitable. This may lead to participants losing access to practical alternatives that are more cost-effective or readily available. Secondly, and following on from the first potential risk, there is an increased risk of underutilisation of plans.

Question 11 – What would help people with disability better understand the NDIS new framework planning rules?

65. Current participants' and prospective NDIS applicants' understanding of the new rules would be assisted by the implementation and provision of:

- Easy Read and Plain English resources;
- visual flowcharts and diagrams;
- videos and webinars;
- frequently Asked Questions and worked examples;
- community forums and information sessions;
- publication of detailed operational guidelines before implementation; and
- practical examples showing how assessments, budgets, reassessments and reviews work in real-life situations.

Question 12 – What communication formats would make the information more accessible?

66. The Law Council recommends provision of information in the following formats to make the information more accessible:

- Easy Read documents;
- visual guides and infographics;
- videos and animations;
- audio resources;
- community forums and webinars;
- interactive online tools;
- translated and culturally appropriate resources; and
- decision trees and step-by-step guides.

Question 13 – What should the NDIA and NDIS focus on in future communication products?

67. The Law Council recommends the following considerations for future communications products:

- support needs assessment tools and targeted assessments;
- budget calculations;
- impairment notices and variation request processes;
- reassessments and plan variations;
- information on review rights and participant safeguards;
- participant safety and managing risks of unmet support needs;
- NDIS versus mainstream service responsibilities; and
- practical examples demonstrating common participant scenarios.

Responses – NDIS Supports Transitional Rules

General Comments

68. In general, the Transitional Rules currently lack sufficient clarity and have been subject to varying interpretations as to whether specific items are captured or not. They have also formed the basis of several Administrative Review Tribunal (**ART**) decisions.[18]

Question 1 – Are the proposed support categories clear?

69. Legal practitioners consider that the proposed categories are generally clearer than previous arrangements and reduce some of the overlap that previously existed. However, further guidance is required where disability support needs intersect with the justice, health, and child protection systems. NDIS support processes should also have more timely flexibility to account for supports that are not foreseeable or are urgent.

Question 2 – Are there areas where further explanation, examples or guidance would be helpful?

70. Additional examples and guidance would be beneficial on the following topics:

- behaviour support for participants who are involved in the justice system;
- supports addressing substance-use related behaviours of concern arising from disability-related impairments;
- transitional supports for people leaving custody;
- intensive core supports;
- home and living supports for participants under 18;

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[18] See for example *CEO, National Disability Insurance Agency and Roberts (Guidance and Appeals Panel)* [2025] ARTA 2628; *CEO, National Disability Insurance Agency and KDKJ by her nominee, NKHPV (Guidance and Appeals Panel)* [2026] ARTA 1166 and *NNFXT by his nominee, QKMBR and Chief Executive Officer, National Disability Insurance Agency (Guidance and Appeals Panel)* [2026] ARTA 308.

- the interaction between the Supports Rules and Transitional Rules;
- core supports during initial plans; and
- distinguishing disability supports from justice system supervision.

Question 3 – Are there particular support types where more guidance may be needed?

Disability advocates and supports

71. Given the significant changes proposed, it is critical that escalation and contact pathways for participants are clear and accessible. Availability of legal assistance and support for NDIS participants is essential, particularly when circumstances change suddenly. Legal assistance is also crucial in the context of NDIS delays, to ensure that people with disability have timely access to the supports they need. While there are existing processes for plan changes, community and participant uncertainty arising from significant cumulative changes to the NDIS over the past few years underscores the importance of regular contact points and support to navigate both initial access and unexpected support changes.

Gap payments

72. The ART's decision in *WSWL and National Disability Insurance Agency*[19] highlighted an important policy consideration as to the role of the NDIS in funding significant gaps in other service systems where the failure to do so means that an otherwise eligible support is inaccessible. In this matter, the requested hearing aid would attract a subsidy through the Hearing Services Program, although the subsidy would leave an "out of pocket" sum of $2,390.

73. In making its decision that the gap could not be funded through the NDIS, the ART found that "the Transitional Rules turn on the character of the supports so declared, not the individual benefit that a particular participant like WSWL may obtain from the support".[20] Consideration should be given to how discretion can be incorporated in respect of those items identified in Schedule 2 of the Transitional Rules, particularly having regard to the individual's relevant circumstances and support needs.

Removal of replacement supports

74. The Transitional Rules currently include some items which can be accessed through a replacement supports process.[21] The Consultation Paper proposes that "no items, including standard commercially available household items, would be available through a replacement supports process".[22] According to the Consultation Paper, the

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19 [2026] ARTA 2070.

20 Ibid, [148].

21 For a definition of "replacement support", see National Disabilty Insurance Scheme, "What is a Replacement Support?" (Web page, 19 June 2026) <https://www.ndis.gov.au/participants/using-your-funding/understanding-your-ndis-funding/what-replacement-support>.

22 Department of Health, Disability and Ageing, "NDIS Supports Transitional Rules Consultation Paper" (August 2026), 9 <https://consultations.health.gov.au/disability-and-carers-group/nfp-ndis-supports/user_uploads/consultation-paper---ndis-supports_final.pdf>.

most commonly requested items [as replacement supports] will be included as "stated supports", such as tablets, smart phones, smart watches and apps for accessibility and communication.[23]

75. However, it is unclear how these items are intended to be captured as stated supports in the new framework categories, including in relation to the repair and replacing of existing items. As currently drafted, this carveout risks having unintended impacts. Additional guidance is needed to provide greater certainty for people with disability who currently utilise a commercially available household item, that is not a NDIS support, as a "replacement support".

Private vehicle transport

76. Amending Rule 15 regarding private vehicle transport states that support does not include transport that is ancillary to the provision of a NDIS support. The Law Council suggests that further clarification is needed as to whether private vehicle transport is intended to be captured for all NDIS appointments for participants who cannot travel or use public transport independently.

Assistance animals

77. Legal practitioners report that NDIS participants have welcomed boarding expenses as a stated support for assistance animals. Other forms of ongoing care other than veterinary expenses, such as regular medication, should also be considered for inclusion as stated supports.

Other matters

78. Legal practitioners have also observed that further guidance is needed for the following kinds of support:

- Positive Behaviour Support;
- Intensive flexible core supports;
- SIL and ILO;
- Transitional supports for participants leaving custody;
- Support Coordination and Specialist Support Coordination;
- home and living supports for children and young people; and
- supports where disability-related needs overlap with justice system involvement.

Question 4 – Are there any practical issues, or unintended impacts that need to be considered?

Classification of disability-related support needs as opposed to justice system supervision

79. Disability-related support needs may continue to be characterised incorrectly as justice system supervision rather than disability support needs. There is a risk that supports sought to address disability-related impairments, behaviours of concern, poor consequential thinking, vulnerability, impaired judgement, difficulties with social

[23] Ibid.

interaction, or difficulties complying with community-based orders will be characterised as "supervision" or supports designed to prevent offending behaviour.

80. In practice, this may result in participants being denied behaviour support, core supports, support coordination, community participation supports, or home and living supports despite substantial evidence that the primary purpose of the support is to address disability-related functional impairments.

81. Legal practitioners have observed these issues in relation to participants whose contact with the justice system arose primarily because their disability support needs were not identified or supported earlier. There is a risk that justice involvement itself becomes a barrier to obtaining supports that would otherwise be funded for participants with similar impairments who have not offended.

The needs of participants in custody

82. Participants who are in custody may continue to face barriers accessing transition supports. While the Rules recognise that transition supports from custody are a NDIS responsibility, there remains a risk that participants in custody will continue to be denied supports necessary to prepare for release.

83. In practice, participants are frequently advised that assessments, core supports, behaviour support and other disability-related supports cannot be considered until they are in the community. This creates a situation where participants leave custody without the supports required to secure accommodation, engage service providers, establish routines, or manage disability-related impairments that affect daily living and community participation. Delays in establishing supports at the point of release may increase the risk of homelessness, hospitalisation, social instability and re-offending.

Specific issues relating to supports for children

84. Children with significant behaviours of concern may continue to face barriers accessing intensive supports and appropriate home and living options. There is a risk that intensive core supports, in-home support arrangements, ILOs and other home and living supports will continue to be refused on the basis of parental responsibility or assumptions that child protection systems should respond. This may occur even where the child's disability-related support needs significantly exceed those of other children of a similar age and where families have exhausted available informal supports.

85. Without access to intensive supports at an early stage, families may experience escalating carer burnout, family breakdown, property damage, injuries to family members, school disengagement, increased police involvement and eventual entry into child protection or justice systems. Early access to intensive disability supports may prevent these outcomes and preserve family placements.

Participants with psychosocial, cognitive and intellectual disabilities

86. Participants with these disabilities may be disproportionately affected if support categories are interpreted narrowly. Many participants supported by legal practitioners experience impairments that affect insight, decision-making,

communication, self-management, emotional regulation and engagement with services.

87. If support categories are interpreted narrowly or rigidly, there is a risk that disability-related needs will be viewed as lifestyle choices, behavioural issues, substance-use issues, justice issues or social problems rather than manifestations of disability. This is particularly concerning where behaviours of concern are linked to psychosocial disability, acquired brain injury, intellectual disability or other cognitive impairments. Narrow interpretations may disproportionately exclude some of the most vulnerable participants from accessing supports that would otherwise assist them to remain safe and engaged in the community.

Participants with psychosocial, cognitive and intellectual disabilities

88. Greater flexibility should be considered regarding appropriately verified second-hand equipment where this provides a safe and cost-effective option. Consideration should be given to allowing appropriately assessed and certified second-hand assistive technology and equipment where safety and suitability requirements can be met.

89. This may improve participant choice, reduce costs, reduce waiting times and enable participants to access equipment sooner. Appropriate safeguards could include certification by a suitably qualified therapist and verification that the equipment has been professionally serviced and remains fit for purpose.

Impact of unmet disability needs

90. Without adequate flexibility and safeguards, unmet disability needs may contribute to homelessness, family breakdown, incarceration, hospitalisation and increased long-term support needs. The scale of recent reforms to the NDIS is significant, and the Law Council has expressed its concern about their potential impact on demands for legal assistance, including legal aid commissions and community legal centres.[24] Ensuring adequate legal assistance funding should be a priority to meet likely demand.

91. A recurring issue identified by legal practitioners is that many participants enter crisis because disability-related support needs are not recognised, funded or implemented early enough. Delays in accessing behaviour support, core supports, transitional supports, home and living supports, or support coordination can result in escalating functional decline and worsening social circumstances.

92. For participants who are involved in the justice system, this often manifests as increased interaction with police, breaches of orders, further offending behaviour and incarceration. For children and families, it may result in family breakdown, child protection involvement or out-of-home care arrangements. For participants with

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[24] National Legal Aid, Community Legal Centres Australia, Law Council of Australia and National Aboriginal and Torres Strait Islander Legal Service, "Joint Statement: NDIS Reforms Risk Real Harm without Proper Consultation" (Joint media release, 2 June 2026), <https://nationallegalaid.org.au/news/joint-statement-ndis-reforms-risk>; Law Council of Australia, Submission no 1731 to Senate Legislation Committee on Community Affairs, *Inquiry into the National Disability Insurance Scheme Amendment (Safeguarding the NDIS for Future Generations) Bill 2026* (10 June 2026), [3], [64] – [66], <https://lawcouncil.au/publicassets/255be91a-ad75-f111-94c8-005056acd090/4864%20-%20S%20-%20Securing%20the%20NDIS%20for%20Future%20Generations%20Bill.pdf>.

psychosocial disabilities, it may contribute to hospitalisation, housing instability and disengagement from services. There is a risk that restrictive interpretations of support categories may increase both participant harm and overall long-term scheme costs if relatively modest early interventions are not available when needed.

Functional capacity assessments

93. Finally, legal practitioners have raised issues with respect to functional capacity assessments. Whilst these matters are outside the scope of the Consultation Paper, practitioners observe that the outcome of functional capacity assessments naturally have a significant flow on effect in respect of supports.

94. The term “functional capacity” is defined in section 9B of the NDIS Act. This section provides that a person’s functional capacity, in relation to an activity, is the person’s ability to undertake the activity either without assistance from other people, assistance technology or modification, or only with assistance from assistive technology or modifications that are commonly used and that the person would ordinarily use to undertake the activity.

95. Legal practitioners report that in practical terms the application of the term “commonly used” may result in a circular and inequitable outcomes. For example, if a higher quality aid has been denied by the NDIA and is subsequently self-funded by a participant, the participant may be assessed whilst using that aid because it is “commonly used”. The benefits of the aid may however reduce an assessed impairment need or obscure it. The assessment process should not attribute improved functional capacity to privately funded aids, particularly where the technology has not been recognised as a necessary support by the NDIS.

96. Further guidance may also be appropriate with regard to carrying out such assessments to ensure that both underlying and supported capacity is recorded without unsafe testing (for example, requiring the removal of aids during an assessment, which can make a process unsafe and inaccessible), examination of residual limitations and safety as well as the compounding effects of multiple impairments, particularly where a controlled assessment environment does not reflect functional capacity outside of those narrow circumstances.

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- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
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