

Subsequent Submissions to the
Community Affairs Legislation Committee

National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024 and subsequent proposed amendments

9 July 2024

About Us

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990. We are funded to provide advocacy under the National Disability Advocacy Program, NDIS Appeals and the National Legal Assistance Partnership Agreement.

Villamanta engages in the following activities which inform this submission:

- **Telephone Information Service** – our intake team receives around 2,000 contacts per year from people with disability seeking assistance.
- **Advice calls** – our legal team provide discrete advice to over 150 people with disability per year. Many of these are about NDIS Appeals, or else about their NDIS experience.
- **NDIS Appeals** – our representation of clients at the AAT provides us ongoing insights into how the current legislation and rules are working for different participants.

Villamanta have been providing NDIS Appeals support since 2017. In this time, we have assisted over 1,600 people with their NDIS concerns, representing 309 people at the Administrative Appeals Tribunal.

We were involved in the following AAT decisions:

- [Uthenwoltd single occupancy SDA](#) (successful appeal)
- [Mowjood access](#) (unsuccessful appeal)
- [Boicovitis Single occupant SDA](#) (successful appeal)
- [CYHY autism assistance animal](#) (successful appeal)
- [Ray Access and Independent Expert](#) (successful appeal)
- [Castledine supports and NDIA internal advice](#) (successful appeal)
- [KLMN and other service systems - prism glasses](#) (successful appeal)

We have made the following submissions related to the NDIS:

- [April 2024 NDIS Registration Taskforce Submissions](#)
- [May 2023 NDIS QS Framework Submission](#)
- [March 2023 Briefing Paper for NDIS Review and Access and Planning Under the NDIS](#)
- [October 2022 NDIS culture and capacity](#)
- [June 2022 - Model litigant obligations and NDIS Appeals](#)
- [August 2021 Unreasonable and unnecessary harms](#)
- [October 2021 - Proposed NDIS legislative improvements and Participant Service Guarantee](#)
- [November 2021 Joint Standing Committee on the NDIS - general issues around implementation and performance](#)
- [2021 General Issues around the implementation and performance of the NDIS](#)
- [July 2020 - NDIS Quality and Safeguards Commission](#)

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Submissions post amendments

We thank the Community Affairs Legislation Committee for the opportunity to provide submissions on the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Bill 2024 (Bill)*.

We refer the Committee to our previous submissions, and note the following in relation to amendments which have been proposed since that time.

CHANGES FOR FUTURE PURPOSES

We still hold the view that this Bill is **not fit for purpose** and that the longer term aspects such as assessment and budget setting require far more work to be carried out prior to being ready to legislate.

We believe there is a significant risk of robo-planning being implemented, which effectively removes the decision-maker. A decision-maker is an essential element of the review of administrative decisions. Until the key elements of the assessment and budget setting are defined and considered, this can not be ruled out as a foreseeable consequence of the Bill.

The Minister has given no explanation as to why this change is required to be implemented urgently, and has shared no information as to what is contemplated.

CHANGES FOR IMMEDIATE IMPLEMENTATION

Defining NDIS Supports

We echo the concerns of the *Parliamentary Joint Committee on Human Rights* that narrowing the definition of NDIS supports does not provide clarity (given there are no Rules in circulation, interim or permanent) but does instead leave open the possibility that supports which participants have relied upon for independence and quality of life will be removed.

Whole of Person

The proposed amendments still do not treat NDIS participants as whole people, but engages a bizarre process of considering some elements of the person's experience, and then in some contexts allows consideration of other elements, but only as contemplated in the notation.

An impairment does not meet the access criteria to the NDIS. A person does.

The insistence on this "primary disability" approach (which this is) must be presumed to be linked to the possibility of robo-planning. A single category of information is more amenable to an algorithmic approach to budget setting than is a person's experience.

No doubt the amendments seem to overcome this issue, at least to the drafted of these amendments.

They do not.

Firstly, the "primary disability" or "impairments which meet access criteria" are not an agreed fact. The NDIA decide what this is, and they encode it in their database, but do not communicate it to the participant.

By illustration, we note the following from the matter of *HRZI and National Disability Insurance Agency [2023] AATA 481* (emphasis added):

171. HRZI was granted access to the NDIS on 19 December 2016. As the access decision has not been given to the Tribunal, it is not possible to determine what the decision maker found in respect of HRZI's disability and the impairment or impairments to which it was attributable at that time, for the purposes of disability requirements.

172. There is no dispute, and I accept, in 2016 HRZI had the following medical conditions: **Complex PTSD, Chronic anxiety, Mild Brain Injury, Chronic Pain Syndrome**

177. Subsequently, on 2 July 2020, the NDIA recorded HRZI's primary disability as **Ankylosing spondylitis**. The material on which this finding was made has not been provided to the Tribunal.

The failure to disclose this crucial element of the decision making process prevents the participant from:

- Knowing it has happened
- Understanding it's crucial relevance to planning and funding decisions; and
- Challenging it if it is wrong.

While we disagree fundamentally with the approach of relying on a "primary disability" (a concept also rejected by the NDIS Review, which this Bill purports to implement) the way in which it is currently used is procedurally unfair and a breach of participant rights to review administrative decisions being made about them.

Revocation

We echo our prior concerns about the increased revocation powers and failure to ensure any accompanying duty to case manage this process.

We have this week seen an individual receive a letter from the NDIA which revoked their status as a participant immediately. They had no prior notice that their status was being reviewed, nor ability to provide any information which might be useful in the circumstances. This places them at immediate risk of:

- Services ceasing immediately if they are Agency managed
- Services not ceasing immediately otherwise, but funding not being available.
- In either case this leaves the person at risk of a debt if relevant notice of cancellation has not been given under existing service agreements.

We reiterate our concerns that this will be used to exit people from the Scheme when they have no alternative source of support and their independence and quality of life will be affected immediately.

First Nations people

We support the proposed requirement that there be consultation with representatives of First Nations participants.

We further support the proposal enshrining representation of a First Nations member of the NDIA's board and access to supports for people with disability in custodial settings.

Input from NDIS participants

On 5 July 2024 we held an online forum with NDIS participants, seeking their views on the proposed reforms. These are being collated and consent to share checked, and they will be provided to the committee in a separate submission.