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This report has been prepared by the Justice and Equity Centre (JEC), a leading, independent law and policy centre based in Sydney. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing disadvantage and injustice.

We acknowledge and pay our respects to the Gadigal as the Traditional Owners of the land on which our office stands and recognise their continuing connection to land, water and community. Sovereignty over Gadigal land was never ceded and we stand with First Nations people in their struggle for justice.

This report contains general information. It is not intended as legal advice and is not a substitute for legal advice from a qualified professional.

The artworks in this report have been licensed from Studio A, a supported studio based in Sydney, Australia that tackles the barriers artists with intellectual disability face in accessing conventional education, professional development pathways and opportunities needed to be successful and renowned visual artists. Studio A paves professional pathways for such artists so that they can achieve their artistic and economic aspirations.

Cover artwork by Lex Tan, *St Leonards Bushland*, 2025 **studio A**



1. Introduction

For National Disability Insurance Scheme ('NDIS') participants and advocates, 2025 was a year of delays and ongoing uncertainty.

While we expected a broad reform agenda, the Commonwealth Government did not implement many of the legislative and regulatory changes foreshadowed in 2024. The Government did address some recommendations from the 2023 Independent Review into the NDIS ('NDIS Review'), however a formal response is still pending.

Following leadership and portfolio changes after the May 2025 federal election, Government prioritised reforms aimed at reducing the annual cost growth rate of the Scheme to 5-6% per year in the medium term. Key developments included the announcement of the 'Thriving Kids' program (designed to support some children outside the NDIS), the release of new NDIS supports lists (to designate supports that will and will not be NDIS-funded), and the rollout of funding periods in participant budgets (said to be aimed at reducing plan over-spending).

The Government also continued efforts to co-design NDIS reforms with the disability community. However, there have been substantial challenges in clarifying the role and scope of co-design groups and in ensuring meaningful engagement.

Meanwhile, provider accountability and compliance came under heightened scrutiny, with record penalties imposed by the Federal Court and new legislative measures introduced to Parliament to strengthen regulatory oversight.

These changes unfolded against a backdrop of ongoing debates about access and equity, and a surge in appeals to the newly established Administrative Review Tribunal, demonstrating the NDIS's role, and community expectations of its outcomes, remain complex and contested.

Looking to the year ahead, Government announcements have again foreshadowed significant NDIS developments, including in relation to the new framework planning process, the budget 'method' calculation and updates to the NDIS supports lists. But the pace and extent of reform remain to be seen.



Artwork by Annette Galstaun, *Tropical Wetlands*, 2023. **studio A**

2. NDIA leadership and engagement

2.1 Leadership and oversight

2025 brought changes to NDIA leadership and oversight, with a portfolio reshuffle, a new CEO and the new NDIS Reform Advisory Committee.

2.1.1 Leadership and portfolio changes

Following the federal election in May 2025, the National Disability Insurance Agency ('NDIA') moved from the Department of Social Services to an expanded Department of Health, Disability and Ageing ('Department'). In a portfolio reshuffle, the Hon Mark Butler MP was appointed Minister for Health and Ageing and Minister for Disability and the NDIS, with the Hon Jenny McAllister also serving as the Minister for the NDIS. The new Ministers have stressed the Government's focus on controlling Scheme costs while ensuring it is effective and operates with integrity.

In November, there was leadership change within the NDIA itself, with Mr Graeme Head AO appointed as CEO for a three year term, replacing Ms Rebecca Falkingham PSM at the conclusion of her term.

2.1.2 NDIS Reform Advisory Committee

In January 2025, the Government established the NDIS Reform Advisory Committee, a recommendation of the NDIS Review. The Committee is co-chaired by long-term disability advocates El Gibbs and Dougie Herd, joined by 8 members nominated by governments to represent each state and territory and 3 additional community members. The Committee monitors implementation of NDIS reforms and provides independent advice to Commonwealth, State and Territory Ministers with responsibility for disability, to ensure those Ministers are informed by lived experience and community insight.

Since the Committee began meeting in August 2025, it has received briefings on new framework planning, the Thriving Kids program and the work of the NDIS Quality and Safeguards Commission ('NDIS Commission'). The Committee's discussions canvassed the lack of clarity or certainty surrounding NDIS reforms and the distress this is causing in the community, ongoing issues with cuts to NDIS plans, and issues with eligibility reassessments. In each meeting, the Committee emphasised the need for improvements to consultation processes, such as longer lead times, clearer communication, transparency and increased disability expertise.

2.2 Approach to co-design

Following an independent review, in April 2025 the NDIA reset its co-design approach to focus on priority reforms.

In January 2025, the NDIA received findings of an independent evaluation into its use of co-design. The evaluation found 'NDIA staff were faced with a difficult task: to implement co-design at pace, with limited skills and support, in an environment that could not fully support acting on the decisions that came out of co-design'. The report recommended prioritising co-design projects that are clear in purpose and scope. It advised co-design requires sufficient time and support, as well as greater accountability around implementing decisions agreed through co-design.

In April 2025, the NDIA reset its co-design approach. Four co-design groups have been prioritised to continue: Navigation, Assessment and Budgeting, Participant Pathway Experience and Participant Safeguarding. Other co-design groups (Home and Living, Integrity and Workforce Capability) have been paused until the next phase of NDIS reforms.

Despite the findings of the independent evaluation and the reset, Disability Representative Organisations ('DROs') continue to raise concerns that changes to the NDIS (eg new framework planning) are still not being developed through meaningful co-design processes. Co-design groups remain uncertain about the scope and nature of their role in shaping and implementing NDIS reforms. For example, there is uncertainty around how the advice of co-design groups is implemented alongside the activities of the Design Hub (responsible for designing and testing approaches to new framework planning).

As the independent evaluation found, true co-design involves a robust process to engage people with disability and implement the decisions agreed through that process. Current feedback from DROs indicates the NDIA is still not engaging in effective co-design.



True co-design involves a robust process to engage people with disability and implement the decisions agreed through that process.

3. Changes to the NDIS

3.1 New framework planning

The anticipated rollout of new framework plans was delayed. The new planning process will begin from mid-2026, following further public consultations in early 2026.

As covered in our [NDIS Insights 2024-25](#), NDIS participants will be transitioned to 'new framework plans'. These changes were meant to commence in September 2025.

The NDIA delayed the rollout, citing [advice](#) from the disability community 'that more time will improve the delivery of these reforms and minimise disruption'. While the new planning process is intended to be developed through the Assessment and Budgeting co-design group, as mentioned above (see 2.2 Approach to co-design), the disability community has raised issues with the process and outputs of that co-design.

New framework planning will use a 'support needs assessment' to determine the supports a participant needs and set a more flexible 'total budget amount'. The NDIA has [advised](#) the assessment will include:

- * personal and environmental circumstances questionnaire ('PECQ');
- * an interview using the Instrument for Classification and Assessment of Support Needs ('I-CAN'); and
- * if required, a targeted assessment for people with more complex support needs.

This standardised process was adopted in part because of the inequities in the current planning process for 'old framework plans', where better-resourced people may be able to better substantiate their need for supports and therefore achieve better outcomes through the NDIS.

It remains to be seen whether the new support needs assessment will deliver fairer and more consistent outcomes for participants.

3.1.1 I-CAN and budget method

In September 2025, the NDIA [announced](#) it procured the I-CAN tool for the new support needs assessment.

I-CAN was developed in Australia by the Centre for Disability Studies, and versions of it have been used, for example, as part of the [Disability Supports for Older Australians program](#). It is a 'strengths-based' tool that identifies and focuses on a participant's support needs, rather than functional impairments. It will be the primary method for support needs assessments for participants over the age of 16.

It is currently unclear:

- * what training and qualifications NDIS assessors will have to use the I-CAN;
- * how the I-CAN will be used; and
- * what other information (if any) assessors can consider as part of the assessment.

Once the I-CAN identifies a participant's support needs, a 'method' will be applied to quantify the budget amount – this budget is intended to allow greater flexibility than current plans where funding is based on specific supports. The method to quantify the budget is yet to be developed.

The I-CAN will be a critical part of the process in developing a participant's budget. If a participant is not satisfied with their budget amount, the main mechanism for a participant to challenge it is to ask for a replacement assessment.

It is not yet clear when the NDIA would agree to a replacement assessment. While a participant will continue to have the right to seek external review of decisions through the Administrative Review Tribunal, it is also not yet clear which components of the plan will be reviewable. It is therefore vital that a participant can access a replacement assessment in a sufficiently broad range of circumstances, to ensure problems with assessments can be addressed.

The disability community has an opportunity until 6 March 2026 to provide views on the [new framework planning process consultation](#), before the anticipated implementation in mid-July 2026.

3.1.2 Concerns regarding the NDIA's use of artificial intelligence ('AI') and automated decision-making

Media reporting in late-2025, including investigations by [The Guardian](#), stirred concern among the disability community regarding the NDIA's potential use of automated decision-making and AI when creating participants' plans.

DROs issued a [joint statement](#) in December 2025 calling for transparency regarding the NDIA's use of AI and automated decision-making in new framework planning, and for co-design of all aspects of new framework planning and rules development, including any proposed use of automation.

Many government programs use automation, AI or other technologies to assist decision-makers to organise data and identify trends and patterns. When done consistently with [principles of responsible use](#), such uses seem unlikely to raise legal issues. Particular care must be taken, however, if the NDIA intends to use AI or automated decision-making to replace human judgements or undertake more evaluative tasks.

The NDIA must ensure it is acting consistent with best practice (see, for example, the [Commonwealth Ombudsman's Better Practice Guide on Automated Decision Making](#)), including by being open and transparent about how these technologies are used in decision-making about participants and plans.

3.2 Eligibility reassessments

In 2025, the NDIA's approach to eligibility reassessments continued to be a significant issue for the disability community.

In late 2024 and into 2025, a significantly larger number of participants were subject to eligibility reassessments than in previous years, particularly children on early intervention pathways. The disability community raised concerns about the NDIA's approach and process for conducting these reassessments. In February 2025, the NDIA responded by increasing the timeframe for participants to provide additional information after receiving a reassessment notice from 28 to 90 days.

The NDIA also [said](#) it was working to improve its communication with participants through the reassessment process. In July 2025, the NDIA [reported](#) it had 'updated the eligibility reassessment letters with clearer information on what participants can do'. Despite this, the community continues to have concerns about the fairness of the eligibility reassessment process, particularly around the information the NDIA asks participants to provide to support their eligibility.



It is therefore vital that a participant can access a replacement assessment in a sufficiently broad range of circumstances, to ensure problems with assessments can be addressed.

3.3 Funding periods

In May 2025, the NDIA introduced funding periods in NDIS plans. Funding is now released to participants in staged intervals rather than in full at the start of a plan.

The NDIA's rationale for introducing funding periods is to reduce the likelihood of participants overspending their budgets.

In July 2025, a [joint statement](#) by Every Australian Counts and DROs expressed concerns about the NDIA's approach to funding periods. Short and rigid funding periods fail to account for the unpredictable nature of disability and accessing supports – it reduces flexibility and choice for participants, and the disruption of essential supports can be harmful to participants. The joint statement called for the NDIA to set 12-month funding periods as the default, unless participants prefer a shorter funding period or there is a history of inappropriate overspending.

In October 2025, NDIA Deputy CEO Aaron Verlin [commented](#) during Senate Estimates that 3-month funding periods are not a mandatory default, but a starting point. However, reports from within the disability community suggest 3-month funding periods are being applied as the 'default' option for participants. The NDIA [shared](#) that 105,694 NDIS participants had 3-month funding periods applied to their plans between 19 May and 28 November 2025.

3.4 Participant withdrawals, payment claims and plan variations

Proposed amendments to the NDIS Act would change the process for a participant withdrawing from the NDIS, the process of payment claims and clarify a plan can be varied to decrease funding.

In November 2025, the Government introduced the [National Disability Insurance Scheme Amendment \(Integrity and Safeguarding\) Bill 2025](#) ('Bill No. 2') into Parliament. This is the Government's second law-reform response to the [NDIS Review Final Report](#) released in December 2023. While most of the changes proposed in Bill No. 2 are to increase NDIS Commission powers (see 5 Regulation of providers, below), the Bill also proposes three changes to how the NDIS operates:

1. Introducing a 90-day 'cooling-off' period to allow participants to cancel a request to leave the NDIS. This would be a safeguard to ensure requests to leave the NDIS are genuine and in the best interests of a participant.
2. Amending the process for submitting payment claims by introducing new requirements before the NDIA can pay a claim. The NDIA would not be able to pay a claim where any requested information has not been provided (including if the information requested is not available or is difficult to provide) even if it is otherwise satisfied the claim is payable. The disability community is concerned this could lead to the NDIA making onerous requests for information or to supports being disrupted/not delivered because of unpaid claims.
3. 'Clarifying' that the NDIA's power to vary a participant's plan in accordance with subsection 47A(1) of the NDIS Act can involve an increase or decrease to the total funding amount (unless prevented by the NDIS Act or Rules). This applies to both old and new framework plans and does not change the circumstances in which variations can be made. Although the Government says these amendments do not introduce 'new' NDIA powers, but simply clarify the operation of existing variation powers, there are concerns within the disability community that this change could have unintended consequences if the provision is misunderstood or misused.

A [Senate Committee inquiry](#) is taking submissions on the Bill until 6 February 2026, with Parliament expected to consider the Bill when it returns for its Autumn sittings in February to April 2026.

4. Availability of disability supports

Changes to which disability supports will be funded under the NDIS created on-going concerns for the disability community over the past year.

Interim NDIS supports lists implemented in late-2024 were critiqued as overly prescriptive, reducing choice for participants, while development of Foundational Supports – disability supports provided outside of the NDIS – lagged.

4.1 NDIS supports

4.1.1 NDIS supports lists

Strong community feedback about interim NDIS supports lists shows participants remain unhappy with the lack of choice and flexibility in accessing NDIS supports.

Following the introduction of interim NDIS supports lists in October 2024 (covered in our [NDIS Insights 2024-25](#)), feedback to the Department [published](#) in 2025 identified several themes, including:

- * the disability community's preference for a less-prescriptive, principles-based approach over a list-based approach;
- * the need for flexibility in relation to what supports can be funded;
- * ensuring standard items can be purchased with NDIS funds, not just 'specialist disability support' items; and
- * a better process for 'substitutions' to allow some non-NDIS supports to be purchased.

The interim NDIS supports lists have not been updated as expected: a consequence of disagreement between the Commonwealth and State and Territory Governments about the division of funding for the disability supports (see 4.2 Foundational supports, below).

The Department held a public consultation in 2025 to inform the drafting of updated NDIS supports lists. Many stakeholders highlighted serious problems created by the interim NDIS supports lists. There were calls for greater flexibility for participants (eg improving access to standard items) and to better define how the NDIS intersects with other service delivery systems.

The Department will release draft updated NDIS supports lists for public consultation in early 2026, with the updated lists expected to be operational later in 2026.

4.1.2 NDIS Evidence Advisory Committee

In 2025, the Government established the [NDIS Evidence Advisory Committee](#) ('EA Committee'), as recommended by the NDIS Review. The Committee advises the Government on the suitability of certain supports for NDIS funding, considering the benefits, quality, safety and cost-effectiveness of those supports. This is intended to address any concerns about the evidence base and rationale for including or excluding supports funded under the NDIS.

From October to November, the EA Committee ran a public consultation on the value of several supports, including psychiatric assistance dogs and smart home appliances. The Committee's findings are yet to be published.

Consultation on six additional supports including music and art therapy closed on 20 January 2026. Music and art therapy attracted attention in 2025, with an independent review led by Dr Stephen Duckett AM confirming the therapies can be effective for some people. The review made 19 recommendations to improve how art and music therapy is delivered, with the NDIA supporting or supporting 'in principle' all recommendations made to the Agency. The EA Committee is now undertaking a review of the evidence base for these therapies.

4.2 Foundational Supports

Despite the anticipated rollout of Foundational Supports from mid-2025, disagreement between the Commonwealth and State and Territory Governments as to the division of funding stalled progress.

As reported in our NDIS Insights 2024-25, in 2024 the Department held public consultation on the development of Foundational Supports. The National Cabinet had earlier agreed that all governments should jointly fund these supports. However, ongoing disagreement between Commonwealth, State and Territory governments as to the arrangements for this joint funding has stalled the rollout.

While the Commonwealth Government says Foundational Supports will be developed through a mix of new and reformed programs and services, other than the Thriving Kids program, 2025 saw limited updates on the development and implementation of these supports.

4.2.1 Thriving Kids

In August 2025, the Government announced 'Thriving Kids' – a new program to support young children with disability and/or developmental delay outside of the NDIS.

Thriving Kids targets children aged 8 and under who have low to moderate support needs related to their disability and/or developmental delay.

The Government intends to roll out Thriving Kids from 1 July 2026, with availability expanding progressively to 1 July 2027. The Government has said existing participants will remain in the NDIS subject to reassessment through the transition, with changes to access and eligibility only impacting new applicants.

In September 2025, the Government set up the Thriving Kids Advisory Group to help design the program, bringing together expertise from paediatrics, child development, disability, education, health care, family services and First Nations communities.

As program details are yet to be finalised, critical aspects such as eligibility criteria, scope of supports, service pathways and interaction with the NDIS are yet to be settled. In September 2025, Minister Butler referred the Thriving Kids program to a Parliamentary Committee inquiry. The Committee heard mixed views about the program, noting the uncertainty about its design.

In December 2025, the Committee published its report titled 'No Child Left Behind', making 16 recommendations. In response to stakeholders' strong and consistent calls for co-design, the Committee recommended the Thriving Kids Advisory Group co-design the program. To prevent loss of supports and children falling through the cracks between the NDIS and Thriving Kids, the Committee recommended the Thriving Kids program be introduced in phases. The Committee specifically recommended the Thriving Kids program be fully operational before any changes are made to NDIS eligibility, to ensure 'no child is worse off'.

Given the details of the Thriving Kids program are yet to be settled, the Government has an opportunity to address the types of concerns that were raised at the Parliamentary Committee inquiry.



The Committee specifically recommended the Thriving Kids program be fully operational before any changes are made to NDIS eligibility, to ensure 'no child is worse off.'

5. Regulation of providers

5.1 Increased compliance and enforcement

2025 saw NDIS providers face greater scrutiny and accountability, with law and policy reform to increase monitoring and enforcement of providers in 2026.

Over the year, the NDIS Commission increased compliance and enforcement action against NDIS providers. It issued more compliance notices, made more corrective action requests, revoked more registrations and delivered significantly more education than in past years. The NDIS Commission also commenced proceedings seeking civil penalties against individuals alleged to have breached banning orders, the first action of this kind.

Responding to the NDIS Commission's compliance activities, in 2025 the Federal Court ordered record penalties for providers who breached their obligations under the NDIS Act:

- * In January 2025, a penalty of over **\$1.9 million** was imposed on a provider for failing to ensure its staff had the necessary training, qualifications and/or competence, in relation to the death of an NDIS participant and two other participants being put at serious risk of harm.
- * In October 2025, following the death of an NDIS participant, a provider was ordered to pay a penalty of **\$2.2 million** for not providing services in a safe and competent manner by failing to provide active 2:1 supports 24 hours a day as the participant needed.

- * In November 2025, a provider was ordered to pay **\$2.5 million** for failing to keep participants and workers safe at Supported Independent Living accommodation and for failing to notify the NDIS Commission of reportable incidents within the required timeframes.

The Australian Competition and Consumer Commission ('ACCC') also took regulatory action against NDIS providers, in line with its 2025 priority to improve providers' compliance with obligations under the Australian Consumer Law. It took compliance and enforcement action against a number of businesses in relation to advertising practices targeting NDIS participants, including for making false or misleading representations to consumers that certain products were 'endorsed' by the NDIS.

The ACCC and the NDIS Commission have distinct but complementary functions, aiming to work collaboratively to regulate provider misconduct. The ACCC will focus on enforcement action against providers who breach competition and consumer laws.

Monitoring and enforcement of providers are likely to increase if the Government's Bill No. 2 passes. Schedule 1 to the Bill proposes changes to increase the NDIS Commission's powers to proactively and effectively regulate how disability supports are provided, including:

- * broader investigation, monitoring and information gathering powers;
- * new civil penalties;
- * new criminal offences and higher penalties for existing civil penalty provisions;
- * broadening the categories of people against whom the NDIS Commission can impose a banning order; and
- * new antipromotion orders to allow the NDIS Commission to restrict advertising or promotion of NDIS supports where it undermines the principles and integrity of the Scheme.

5.2 Updates to mandatory registration

Mandatory registration for Supported Independent Living providers and providers of digital platforms will begin in July 2026.

Providers of disability supports can be registered with the NDIS Commission or unregistered. Before the end of 2025 the Government announced that, from 1 July 2026, providers of Supported Independent Living and 'platform providers' will be required to be registered with the NDIS Commission. Platform providers connect NDIS participants and support workers through online marketplaces, often facilitating high-volume, low-visibility interactions.

The NDIS Commission says the Government's proposal responds to recommendations from the NDIS Review, the Disability Royal Commission and the NDIS Provider and Worker Registration Taskforce. While mandatory registration of support coordination has also been considered, for now it has been paused.

The NDIS Review recommended graduated mandatory registration of all providers. Since then, opinions within the disability community have been divided – while mandatory registration would offer greater assurances of safety, quality and oversight, it may also risk restricting individual choice. The NDIS Commission has recognised participants will be impacted if providers do not register and instead leave the sector, and said participants will need to be supported through any transition.



Artwork by Skye Saxon, *Frosted Webbing*, 2025.

studio A

6. Tribunal and Federal Court decisions

6.1 NDIS appeals to the Tribunal are at record highs

In the financial year 2024-25, the Administrative Review Tribunal ('ART') received 7,935 applications to review decisions made under the NDIS Act; a 95% increase from 2023-24. The percentage of NDIS reviews resolved within 12 months was largely unchanged – from 77% in 2023-24 to 79% in 2024-25. The increase in applications means a greater number of more complex and difficult-to-resolve cases are waiting to be heard.

ART principal registrar Michael Hawkins told Senate estimates in October 2025 that the ART was struggling with the increased workload, as they 'do not have the staff, members or technological resources to keep up with the demands for our services'. It remains to be seen whether the Government will expand the ART's resources to meet the increasing number of NDIS appeals, or whether there are other options to expedite finalising NDIS appeals in the ART.



Consideration of whether an item was 'standard' or had been 'modified or adapted' needed to consider the circumstances and needs of the participant in question.

6.2 Interpreting the NDIS Supports Lists

Since 'supports lists' were introduced in October 2024 (see 4.1.1 NDIS supports lists), the question of what is and is not an 'NDIS support' that can be funded by the Scheme has been the subject of more ART cases than any other.

6.2.1 Swimming lessons

The Federal Court's decision in *NDIA v IHY25 (by next friend IHZ25) [2025] FCA 1122* underlined the importance of these supports lists. While the ART had found a child with developmental delay should receive funding for swimming lessons because these would have clear and significant benefits, the Federal Court overturned these orders as swimming lessons are not a listed NDIS support.

6.2.2 Art therapy

In *FSWN and NDIA [2025] ARTA 114*, the only support in dispute before the ART was art therapy. While the ART concluded that art therapy was not excluded from being an NDIS support, and could be an 'evidence-based therapy', it found the applicant had not filed the necessary evidence to support her case and so did not fund art therapy. This was decided amidst the ongoing controversy over the NDIA's policy of refusing to fund art therapy (as discussed above at section 4.1). The ART took a position contrary to NDIA policy at the time. This position was subsequently reflected in the Duckett Review's approach and recommendations (see 4.1.2 NDIS Evidence Advisory Committee). This highlights the contested nature of NDIS supports and what things government will and should fund.

6.2.3 Vehicles

The decision in *YHCQ and NDIA [2025] ARTA 267* involved a nuanced interpretation of the supports lists. While the 'out list' prohibited 'vehicles', the ART found that when read in conjunction with supports permitted by the 'in list' and with the NDIA's policies, this should be taken to only prohibit *purchase* of a vehicle, and vehicle hire should be allowed. The ART stressed the need to consider the full context of the lists, NDIA policy, and the functions of the wider NDIS when interpreting the scope of any particular item on the supports lists. This demonstrates how interpretation of the 'supports lists' continues to require legally and factually complex evaluations.

6.2.4 'Standard' items

Several other cases have considered the scope of exclusions of 'standard' items. While the NDIA consistently argued that supports that might be widely used by and provide a benefit to the general population would fall within excluded 'standard' items, ART decisions adopted varying views.

In *VPYC and NDIA [2025] ARTA 3*, the ART refused to fund weighted blankets or a heavy beanbag for the participant because, while these might assist in addressing disability needs, the items themselves were typical off-the-shelf purchases and had not been 'modified'.

Similarly, in *NZGW and NDIA [2025] ARTA 1035*, the ART found property modifications such as a pathway and grab rails were not modified to meet the participant's disability needs, and so were 'standard' modifications that could not be funded.

By contrast, in *QGRY and NDIA [2025] ARTA 598* the ART took a different stance in which many types of home modification and features (ie driveway repair, construction of a pathway and kitchen renovations) – which members of the general population might choose to purchase and would benefit from – were nonetheless permissible as they enabled the participant to live both independently and safely in her own home and therefore addressed her specific disability needs.

This issue was further considered by the ART's Guidance and Appeals Panel ('GAP') in the recent case of *CEO, NDIA and Hyde (Guidance and Appeals Panel) [2025] ARTA 2597*.

This case concerned purchase of a 'smart home' security system, and whether this was a 'standard item' that could not be an NDIS support. One member of the GAP found that both the individual components of the system, and the system as a whole, were standard items and so excluded.

However, the other two members found the system needed to be considered as a whole and, as the participant would include additional hardware components in the system, it was 'modified' and 'adapted' to her needs. The two members in the majority also rejected several elements of the NDIA's approach to defining a 'standard' item and commented that consideration of whether an item was 'standard' or had been 'modified or adapted' needed to consider the circumstances and needs of the participant in question. They also made clear (in contrast to the decision in *VPYC*) that 'the commercial availability or otherwise of an item is not relevant to whether the item is a "standard item" for a current or prospective participant'.

As GAP decisions provide guidance to future Tribunals, this majority decision should provide much-needed clarity to this area of law and ensure an appropriate focus on the nature of a participant's disability needs.

6.2.5 'Day-to-day living costs'

In our *NDIS Insights 2024-25*, we noted the Federal Court decision of *Warwick v NDIA [2024] FCA 616*, in which the Court found one-off costs associated with moving house were not 'day-to-day living costs' as they are not everyday expenses and are incurred only very rarely. The NDIA appealed that decision. In *National Disability Insurance Agency v Warwick [2025] FCAFC 100*, the Full Federal Court upheld the original judge's decision and findings about the interpretation of 'day-to-day living costs'. As the supports lists use the phrase 'day-to-day' living costs' in several places, this decision also helps to clarify how those lists should be interpreted.

6.3 Specialist Disability Accommodation cases

As in previous years, the ART resolved several reviews concerning Specialist Disability Accommodation ('SDA') funding.

SDA decisions involve complex interactions between the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2013* (Cth) ('SDA Rules') and the NDIS Act, and often involve challenging questions of fact and judgement.

In *Allen and NDIA* [2025] ARTA 1359, the ART interpreted the phrase 'extreme functional impairment' in light of a threshold derived from the World Health Organisation Disability Assessment Schedule ('WHODAS'), while also determining this assessment of impairment must consider a participant in his/her 'intrinsic' state (without aid of assistive technology). This appears inconsistent with the approach to defining 'extreme functional impairment' in *Charrington and National Disability Insurance Agency* [2022] AATA 1160, where the ART relied instead on a particular dictionary definition, which was not referred to by the ART in *Allen*.

Similarly, in both *Brandon Trapezanidis and NDIA* [2025] ARTA 1674 and *Kirby and CEO, National Disability Insurance Agency (NDIS)* [2025] ARTA 2378, the ART determined the NDIA's pricing policy for SDA was inconsistent with the SDA Rules to the extent it prohibited funding for a single-resident SDA house, and so should not be followed. In doing so, the ART did not refer to or engage with the reasoning from several previous decisions on this same issue.

This inconsistency in ART decision-making on SDA cases may reflect the highly personalised nature of SDA supports for participants, so rigid policies will often lead to individual unfairness. It also highlights ongoing legal uncertainties which are unlikely to be resolved until the GAP or the Federal Court has the opportunity to consider the SDA Rules.

6.4 'Whole of person' decisions

The NDIS (Getting the NDIS Back on Track No. 1) Act 2024 (Cth) inserted provisions into the NDIS Act that tried to articulate the Scheme's 'whole of person' approach to funding supports for participants. In 2025, there were several cases in which the ART was asked to clarify what these provisions meant.

It is clear the law requires a support to be 'necessary' to address disability needs, and those disability needs must relate to an impairment that meets the section 24 or 25 eligibility criteria for the Scheme (which might be called 'NDIS-eligible impairments').

However, the ART was asked to decide whether supports that would not be necessary for needs flowing from NDIS-eligible impairments alone, but were necessary due to a combination of NDIS-eligible impairments and non-NDIS-eligible impairments, could be funded.

In *Eastham and CEO of the NDIA* [2025] ARTA 198, the ART found these types of supports can be funded. In that case, the participant had visual impairments that met the s 24 disability requirements and physical impairments that did not. The ART found that a mobility scooter was necessary to meet the participant's needs arising from a 'combination' of his visual and physical impairments.

In the subsequent cases of *Sparkes and CEO, NDIA* [2025] ARTA 561 and *Young and NDIA (NDIS)* [2025] ARTA 614, the ART took the approach that these kinds of supports could not be funded; while in *Forrest and NDIA* [2025] ARTA 1131 and *KDKJ and National Disability Insurance Agency (NDIS)* [2025] ARTA 454, the ART took an approach consistent with *Eastham*.

As many participants have multiple impairments that interact in complex ways, this is an issue of critical importance to be resolved. The NDIA has sought review by the Federal Court of the decision in *Eastham*; the Court is expected to hand down its decision on that review in 2026, which could provide vital clarity on this issue.

6.5 Unexpected interactions with aged care supports

Two ART decisions found eligibility for aged care supports could disqualify a person from being eligible to become an NDIS participant.

In *Brickhill and NDIA [2025] ARTA 707*, the applicant had been approved for a Home Care Package to the value of \$62,013 through the Commonwealth My Aged Care scheme. The ART found this Home Care Package was designed to meet each type of need the applicant might have and may have sought support for through the NDIS, even though it would not pay for the whole cost of those needs. The ART found the applicant would not be eligible for any NDIS supports, as it interpreted the Federal Court decisions in *McGarrigle v NDIA [2017] FCA 308* and *NDIA v Foster [2023] FCAFC 11* as finding the NDIS cannot fund supports that would ‘top-up’ other sources of support for the same need.

In the subsequent case of *Court and CEO, NDIA [2025] ARTA 1560*, the ART similarly found the applicant was not eligible for the NDIS as she was also funded for a Commonwealth Home Care Package, which was available to her for her lifetime. Notably, the applicant had not used her Home Care Package at all, due to the co-payments required. Despite this, the ART appeared to go further than in *Brickhill* in finding the mere availability of the aged care supports to the applicant was sufficient to find her ineligible.

The applicant in *Court* raised the recent Federal Court case of *NDIA v Deayton [2025] FCA 562*, in which the Federal Court explicitly found *McGarrigle* and *Foster* did not operate to prevent the NDIS from paying for a participant’s excess electricity needs even though he also benefited from a similar Victorian government subsidy. The ART in *Court* dismissed the relevance of *Deayton* on the basis that *Deayton* concerned planning and supports, while *Court* concerned access to the Scheme. The reasoning in *Court* on this point is brief and may be open to challenge.

On 14 January 2026, the Federal Court decided the case of *National Disability Insurance Agency v Sutherland [2026] FCA 3*, finding that decisions about access to the NDIS should not take into account whether a person could more appropriately obtain supports for their disability-related needs from sources outside the NDIS. This decision casts further doubt on the correctness of *Brickhill* and *Court*.

Notwithstanding concerns over their legal correctness, the decisions in *Brickhill* and *Court* have very concerning implications for equity in the NDIS. While most people will not be eligible for a Home Care Package until they are over 65 and so already excluded from becoming an NDIS participant due to the age cap, First Nations people are eligible for some aged care supports earlier, in recognition of their shorter average life expectancy. The position taken by *Brickhill* and *Court* – where both applicants were First Nations people – would potentially disproportionately impact people because of their First Nations identity by excluding them from the NDIS.



Artwork by Thom Roberts, *Night Time at Echo Mountain*, 2025. **studio A**

7. What to expect in 2026

Based on announcements already made by Government and the NDIA, we expect 2026 to be a year of significant change for the NDIS. This should include reforms that were expected to progress in 2025, across areas including development of the new framework planning process and increased scrutiny and regulation of NDIS providers.

As at mid-January, we anticipate the following key dates to watch out for:

● **Early 2026:** Public consultation on:

- New rules for new framework planning (support needs assessments and budget method).
- Updated NDIS supports lists.

● **6 February 2026:** Submissions to Senate Committee on Bill No. 2 close.

● **20 March 2026:** Senate Committee's report on Bill No. 2 is due.

● **1 July 2026:**

- New NDIS rules concerning new framework planning take effect.
- Thriving Kids rollout commences.
- Mandatory registration commences for providers in Supported Independent Living and platform providers.

● **Mid-2026:**

- First participants subject to new framework planning process.
- Updated NDIS supports lists take effect.

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