Law Council
OF AUSTRALIA

Consultation on National Disability Insurance Scheme Access Changes

Department of Health, Disability and Ageing

1 October 2026

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Acknowledgements

The Law Council of Australia thanks:

- the Law Society of South Australia;
- the Law Institute of Victoria; and
- the Law Society of Western Australia

for their contribution to the preparation of this submission.

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 access to the National Disability Insurance Scheme (**NDIS**).

2. From 1 January 2028, access to the NDIS will no longer rely primarily on a person's diagnosis. Instead, DHDA's intention is that eligibility for the NDIS disability requirements will be based on a standardised, evidence-based assessment of a person's functional capacity and how this impacts their day-to-day living. These changes are provided for by the *NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026* (the **NDIS Amendment Act**), which amended the *National Disability Insurance Scheme Act 2013* (**NDIS Act**).

3. In its recent advocacy, the Law Council has underscored the need to consider the everyday, practical impacts for people with disability of the new test for assessing permanence of impairments and tightened eligibility requirements where alternative supports are available, and to strengthen safeguards and rights in the system.[1]

4. Changes to NDIS access requirements can have a profound impact on people's lives by determining whether they can obtain the supports they need to participate in education, employment and community life. Such changes should seek to maximise participation and engagement, promote flexibility and remove barriers to obtaining access to support, rather than create additional procedural hurdles for people who may already be experiencing the cumulative impacts of disability, trauma and social disadvantage. They must also reflect the legislative framework and be publicly accessible and transparent, including through the publication of clear guidance for applicants.

5. The reforms to the access process present an opportunity to consider issues experienced by applicants under the current arrangements and to ensure the new process is designed with trauma-informed and culturally safe considerations from the beginning. Any process for determining permanence of disability and functional capacity should be continually reviewed and improved, based on evidence obtained from people with lived experience.

6. The DHDA should also consider the impact on people who will not qualify for the NDIS under the new arrangements but will continue to require support, including what alternative supports will be available and whether they will be in place before the access reforms referred in the Consultation Paper commence. Without adequately funded and accessible Foundational Supports, there is a risk that people with disability will be left without the support they need or will simply be shifted to

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[1] Law Council of Australia, Submission no 1731 to Community Affairs Legislation Committee, *Inquiry into National Disability Insurance Scheme Amendment (Safeguarding the NDIS for Future Generations) Bill 2026* (10 June 2026) <https://lawcouncil.au/publicassets/255be91a-ad75-f111-94c8-005056acd090/4864%20-%20S%20-%20Securing%20the%20NDIS%20for%20Future%20Generations%20Bill.pdf>; National Legal Aid et al, "Joint Statement: NDIS Reforms Risk Real Harm Without Proper Consultation" (Media release, 2 June 2026), <https://nationallegalaid.org.au/news/joint-statement-ndis-reforms-risk>.

other already overstretched systems. Any changes to NDIS access should not occur until appropriate alternative supports are available and accessible.

7. DHDA has issued a Consultation Paper on access changes, which lists six questions for consideration.[2] This submission responds to each in turn.

[2] Department of Health, Disability and Ageing, "Consultation on NDIS Access Changes" (Consultation Paper, August 2026), 7-8 <https://consultations.health.gov.au/disability-and-carers-group/ndis-access-changes-consultation/user_uploads/public-consultation-paper---ndis-access-changes---pdf-2.pdf>.

Responses

Question 1—Do the draft guiding principles provide the right foundation for a future NDIS access process?

8. The Law Council supports the draft guiding principles overall, noting that they provide a sound foundation for the framework, particularly through their emphasis on human rights, lived experience, transparency and accessibility. Fairness, consistency, transparency, and a disability-informed, evidence-based approach are proper bases for a Scheme whose access decisions carry such significant consequences for the physical and mental health of people with disabilities.

9. However, the effectiveness of the principles will depend on how they are implemented in practice, the extent of resourcing, and whether they are supported by adequate procedural safeguards. The final principles should be accompanied by a clear implementation and monitoring mechanism, including to ensure the alignment of legislation, policy and practice.

Question 2—Should any principles be added, removed or changed?

10. The Law Council recommends that the principles expressly recognise procedural fairness, timely access to review and effective remedies. Whilst Principle 1 appropriately refers to alignment with human rights obligations, its practical operation would be enhanced by acknowledging the procedural protections necessary to give meaningful effect to those rights. This would also assist in promoting fairness and transparency within the system, complementing existing Principles 3 and 6.

11. It is also vital for NDIS applicants and recipients that decisions are made in a comprehensible and transparent manner. Transparency is not just about explaining the process; it is also about ensuring decision makers are accountable, that applicants can see what evidence has been relied on, and that applicants have meaningful opportunities to challenge adverse decisions.

12. To this end, the Law Council suggests consideration of an additional principle that requires decisions to be comprehensible, reviewable and subject to meaningful human oversight. Explicit recognition of reviewability would further safeguard against arbitrariness or overreliance on automated processes, enhancing public confidence in the fairness and integrity of the decision making.

13. Principle 5 recognises the need to deliver consistent outcomes regardless of personal characteristics, including geographic location. In the design of the Scheme, there should be recognition of the challenges faced by people in rural, regional and remote areas, including areas with thin service markets. Any eligibility process should recognise that access to evidence, treatment, assessments and supports is often limited outside metropolitan areas.

14. Recognising the diversity of disability experiences, backgrounds and life circumstances, and the need for an inclusive and person-centred access experience (consistent with Principles 2, 4 and 5), the principles should also expressly recognise the need for a flexible approach in the Scheme's design. For applicants with issues relating to inconsistent or non-existent identity documents, homelessness, people living in regional and remote locations, consideration of First Nations kinship relationships (particularly for child applicants) and the acknowledged issues of fluctuating capacity, flexibility in the NDIS design is required and need not be inconsistent with a consistent and evidence-based approach.

15. Ultimately, each principle should be capable of being assessed against the day-to-day operation of the legislation, guidance, and practice, so that they function as meaningful, practical commitments rather than aspirational statements. Without ongoing assessment, there is a risk that these principles are ineffective and inconsistent with the real experience of applicants.

Question 3—What do we need to consider when designing an access decision-making process that is fair, consistent, transparent, disability-informed and evidence-based?

16. The access decision-making process should be fair, transparent, and easy for applicants to understand. Applicants should understand what evidence is required in their particular case, how that evidence will be assessed and the reasons why a decision has been reached. The criteria for access should be clear, accessible and consistently applied across Australia. Guidelines, forms (including supporting evidence required from applicants), and internal processes must also be consistent with the legislative framework and publicly accessible information.

17. Without such measures in place, the consequences of unpublished or unclear procedural and evidentiary requirements will fall disproportionately on people with disability who already experience difficulty navigating complex administrative systems. This includes people with cognitive, intellectual, psychosocial and communication impairments, as well as people experiencing homelessness, justice involvement, poverty or family violence. Legal practitioners observe that many applicants are unable to understand why their application is delayed, what additional steps are required, or how to exercise their rights because the practices and procedures affecting their application are not reflected in publicly available materials.[3]

18. The Law Council recommends that the access decision-making process should incorporate procedural safeguards that promote the quality and legitimacy of decisions. This includes providing clear and accessible reasons for decisions, ensuring applicants have the opportunity to respond to adverse information before the decision is made, and establishing meaningful review rights (that are clearly

[3] For example, legal practitioners report that the introduction of the Evidence of Identity requirements (EOI) by the National Disability Insurance Agency (**NDIA**) has created a significant procedural barrier to making an Access Request, despite there being no corresponding requirement in the NDIS Act, Rules, or the Access Request Form, resulting in substantial delays or being unable to progress an Access Request at all, despite having evidence capable of satisfying the legislative criteria. Other rreported examples of inaccessible processes for persons without advocacy support include the use of forms such as the proxy EOI Form for people in custody and the Child Representative Form for persons without parental responsibility.

communicated and accessible to applicants) and safeguards against unintended bias in automated assessment tools. The Law Council maintains its previous reservations about the use of automated decision making in this context.[4]

19. The Law Council also notes that, while consistency is important to ensuring fairness, predictability and equal treatment, it should not come at the expense of recognising the individual circumstances of applicants. To this end, the framework should allow decision makers sufficient flexibility and discretion to account for the diverse and often complex ways in which disability affects people's lives, functioning and support needs. For example:

    - Not everyone has equal access to specialists, allied health providers or advocacy support. There should be particular attention given to ensuring fair outcomes for people living in rural, regional and remote areas and for people with disabilities that are fluctuating, progressive, episodic or complex.
    - Legal practitioners report that many access processes appear to be designed on the assumption that applicants can independently gather documents, complete forms, understand complex written information, attend appointments, communicate effectively with government agencies, and advocate for themselves throughout the NDIS access process. These expectations may be manageable for some applicants but can create significant barriers for people whose disabilities directly affect their ability to perform those tasks. In practice, the people who require NDIS supports the most are often those who have the greatest difficulty navigating complex administrative systems. Revised access designs should also include a flexible approach to issues such as verification of identity, nominated contact persons, supported decision making and the different levels of support required, to enable individual applicants to more easily engage with the process regardless of their circumstances.

20. Finally, the Law Council recommends that the process and any evaluative criteria should be subject to ongoing monitoring and evaluation to assess their accuracy, fairness and equity across different disability cohorts to identify and address any systemic disparities or unintended adverse effects.

21. Additional considerations, regarding evidentiary requirements, reasons for access decisions and support for trauma-informed and culturally safe decision making, are elaborated below. All of the considerations raised in response to this question should also be the subject of ongoing and regular training for NDIS decision makers.

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[4] See for example Law Council of Australia, Submission to Attorney-General's Department, "Use of Automated Decision Making by Government: Consultation Paper" (24 January 2025), <https://lawcouncil.au/publicassets/be8251b1-d4dd-ef11-94af-005056be13b5/4643%20-%20S%20-%20Use%20of%20automated%20decision-making%20by%20government.pdf>; Law Council of Australia, Submission no 152 to Select Committee on Adopting Artificial Intelligence, Inquiry into opportunities and impacts for Australia arising out of the uptake of AI technologies in Australia (20 May 2024), [105] – [119], <https://lawcouncil.au/publicassets/f741a901-4721-ef11-949e-005056be13b5/4529%20-%20S%20-%20Opportunities%20and%20impacts%20of%20AI.pdf>.

Evidentiary requirements

22. The NDIS legislative framework is directed to whether a person has one or more intellectual, cognitive, neurological, sensory, physical or psychosocial impairments and the extent to which those impairments result in substantially reduced functional capacity.[5] The focus of the inquiry, as set out in the NDIS legislation, is therefore on impairment and function, rather than on the existence of a particular diagnosis. This distinction is particularly important because diagnosis and impairment are not the same concepts.[6]

23. However, legal practitioners have reported that applicants are regularly required, either expressly or indirectly, to provide a definitive diagnosis of their condition before they are accepted as "impaired" by decision makers. Access Not Met decisions commonly state that there is insufficient evidence of impairment because a diagnosis has not been confirmed, even where the available evidence clearly establishes the existence of permanent impairments and their resulting functional inputs. This approach is inconsistent with the legislative framework and case law,[7] which emphasise that the relevant question is what impairments a person experiences and how those impairments affect their functioning, rather than what diagnostic label has been applied.

24. Further, this issue disproportionately affects people with complex and overlapping disabilities. For example, many justice-involved applicants[8] present with combinations of intellectual impairment, acquired brain injury, neurodevelopmental disorders, psychosocial disability, trauma-related conditions, substance use histories and cognitive impairment. While these impairments may be readily observable and well documented by treating medical practitioners, obtaining a definitive diagnosis can be extremely difficult due to poverty, homelessness, disengagement from health systems, fragmented medical histories, lengthy public waiting lists and the cost of specialist assessments.

25. Ensuring that decision making remains focused on impairment and resulting functional impacts, rather than diagnosis, would improve consistency with the NDIS Act, reduce unnecessary evidentiary burden on applicants and minimise avoidable reviews and appeals. It would also improve access for applicants for whom obtaining a definitive diagnosis is costly, complex or not clinically achievable in the short term.

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5 See for example National Disability Insurance Scheme, "What are the NDIS Disability Requirements?" (Web page, 2 September 2026) <https://www.ndis.gov.au/applying/eligibility-requirements/what-are-ndis-disability-requirements>.

6 A diagnosis is a medical label used to describe a condition, whereas an impairment refers to the loss, reduction or damage to a person's physical, cognitive, intellectual, neurological, sensory or psychosocial functioning. A person may have a diagnosis but little or no resulting impairment. Equally, a person may have significant and permanent impairments despite not yet having received a definitive diagnosis. Multiple impairments may arise from a single diagnosis, and the same impairment may arise from several different diagnoses.

7 See for example *National Disability Insurance Agency v Davis* [2022] FCA 1002, [69].

8 Where this submission uses the term "justice-involved applicant", it refers to an NDIS applicant who has had contact with the criminal justice system, for example having been arrested or incarcerated.

Clear and accessible reasons for decisions

26. NDIS applicants should be able to readily understand why a decision was made, what evidence was relied upon, any concerns the decision maker identified, and what information may help resolve those concerns in the future. Decision letters are often the only explanation an applicant receives regarding how the evidence was assessed and why a particular outcome was reached. The quality and accessibility of those reasons therefore have a significant impact on a person's ability to understand the decision, exercise review rights and, where appropriate, provide further evidence in support of a future application.

27. In the experience of legal practitioners, many applicants struggle to understand the reasons contained in Access Not Met decisions, which frequently rely on generic or highly technical language, legislative wording without meaningful explanation, or broad statements without details of the decision maker's process or what additional information might address the identified concerns. Comprehensibility of reasons is an issue particularly significant for people with disability, many of whom experience cognitive, intellectual, neurological, communication or psychosocial impairments that affect their ability to interpret complex written information. This may affect their ability to understand:

    - which access criteria were not satisfied;
    - whether the decision maker correctly understood their disability;
    - what evidence was accepted;
    - what evidence was rejected or afforded limited weight;
    - what additional evidence may be required; or
    - whether there may be grounds to seek an internal or external review.

28. Legal practitioners also report that some Access Not Met decisions state there is no evidence of impairment, permanency or functional impact in circumstances where evidence addressing those matters was in fact provided by health professionals. In these situations, the decision letter often does not explain why that evidence was not accepted or what concerns the decision maker had about it.

29. Accessibility should also be a key consideration. Decision letters should be written in plain, clear language and be available in formats that accommodate different communication needs. Applicants should not require specialist legal knowledge to understand why a decision has been made. Further, decision makers need to ensure that all information provided by an applicant is considered, and that this is reflected in decision records.

Trauma-informed and culturally safe decision making

30. Many NDIS applicants have experienced significant adversity, including family violence, institutionalisation, child protection involvement, homelessness, mental illness, justice involvement and intergenerational trauma. An access process that requires applicants to repeatedly retell traumatic experiences, justify their disability and impairment to multiple unfamiliar people, or navigate multiple layers of assessment and screening may inadvertently retraumatise individuals and reduce engagement with the NDIS. Some applicants have also experienced exclusion from education, health and support services. It is therefore not uncommon for such

applicants to be distrustful of authorities, reluctant to disclose personal information, or overwhelmed by bureaucratic processes.

31. Access processes must be designed in a trauma-informed, culturally safe manner designed to maximise engagement rather than inadvertently creating further barriers. A trauma-informed and culturally safe access process recognises that many people seeking access to the NDIS have experienced significant life adversity that shapes how they engage with government agencies, service systems and decision-making processes.

32. Trauma-informed practice therefore requires decision makers and access staff to consider not only what information they need, but how that information is obtained. Processes should seek to minimise unnecessary assessments, interviews, meetings and requests for information where suitable evidence has already been provided.

Question 4—How could the access decision-making process, including referral pathways, be designed to reduce administrative burden and be easier and more equitable to understand?

Clarity in decision-making

33. The Law Council recommends that evidence requirements should be streamlined to minimise any unnecessary administrative burden on applicants and ensure timely access to support. Wherever possible, and with appropriate safeguards for privacy and confidentiality, information already held by government agencies should be utilised to reduce duplication in administration and avoid individuals being required to repeatedly produce the same evidence. Clear guidance should be provided to NDIS applicants about the required evidence and decision-making criteria so that applicants are aware of how their claims will be assessed. Particular consideration should be given to the accessibility of evidentiary processes for people with disability, especially those who may experience difficulties in obtaining the required assessments or supporting documentation.

Accessible pathways

34. Consideration should be given to the establishment of fast-track pathways for people with clearly established, permanent and significant impairments to avoid unnecessary reassessment and duplication. This will also allow greater resources to be allocated to more complex and difficult cases. The Law Council notes that people living with Motor Neurone Disease currently benefit from both streamlined access and planning pathways that were introduced by the NDIA in mid-2024.[9]

35. Referral pathways should also operate on a "no wrong door" basis, ensuring that applicants receive active assistance for their impairment and are not disadvantaged by initially approaching the "wrong" support service. Rather, people should be assisted to navigate the system and be connected with appropriate supports (including mainstream supports), ensuring greater accessibility and improving applicants' experience throughout the process. If applicants are found to be ineligible

[9] National Disability Insurance Scheme, "The NDIS and Motor Neurone Disease" (Web page, July 2024) <https://engage.ndis.gov.au/projects/ndis-motor-neurone-disease-mnd-pathway>.

for access to the NDIS, alternative referral pathways need to be meaningful and not simply a redirection to services that are hard to obtain or have long waiting lists. A person should not be left without any kind of support solely because they do not meet the NDIS access requirements. Clear pathways to alternative supports, including foundational supports and mainstream services, will be critical.

36. Applicants should also be allowed to submit access requests directly to the NDIA, without mandatory engagement with Partner in Community organisations before an access decision can be made. This was the case prior to the introduction of the requirement to submit access requests through Partners in the Community, and importantly, the current Access Request Form continues to state that applicants can submit their forms directly to the NDIA.[10] Yet in practice, applicants in partnered areas who submit an Access Request directly to the NDIA are redirected to a Partner in the community organisation and required to engage with a Local Area Coordinator (**LAC**) before the request will progress to an NDIA delegate for consideration. This creates a disconnect between the publicly available information and the process applicants experience in practice.

37. Legal practitioners report that this additional layer of administration creates significant burdens and delay for applicants. Many such applicants have already completed an Access Request Form and gathered substantial supporting evidence before engaging with the NDIA. In these circumstances, requiring the applicant to repeat information through an Access Support Meeting or additional intake process is often duplicative and unnecessary.

38. Legal practitioners also report that the current model can result in Partners in the Community effectively performing a gatekeeping function. Where a LAC forms a preliminary view that a person is unlikely to meet the access criteria, the person may be referred to mainstream services or Community Connections rather than their Access Request being submitted to an NDIA delegate for determination. This means that a person may never receive a formal access decision despite applying to test their eligibility for the NDIS. Consequently, some applicants are denied the benefit of the review rights that may arise from an Access Not Met decision. Requiring engagement with a Partner in the Community can also disproportionately impact applicants whose disabilities affect their ability to participate in meetings, engage with unfamiliar services, complete self-report questionnaires or navigate complex service systems.

39. NDIS applicants should ultimately have a choice regarding how they apply for access. While some applicants benefit from assistance provided by Partners in the Community organisations and LACs, engagement with these services should remain optional and readily available, rather than becoming a gateway to accessing the Scheme. Where an applicant has completed an Access Request and wishes to have it determined by the NDIA, they should be able to submit it directly and receive a decision without mandatory engagement with intermediary organisations.

40. All access pathways, requirements and referral options should also be clearly published and available in a variety of accessible formats.

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[10] National Disability Insurance Scheme, "What is an Access Request Form?" (Web page, 29 May 2026) <https://www.ndis.gov.au/applying/application-process/what-access-request-form>.

Identity verification processes

41. Identity verification processes should protect the integrity of the Scheme while ensuring that people with disability are not excluded from accessing the Scheme because they cannot satisfy rigid documentary requirements.

42. Legal practitioners report that the current EOI requirements create a significant administrative burden for many applicants and can delay access requests by weeks or months before the NDIA even begins considering whether a person meets the access criteria. This burden falls disproportionately on people whose disability, social circumstances or life experiences make it difficult to obtain and produce identity documents. For many applicants, particularly those who are homeless, transient, justice-involved, experiencing family violence, living in poverty, or affected by intellectual, cognitive or psychosocial impairments, obtaining the required combination of identity documents can be more challenging than gathering the disability evidence itself.

43. To address this, the NDIA should consider removing EOI requirements as a precondition to lodging an access request and instead adopting a flexible, proportionate approach to identity verification that occurs after an application is made where necessary. NDIS applicants should be able to submit an access request and have the statutory access decision-making process commence, with any additional identity information requested later if required. This would ensure that administrative identity requirements do not prevent people from having their eligibility assessed under the legislative framework.

44. The NDIA should also make greater use of identity information that has already been verified by other government agencies, wherever possible. Many NDIS applicants already hold a Centrelink Customer Reference Number or have their identity verified through agencies such as Centrelink, Medicare, Corrective Services, the Department of Home Affairs, State justice agencies or other government systems. Requiring applicants to repeatedly prove their identity to different government entities creates unnecessary duplication and is particularly difficult for people whose disabilities affect organisation, planning, memory and document management.

45. Greater flexibility is also needed in the types of identity evidence that can be accepted. Legal practitioners report that many applicants do not possess original identity documents, have difficulty locating them, or cannot safely retain them because of homelessness, unstable housing or other vulnerabilities. Requiring original documents to be sighted can therefore create significant and often unnecessary barriers. Certified copies of documents should generally be accepted.

46. Alternative means should also be available for applicants who cannot meet standard identity requirements. This is particularly important for people experiencing homelessness, people in custody, people with a transient lifestyle, young people without access to parental documents, First Nations applicants who may face additional barriers obtaining formal identity documents, and people whose disabilities significantly affect their ability to navigate administrative systems. In these circumstances, the NDIA should have clear and publicly available alternative verification pathways that allow identity to be established through a broader range of

evidence, including government-held records, correctional records, support service records or verification from appropriately authorised professionals and agencies.

47. Ultimately, identity processes should be capable of adapting to the realities of disability, disadvantage and social vulnerability while still maintaining appropriate safeguards against fraud and misuse.

Requirement for residential address

48. Requiring a residential address to make an NDIS application can create an unnecessary barrier for applicants who are homeless, transient, escaping family violence, recently released from custody, or otherwise experiencing housing instability.

49. Legal practitioners report that some of the most vulnerable people with disability are unable to provide a fixed residential address despite having reliable alternative means of communication. The access process should therefore accommodate a range of contact arrangements, including a “no fixed address” option, email-only communication, and the ability to nominate a trusted third party, support service, advocate or government agency as a correspondence address. This would ensure that applicants are not excluded from obtaining access to the NDIS simply because of their housing circumstances and would better reflect the realities experienced by many people with disability.

Access Request and Supporting Evidence forms

50. Access forms should be designed to ensure the access criteria is addressed and to enable relevant supporting information to be provided in the initial application.

51. A well-designed form that is aligned with legislative criteria and relied upon by decision makers can reduce administrative burden, improve decision quality and make the access process easier to understand and navigate for applicants and professionals. However, many NDIS applicants are required to provide multiple reports, supplementary letters and additional assessments because the current Access Request Form does not consistently request all the information needed for a decision maker to assess the relevant access criteria. This creates unnecessary complexity for applicants and can result in significant delays while further evidence is obtained.

52. The redesign of access forms presents an opportunity to ensure that questions are closely aligned with the legislative criteria and any supporting operational guidance, with clear and targeted questions that elicit the specific evidence required for decision making. While this may result in more detailed forms, it has the potential to significantly reduce the need for multiple follow-up requests, Requests for Further Information, specialist reports and review processes.

53. Supporting Evidence Forms should remain optional rather than mandatory, recognising that applicants may provide relevant evidence in a variety of formats. However, where applicants and professionals choose to use NDIA-designed forms, the information provided should be afforded appropriate weight in decision making.

If forms are specifically designed to address the access criteria, applicants should be confident that the evidence they contain will be appropriately considered.

Disability cohorts whose eligibility is generally well-established

54. The phased removal of prescribed of List A and List B conditions by 2028[11] should not result in applicants with well-established disabilities being subjected to more onerous evidentiary requirements or extensive reassessment of matters that are unlikely to be in dispute. It will be critical for the NDIA to retain and apply technical expertise regarding existing disability cohorts where the nature, permanency and functional impacts of the condition are well understood.

55. A proportionate access process should continue to recognise circumstances where there is a strong evidentiary basis for concluding that a person's disability is permanent and results in significant functional impairment. In those cases, decision makers should be able to adopt streamlined assessment approaches and place appropriate weight on existing evidence, rather than requiring extensive additional reports, assessments or specialist evidence. This would help ensure that the removal of List A and List B does not inadvertently increase administrative burden on applicants, families, health professionals and the NDIA itself, while still allowing access decisions to be made consistently with the revised legislative framework.

Question 5—What should be considered to ensure the access decision-making process, as well as referral pathways, works well for all disability cohorts?

56. As identified in the Law Council's response to previous questions, the access process needs to be culturally safe, trauma-informed and sufficiently flexible to work for people with different disabilities, communication needs, cultural backgrounds, support and levels of functional impairment. In this respect, particular consideration should be given to First Nations Australians, people from culturally and linguistically diverse communities, and people living in rural, regional and remote areas where access to assessments, treatment and disability supports may be limited. In this regard, ongoing engagement with people in these communities, including those with lived experience, should inform the design, implementation and evaluation of access processes to ensure that they remain responsive to the needs of all cohorts of people with disability.

57. It should also be acknowledged that some fluctuating, episodic and psychosocial disabilities may not obviously fit a standardised model and may require a more individualised approach.

58. Accessibility should also be embedded throughout the process, including through the provision of accessible communication, interpreter and translator services, supported decision-making arrangements and reasonable adjustments tailored to individual needs. These supports are important to ensuring that applicants are able to

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[11] See for example Jake Evans, "People with Autism to be at Centre of 160,000 NDIS Removals", Australian Broadcasting Corporation (22 April 2026) <https://www.abc.net.au/news/2026-04-22/ndis-participant-removal-autism-focus/106593430>.

meaningfully participate in the decision-making process and understand the outcomes that affect them.

Foundational supports

59. One significant concern raised by legal practitioners is for people who will not be eligible for the NDIS, but who will still need support. While the consultation paper refers to "Foundational Supports", of which "Thriving Kids" is described as one example,[12] there is limited information available about how these supports will operate in practice, when they will be available, how they will be funded and, crucially, whether they will be sufficient to meet demand. It is unclear what happens to people who need support, are not eligible for the NDIS, and need support before Foundational Supports are fully established. There is a risk that these individuals will fall through the gaps or that demand will simply shift to already stretched health, mental health, housing and community service systems. This issue should be addressed before significant changes to NDIS access are implemented.[13]

Flexible access pathways

60. Access pathways must be flexible enough to accommodate the diverse ways that disability can affect a person's ability to engage with administrative processes. Legal practitioners report that many of the barriers encountered by applicants arise not from the legislative access criteria themselves, but from the assumption that all applicants can engage with the access process in the same way.

61. Current processes often assume that applicants can independently obtain identity documents, gather supporting evidence, complete forms, attend appointments, engage with unfamiliar organisations, participate in interviews, understand complex requests for information and advocate for themselves throughout the process. For many people with disability, particularly those with intellectual, cognitive, neurological, psychosocial or communication impairments, these administrative requirements can be as significant a barrier as the disability itself.

62. Different disability cohorts experience different barriers to engagement. For example:

- people with intellectual disability, acquired brain injury or cognitive impairments may have difficulty understanding what information is required, organising documents, attending scheduled appointments or responding to requests within required timeframes;
- people with psychosocial disability may experience fluctuating capacity, anxiety, mistrust of services or difficulties engaging with lengthy and highly procedural processes;

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[12] Department of Health, Disability and Ageing, "Consultation on NDIS Access Changes" (Consultation Paper, August 2026), 3 <https://consultations.health.gov.au/disability-and-carers-group/ndis-access-changes-consultation/user_uploads/public-consultation-paper---ndis-access-changes---pdf-2.pdf>.

[13] Note also that Queensland had not signed the "Thriving Kids" agreement as of 23 September 2026. Nas Campanella and Evan Young, "Queensland Lashed over Thriving Kids Holdout, Days Out from Launch", Australian Broadcasting Corporation (23 September 2026) <https://www.abc.net.au/news/2026-09-23/queensland-lashed-over-ndis-thriving-kids-delay/107159054>.

- people with communication disabilities may require information not be provided indifferent formats or may need support to effectively communicate their circumstances and support needs;
- applicants experiencing homelessness, justice involvement or other forms of social disadvantage may face additional practical barriers that intersect with their disability and significantly limit their ability to navigate a rigid administrative process.

63. A disability-informed access process should therefore provide multiple pathways for engaging with the Scheme and allow processes to be adapted to the needs of the individual. This may include allowing direct applications to the NDIA, accepting a broader range of identity evidence, recognising and dealing with the applicant's trusted support persons, providing alternative communication methods, and ensuring applicants are not required to undertake unnecessary procedural steps where sufficient evidence already exists. Flexibility should be built into the design of the access process rather than requiring applicants to identify, request and justify adjustments after they have already encountered barriers.

64. Equitable access is not achieved by requiring every person to navigate the same process. It is achieved by ensuring that the process can respond appropriately to the diverse ways disability affects a person's capacity to engage with administrative systems, while still enabling consistent and robust decision making.

Self-reporting assessment tools

65. Legal practitioners report that difficulties with self-reporting assessment tools commonly arise during Access Support Meetings conducted by Partners in the Community organisations, where applicants are required to complete questionnaires. While these tools may provide useful information in some circumstances, they can be difficult for people whose disabilities affect their ability to accurately understand, interpret or respond to questions about their functioning.

66. Legal practitioners report that in their experience, many justice-involved applicants have intellectual, cognitive, neurological and psychosocial impairments that directly affect their ability to accurately report their own functioning. It is not uncommon for applicants to have limited insight into the impact of their disability, difficulties understanding abstract questions about functional capacity, or challenges recalling and communicating information about their support needs. As a result, self-report assessments can sometimes present an inaccurate picture of a person's actual level of functioning. Similarly, applicants with psychosocial disability, acquired brain injury or intellectual disability may minimise their difficulties, misunderstand questions, or provide inconsistent answers due to the very impairments that form the basis of their access request. For such applicants, information provided by people who know the applicant well is often a more reliable indicator of their day-to-day functioning than a single self-reporting questionnaire.

67. Particular consideration should also be given to people with fluctuating, episodic and psychosocial disabilities. Eligibility assessments should not focus solely on a person's presentation on a particular day. Processes should recognise the reality that impairments may vary in intensity while remaining permanent and substantially disabling overall.

68. The Law Council recommends that decision makers should consider self-reported information in the broader context of all available evidence and give appropriate weight to independent observations and collateral information from those who have ongoing knowledge of the person's disability and functional capacity. In summary, this process should:

- incorporate a broader range of evidence including close contacts of the applicant with knowledge of the person's disability and functional capacity; and
- provide a flexible assessment approach for types of disabilities for which self-reporting is unreliable, taking into account the impact of cognitive impairments and fluctuating, episodic and psychosocial disabilities on a person's presentation during assessment.

Flexible processes for engaging with the NDIS

69. Where a person has legal capacity but would prefer a trusted support person, advocate, family member or organisation to communicate with the NDIA on their behalf, it would be preferable for the system to facilitate this choice where possible and with appropriate safeguards, without requiring legal guardianship, administration orders or other complex nominee arrangements.

70. Legal practitioners report that many people with disability have the capacity to make decisions about their lives and NDIS matters but experience significant difficulty engaging directly with government systems and administrative processes. This is particularly common for people with intellectual disability, acquired brain injury, psychosocial disability, autism and cognitive impairments, who may find NDIA processes overwhelming, confusing or anxiety-inducing. For these individuals, being able to nominate a trusted support person to communicate with the NDIA for the purpose of an access request can be the difference between successfully engaging with the process and disengaging altogether. It will still be important for the NDIS to ensure appropriate safeguards in this process, including so that any such support person has no actual or perceived conflicts of interest in so acting.

71. Legal practitioners also regularly encounter situations where applicants are able to provide informed consent for another person to assist them, but face difficulties because NDIA processes do not accommodate the way they wish to engage with the NDIA. A disability-informed and person-centred process should recognise that requiring formal legal appointments in these circumstances can create unnecessary barriers and is inconsistent with supported decision-making principles.

72. Consent processes should therefore be flexibly designed to maximise participation and choice, allowing for verbal and written consent, clear forms and recognised representatives already supporting them (such as advocates, social workers, legal representatives or community service providers), without requiring formal guardianship or nominee arrangements. This would reduce barriers to engagement, better reflect the realities of how many people with disability navigate complex systems, and promote a more accessible, trauma-informed and person-centred access process. Communication preferences should also be clearly recorded and consistently followed, so that applicants can choose whether they wish communications to occur directly with them, through a support person, through an organisation, or through a combination of these arrangements.

Cultural safety

73. Cultural safety is a particularly important for First Nations applicants.

74. Legal practitioners report that many First Nations applicants have family, caring and decision-making structures that do not align with the assumptions built into standard administrative processes. Children may be cared for by grandparents, aunties, uncles or other extended family members through informal kinship arrangements without formal legal orders in place. These arrangements often provide important stability, cultural connection and protection for the child, yet can create difficulties where NDIS processes require formal parental responsibility or documentary evidence of decision-making authority.

75. Legal practitioners also regularly encounter families who have experienced significant intergenerational trauma, child protection involvement and negative interactions with government agencies. These experiences can understandably contribute to mistrust of government systems and reluctance to engage with processes that are perceived as intrusive, complex or intimidating. In some cases, family members who are otherwise well-placed to support a child or adult applicant may disengage because they are uncomfortable with the level of scrutiny involved in administrative processes.

76. A culturally safe access process should therefore recognise the diversity of First Nations family structures and avoid imposing unnecessary procedural barriers that do not reflect community realities. This includes providing culturally responsive engagement, increasing First Nations representation within access and decision-making teams, ensuring staff receive cultural safety training, and designing processes that build trust and support participation rather than inadvertently reinforcing existing barriers to accessing support.

Applicants with communication difficulties and complex support needs

77. To support applicants with communication disabilities, the Law Council recommends that the NDIS access design process include:

    - easy-read materials;
    - plain language resources;
    - supported communication methods;
    - interpreters;
    - alternative communication formats; and
    - additional time and support where required.

78. Specialist decision-making staff with additional expertise should also be available to assess applications for people with complex support needs. Such people may include:

    - First Nations applicants;
    - people with psychosocial disability;
    - children;
    - people currently or previously partes to legal processes;
    - people experiencing homelessness; and
    - people with multiple and intersecting disabilities.

Question 6—What factors and evidence should be considered when determining whether an impairment is permanent or likely permanent?

Permanence

79. The assessment of an impairment's permanence should focus on the likely long-term functional impact of the impairment rather than solely on its clinical diagnosis. A functional approach recognises the reality that individuals with different conditions may experience similar levels of disability, whilst those with the same condition may not have the same needs. Just as the Convention on the Rights of Persons with Disabilities recognises the role of multiple discrimination faced by persons with disabilities,[14] this risk factor should also be taken into account through a functional approach.

80. The Law Council recommends that the assessment framework should not equate permanence to a condition being "static" or unchanging. In particular, some conditions may fluctuate or partially improve over time whilst still resulting in long-term disability and ongoing support needs. The possibility of fluctuation or partial improvement should not preclude a finding of permanence for any impairment. Rather, the focus should remain on the long-term effects on an applicant's functional capacity, having regard to their personal circumstances and support requirements.

81. Any process for determining permanence and functional capacity should also be continually reviewed and improved, based on evidence and the feedback of people with lived experience.

Availability of treatment

82. Decision makers should consider the availability, accessibility, affordability and appropriateness of treatment and other interventions in making access decisions, based on the reality of that person's circumstances, and focused on actual benefit versus risk, rather than whether a treatment can be identified in theory. Treatment should not be assumed to be available simply because it exists, and applicants should not be required to pursue burdensome, inaccessible or unwanted treatment in order to demonstrate the permanence of their impairment, which may create barriers to access and support.

83. Relevant considerations for decision makers include:

- whether the treatment is available in the person's local area;
- the cost and affordability of treatment outside the NDIS;
- waiting times and workforce shortages;
- the likely benefit of the treatment;
- cultural appropriateness;
- the risks, side effects and burden associated with the treatment; and
- whether the treatment is clinically appropriate for the individual.

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[14] See for example Convention on the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 30 March 2008), Preamble paragraph (p), Article 6.

Distinction between "treatment" and "support"

84. Clear guidance should be provided to NDIS applicants and decision makers on the distinction between treatment and supports, as this distinction is central to new sections 25A and 34A of the NDIS Act in particular. Many interventions, such as psychology, physiotherapy, speech therapy and occupational therapy, can be delivered as health treatments in some circumstances and NDIS-funded supports in others.

85. The distinction often depends on the purpose of the intervention rather than the intervention itself.[15] Without clear definitions and practical examples, there is a risk that recommendations for supports or early intervention services could be incorrectly interpreted as evidence that an impairment is not permanent.

Interaction between disability and early intervention pathways

86. Particular attention should be given to the interaction between the permanency and the early intervention provisions in the NDIS Act as amended. The framework may create an inconsistency in that:

    - under the permanency provisions, an impairment may not be considered permanent if there is treatment likely to materially improve, reverse or alleviate the impact of the impairment; while
    - under the early intervention provisions, a person may satisfy access requirements because supports are likely to reduce the impact of the impairment, improve functional capacity or prevent deterioration.

87. Further guidance will therefore be needed to explain how decision makers should distinguish between a treatment that means an impairment is not yet permanent and a support that indicates a person may benefit from early intervention despite having a permanent impairment.

Assessment of temporary improvement in functioning

88. The concept of an impairment being capable of being "alleviated" in new paragraph 25A(1)(b) of the NDIS Act requires careful consideration. The ordinary meaning of "alleviate" is broad and may simply mean making the effects of something less severe and easier to be endured.[16] In practice, many people with clearly permanent disabilities would experience some alleviation of the impact of their impairments through treatment or support. For example:

    - A person with quadriplegia may benefit from physiotherapy that reduces contractures and improves comfort;
    - A person with Level 3 Autism may benefit from Positive Behaviour Support that reduces behaviours of concern; or

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[15] See for example NSW Health, "Practice Guideline: Distinguishing Between Health and Disability (NDIS) Supports" (18 August 2026) <https://resources.schn.health.nsw.gov.au/policies/policies/pdf/2021-035.pdf>.

[16] The Macquarie Dictionary Online defines "alleviate" as "to make easier to be endured; lessen; mitigate: *to alleviate sorrow*; *to alleviate pain*; *to alleviate punishment*". <https://app.macquariedictionary.com.au/>.

- A person with an intellectual or psychosocial impairment may benefit from therapeutic interventions that improve functioning.

89. The fact that an intervention reduces the impact of an impairment should not necessarily mean the impairment itself is no longer permanent. Guidance should clarify the extent of alleviation required before permanency is no longer established.

Practical guidance on identifying appropriate treatment for an impairment

90. The proposed provisions appropriately focus on treatment of an impairment rather than treatment of a diagnosis. However, this may create practical challenges because impairments are largely an NDIS concept, whereas treatment options are generally identified by reference to diagnoses. A person with a physical impairment may require very different treatments depending on the underlying condition causing that impairment. Clear guidance will be required regarding how decision makers are expected to identify appropriate treatments for particular impairments and determine whether they satisfy the statutory definition of "appropriate treatment".

91. Consideration should also be given to publishing operational guidance explaining what may constitute an "appropriate treatment" for different impairment categories. This could include examples of commonly accepted evidence-based treatments and interventions for different types of intellectual, cognitive, neurological, sensory, physical and psychosocial impairments. Such guidance would

    - improve consistency of decision making;
    - promote transparency;
    - assist applicants and health professionals to understand what evidence is relevant; and
    - reduce disputes regarding whether treatment options have been adequately explored.

Meaning of treatment "regularly undertaken in Australia"

92. Further clarification should be provided regarding the requirement that a treatment be "regularly undertaken in Australia".[17] It is unclear whether this refers to treatments that are commonly available and utilised across Australia, or treatments that are available only in certain metropolitan locations or through highly specialised services.

93. This issue is particularly important for people living in regional, rural and remote areas. Greater clarity would assist decision makers to determine whether a treatment is generally recognised and regularly used in Australia as an evidence-based intervention.

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[17] Paragraph 25A(1)(c) of the NDIS Act, as amended by the NDIS Amendment Act. See also Department of Health, Disability and Ageing, "Final Changes to the *NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026*" (4 August 2026) <https://www.health.gov.au/sites/default/files/2026-08/final-changes-to-the-ndis-amendment-securing-the-ndis-for-future-generations-bill-2026.pdf>.

Decision letters and treatment options

94. Where a decision maker finds that a condition is not permanent because of available treatment options, they should clearly explain

    - which treatments they consider relevant to the person's impairments;
    - why those treatments are considered "appropriate treatments" within the meaning of the legislation;
    - whether those treatments have been explored; and
    - how those treatments are expected to improve, reverse or alleviate the impact of the impairment.

    Provision of this kind of information would significantly improve transparency and enable applicants to understand and respond to the concerns identified by the decision maker.

Operational guidelines

95. As noted above, detailed Operational Guidelines will be necessary to ensure consistency and predictability in decision making under the new provisions. In particular, such Guidelines should include examples and case studies illustrating

    - when an impairment will be regarded as permanent despite ongoing treatment;
    - the distinction between treatment and supports;
    - the interaction between the disability and early intervention pathways; and
    - how the concept of appropriate treatment should be applied to different kinds of impairments

    Publicly available examples would also assist applicants and treating professionals to provide relevant evidence at the outset, reducing Requests for Further Information, review applications and appeals.

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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;
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- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
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- the Victorian Bar Incorporated;
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