

6 February 2026

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Submission to Inquiry into National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Bill 2025

The Justice and Equity Centre ('JEC') welcomes the opportunity to make this submission to the Senate Community Affairs Legislation Committee's ('Committee') inquiry into the National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Bill 2025 ('Bill').

While most of the amendments proposed in the Bill relate to changes to the NDIS Quality and Safeguard Commission's powers, our comments in this submission concern the Schedule 2 amendments that alter the operation of the National Disability Insurance Scheme ('NDIS' or 'Scheme'). In particular, we address measures necessary to strengthen the Bill and protect the interests of participants.

Requirements for submitting payment claims

The proposed amendments to s 45 of the *National Disability Insurance Scheme Act 2013* (Cth) ('NDIS Act') would provide the NDIA with the power to request information to substantiate a claim for payment. We raise three concerns with these proposed amendments.

First, on one reading, the effect of subclause 45(3A) is that the NDIA is legally barred from paying a claim if any requested information has not been provided, even if satisfied the claim is payable. This might include circumstances where the information requested is not available or is difficult to provide for a range of reasons.

This means where a claimant lacks the resources to comply with an information request (noting that the claimant may be the participant themselves, or a service provider), or where the NDIA has requested documents or information that do not actually exist, the claim cannot be paid. Such situations are likely to harm participants, either by preventing them from being reimbursed for disability supports costs, or by leading to service disruptions where providers withdraw supports due to unpaid claims.

This concern could be easily addressed. At present, proposed s 45(3E) provides:

The Agency may treat information or documents as having been given under subsection (3B) within the specified period if the CEO is satisfied that it is appropriate to do so.

This wording leaves room for ambiguity as to whether this subsection allows the NDIA to treat information or documents that were not actually provided by a claimant as having been given to the NDIA; or if it only allows the NDIA to treat information or documents that are provided belatedly as if they had been given within time.¹

Subsection 45(3E) should therefore be amended to clearly adopt the former position, providing the NDIA with the discretion to effectively excuse a claimant from compliance with an information request.

Second, we are concerned the lack of safeguards and reviewability of these powers means there is potential for these powers to request information to be used by the NDIA in ways that disadvantage participants. Under the existing framework, the JEC is aware of cases where the NDIA has refused to pay claims where participants have not supplied supporting evidence such as payslips for providers, and the participant's supports have been disrupted as a result. These new powers risk entrenching issues with delays and unfair refusals of payment claims.

We suggest several measures to ensure that information requests are used appropriately and accountably:

- the power to request information or documents should be made conditional upon the information or documents being reasonably necessary for the NDIA to assess the claim for payment, and the materials being reasonable for the claimant to provide;
- where the claimant demonstrates they cannot reasonably provide the relevant information or documents, the law should provide that the NDIA must treat the information or documents as having been given (pursuant to our recommendations to amend s 45(3E) to this effect, above); and
- in light of serious potential service disruptions to participants where payments are delayed, the legislation should provide mandatory timeframes within which the NDIA must make a decision either to pay the claim or request information or documents (which may be subject to modification by delegated legislation, such as rules implementing the Participant Service Guarantee).

We further recommend that decisions made under s 45(3E) as described above be reviewable.² The Explanatory Memorandum justifies the lack of current review rights on the basis these are procedural decisions with limited 'substantive consequences' because claims can be resubmitted if an extension is refused.³ However, this does not address circumstances

¹ The Explanatory Memorandum to the Bill says, 'subsection 45(3E) allows the Agency to treat information or documents as having been provided...within the specified periods...This allows flexibility for the CEO if there are genuine reasons as to why the timeframe has not been complied with.'

² We note this review could be provided for in multiple alternative ways, including by making all decisions to refuse a claim reviewable; making decisions to refuse a claim due to the operation of s 45(3A) reviewable; or making decisions as to the exercise of s 45(3E) reviewable.

³ Explanatory Memorandum, National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Bill 2025 (Cth) 39; Note to subclause 45(3A), the Bill.

where there is substantive disagreement over the reasonableness or appropriateness of a request for information. In circumstances where the NDIA insists upon provision of a document that the claimant says they cannot provide, such that the NDIA declines to exercise the power in s 45(3E), the NDIA will be barred from paying the claim. In this situation, the exercise of s 45(3E) would be a substantive issue determining payment or otherwise of the claim and the NDIA's substantive position is unlikely to change upon the claimant resubmitting the claim. As such, this decision should be reviewable.

Plan variations

The Bill clarifies that the NDIA's power to vary a participant's plan under s 47A(1) of the NDIS Act may involve either an increase *or* decrease in the total funding amount, unless otherwise prevented by the NDIS Act or Rules. This clarification applies to both old and new framework plans, and does not alter the circumstances in which variations can occur, as outlined in s 47A.

We accept, as set out in the Explanatory Memorandum, there may be cases where it is appropriate for a plan variation to reduce a participant's funds, such as where a participant receives compensation from another source. While we would expect such cases to be rare, it is appropriate they be actioned through the variation process rather than requiring a plan reassessment, which would be a time-consuming endeavour that would create uncertainty for participants in requiring the entirety of their support package to be reconsidered.

Additionally, we note with the transition to new framework planning, Government has expressed its intention that '[p]articipants can continue to request...plan variations for urgent or *minor changes*'.⁴(emphasis added) However, while s 47A(1A)(d)(iv) permits a 'minor variation' for old framework plans, this provision has not been replicated for new framework plans. We maintain our previous recommendation that s 47A(1AB)(j) be amended to include a further circumstance in which a variation of a reasonable and necessary budget can occur, namely a minor variation that results in an increase to the funding of supports under the participant's plan.⁵ This would ensure the circumstances in which participants can request plan variations for old framework plans will continue with the transition to new framework plans, and preserve government's stated intentions for the variation power.

Additional amendments to safeguard participant rights

The amendments to the NDIS Act in Schedule 2 of the Bill seek to improve the integrity and effective operation of the NDIS. We submit additional amendments to the NDIS Act are required, and should be included in this Bill, to ensure the integrity and effective operation of the scheme for participants as new framework planning commences in 2026.

New framework plans will involve an entirely new process for determining disability support needs and the appropriate NDIS funding to meet them. Central to this new planning process

⁴ Department of Health, Disability and Ageing, 'Reviews and appeals under the new way of planning (from mid-2026)' (January 2026), <https://consultations.health.gov.au/ndis/nfp-public-consultation>.

⁵ Justice and Equity Centre, Submission to Senate Community Affairs Legislation Committee inquiry into *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* (17 May 2024), 40.

will be needs assessments as provided for by s 32L of the NDIS Act. The NDIS Act provides the NDIA may commission a 'replacement assessment'. Recent public commentary has made clear this will be the primary means by which an inappropriate planning outcome can be addressed. This is because plan outcomes will be determined by application of a budgetary method that involves limited or no evaluation or discretion once a needs assessment has been completed.⁶ As a result, it is vital the NDIS Act clearly sets out participants' rights to a replacement assessment.

At present, s 32L only provides that a replacement assessment is to occur where 'the CEO is satisfied that another assessment...should be undertaken'.⁷ This language means the test to be applied by NDIA delegates, and the Administrative Review Tribunal on review, for whether a replacement assessment should be ordered is an at-large discretion, which would allow scope for significant inconsistency between decision-makers and provides participants with little certainty about the needs assessment process. While the NDIS Act does provide for NDIS Rules to be made to further govern these decisions, we consider it is unsatisfactory for such a key element of participants' rights (and review rights) to be addressed only through delegated legislation.⁸

We have previously recommended the NDIS Act contain provisions establishing that:

- a participant should have the right to access one replacement assessment (a 'second assessment') in relation to each NDIS plan developed for them; and
- following a second assessment, the CEO should also have the discretion, when requested by a participant, to arrange a further replacement assessment (a 'subsequent assessment') where this is considered appropriate.⁹

We recommend amendments to this effect be included in this Bill. We consider these amendments are necessary in light of the information now available about the critical role of needs assessments to the new framework planning process, and public concern about needing to safeguard review rights of participants in the context of new framework planning.

⁶ See, for example, Kate Lyons, 'NDIS plans will be computer-generated, with human involvement dramatically cut under sweeping overhaul', *The Guardian* (3 December 2025), available <https://www.theguardian.com/australia-news/2025/dec/03/ndis-plans-computer-generated>

⁷ NDIS Act s 32L(7).

⁸ NDIS Act s 32L(7A).

⁹ Justice and Equity Centre, Submission to Senate Community Affairs Legislation Committee inquiry into *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* (17 May 2024), 35-37.

Conclusion

We thank the Committee for the opportunity to provide this submission and would be pleased to provide any additional information to assist the Committee's inquiry into the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'E. Tilbury', with a stylized flourish at the end.**Ellen Tilbury****Principal Solicitor**

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