



**Villamanta**  
DISABILITY RIGHTS LEGAL SERVICE

**Submissions to the  
Department of Health, Disability and Ageing  
on**

**NDIS Rules: public consultation on new framework  
planning**

6 March 2026

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**About Villamanta Disability Rights Legal Service Inc.**

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990.

We want an equal Victorian community for people with disability. We promote laws and systems that protect human rights. We work alongside people with disability to advocate on legal problems.

We want to see these outcomes.

- More people with disability, especially those with cognitive impairment, get legal advocacy.
- People with disability feel more confident to self-advocate.
- Legal services get better at being easy to use.
- Laws and systems do a better job at making the community equal for people with disability.

We are funded to provide advocacy under the National Disability Advocacy Program; NDIS Appeals and the National Legal Assistance Partnership Agreement.

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## Executive Summary

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*“I have grave concerns about the use of algorithms and automation to make decisions about the complex individual care needs of older Australians,” she wrote. “Older people are being denied urgent at-home supports, leaving them trapped in hospital or left without the necessary assistance they need to live safe and full lives in their homes. “This is also placing an incredible strain on family members, many of whom are forced into unpaid care roles.” Penny Allman-Payne<sup>1</sup>*

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The use of an algorithm to determine the care needs of older Australians has proven to be highly problematic and lead to adverse outcomes.

The Department of Health, Disability and Ageing must recognise the limitations of such a tool and not create further risks to the safety and health of disabled Australians.

The tool proposed is not fit for purpose, the assessors not qualified and lacking in discretion, the safeguards non-existent and the disability community is already overwhelmed and exhausted from the savage funding cuts and lack of risk assessment within the NDIA. The full information about how this will work has not been made public and we are four months out from the proposed implementation.

This poses an unacceptable risk.

We urge the Department to reconsider these reforms.

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<sup>1</sup> [She helped design Australia’s aged care assessment tool – but now Lynda Henderson is too scared to use it | Aged care | The Guardian](#)

## Introduction

We thank the Department of Health Disability and Ageing for the opportunity to provide feedback on the various documents released under the “consultation on new framework planning”.

We note the materials that have not been released:

- The draft rules (which clearly exist, given references to paragraph numbers); and
- The rules for support needs assessments; and
- The rules for setting a support budget.

We reiterate our concern that the level of fragmented and piecemeal consultation is a significant impost of time and energy on the disability community who are already dealing with the negative impacts of the changes to the NDIS, including:

- Appeals of NDIS decisions at the relevant Tribunal more than doubling, with no corresponding increase in funding for advocacy and legal assistance;<sup>2</sup> and
- A tripling of requests for assistance with NDIS Appeals to our service from 2023 to 2025;<sup>3</sup> and
- An exit of 8% of children aged 0-14 on the Scheme in the last half of 2025;<sup>4</sup> which is the only data available on scheme exits, but the disability community is well aware of deaths of participants whose funding was changed by the NDIA;<sup>5</sup> and
- Ongoing unacceptable performance on the Participant Service Guarantee, including meeting their own target for reviewable decisions only 44% of the time.<sup>6</sup>

Advocacy and legal services supporting participants have been at capacity for years. The NDIA has been failing to meet its own timeframes for years. Participants being moved from one client management system to another have seen information about themselves changed in the system, important (and expensive) evidence about their support needs lost, and funding decisions made on incorrect information. The Administrative Reviews Tribunal has been understaffed and experienced technology issues,<sup>7</sup> resulting in significant delays to appeals.

It seems all the systems intended to support NDIS participants are under-resourced and unable to provide the support relied upon for safeguards in times of change.

We urge the Department to take a more considered and transparent approach to consultation, providing the materials in full and not requiring repeated rounds of response without having access to the entire suite of proposed changes, and therefore without the ability to understand the interactions between different sets of rules.

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<sup>2</sup> From 2953 in June 2024 ([AAT and IAA caseload overview](#)) to 7051 at end of January 2026 ([ARTCaseload](#))

<sup>3</sup> From 239 in 2023 to 743 in 2025

<sup>4</sup> [Explore data | NDIS](#) shows 317,816 at end of FY25, and 319,625 at end of year 2025, while <https://www.ndis.gov.au/media/8281/download?attachment> states there were 26,773 new participants in FY 26 to date. This gives an exit figure of 24,964.

<sup>5</sup> The media have covered the stories of [Koa](#) and [Noah](#) but advocacy services are hearing stories about others who do not have family willing to speak to the media

<sup>6</sup> <https://www.ndis.gov.au/media/8281/download?attachment> page 45

<sup>7</sup> [Administrative Review Tribunal swamped by surging demand, more than 100 members short - ABC News](#)

## New framework planning

The discussion document states that new framework planning will:

- Use a person-centred and strengths-based approach
- Create fairer and more consistent budgets
- Reduce the need for expensive reports
- Result in simpler plans that are more flexible.

We will respond to the propositions in the relevant documents with reference to these objectives.

We note that the Department states that the materials provided explain how the new framework planning rules will work, including:

- How a participant's disability support needs will be assessed
- How reasonable and necessary budgets will be developed
- How a participant can use their plan

In fact, the materials provided do not explain how support needs will be assessed or how a budget will be developed. The absence of this information undermines the entire purpose of "consulting" in relation to these rules and this process which is due to commence in July 2026.

We call on the department to be transparent about these two issues which have the potential to create monumental shifts in the funding of supports which were supposed to provide certainty to participants for their lifetime.<sup>8</sup>

Too many people have been unable to move forward with their lives, locked in protracted and overdue reviews and appeals with the NDIA; the significance of the proposed changes to impact the resilience and endurance of the disability community cannot be underestimated. There are already significant risks to the wellbeing, safety and life of participants from the inability of various systems to cope with the change and the poor administration of the NDIS, a failure to be transparent about the further changes to occur in the coming months is not co-design, consultation, or even remotely reasonable.

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<sup>8</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 4(3)

## Step 1: Preparing for a Support Needs Assessment

The Discussion paper states that:

*“A participant will be contacted by the NDIA to tell them they will be receiving a new framework plan. The NDIA will explain the support needs assessment process including a **Notice of Impairments and Notice to have a new framework plan**. Further details on these notices can be found below. Participants will continue using their current NDIS plan until they receive a new plan.”*

The very commencement of this process relies on processes within the NDIA that are fair, accessible and reliable. In our experience too many people report that:

- NDIA staff do not observe communication requirements. They call people who are deaf. They send hard copy letters to people who are blind. They call everyone without prior notice and without agreeing a time where the person can make appropriate arrangements to be able to focus on the conversation.
- NDIA staff claim to have “tried to call” on multiple occasions, despite the participant not having any missed calls that could possibly have been the Agency.
- Returning a call from an NDIA staff member is impossible. They don’t have phone numbers. All a participant can do is call the contact centre, which is inaccessible for a range of people.
- NDIA staff members do not ensure that participants who need support to understand new information have that support, they simply go ahead with the conversation and assume that the participant has understood and knows what will happen next. This may not be the case at all.
- NDIA staff too often rely on a single communication method, despite it being best practice to provide material verbally and in writing.

This process cannot proceed on the basis of bulk communications but must be managed carefully on a case-by-case basis to ensure that the known communication deficiencies of the NDIA do not significantly increase the risk to participants during the change process.

### NOTICE OF IMPAIRMENTS

The NDIA’s data on participant impairments is not robust. We have seen:

- Impairments turned on and off multiple times
- Impairments end dated
- Impairments disappear
- Impairments that the participant does not have recorded.

As a result, we do not have confidence in the data being held about participant impairments being correct. By illustration, we refer the reader to pages 3-4 of [this submission](#).

While we acknowledge that the rules require that Impairment Notices be provided to participants, these notices provide only the very highest level of categorization of impairment. Clearly funding decisions will not be based on this.

Given the administrative deficiencies of the NDIA, and the lack of transparency with participants about data stored about them, the only remedy available to participants is a Freedom of Information request. We are told frequently that the FOI department of the Agency is consistently backlogged and fails to meet legislated timeframes for provision of information to participants.

This complete imbalance in access to information creates the foundation for an extremely unfair process by which a participant could lose access to funding for vital supports on the basis of incorrect information held about them by the Agency.

We would estimate that incorrect participant data was the underlying cause of about 40% of the appeals we worked on in 2025. In each of these cases, the participant was not funding according to their demonstrable support needs, due to deficiencies in data or record keeping. The resultant appeals process was protracted, distressing, and at times placed the safety of the participant and others at significant risk. With the introduction of strict funding periods, this risk has only increased.

By illustration we refer the reader to [this submission](#).





**Variation of a Notice of Impairment**

We note the claim that the CEO may initiate a variation where “new information ... becomes available... during a scheduled plan reassessment.” This is at odds with the materials provided to date in relation to the role of the NDIA Assessor, who only conducts a Support Needs Assessment, and does not review the Notice of Impairment. In fact, there is no mechanism for this to occur, meaning that even if a participant’s needs have changed considerably due to acquiring a further impairment, this will not be reflected in their Support Needs Assessment, which is based on the recorded impairments.

Assumptions that an NDIA Assessor could do this in the process of conducting a Support Needs Assessment are negated by the current practice of pushing such requests through to the Administrative Review Tribunal because the reality is the decision is actually made by the Technical Advice and Practice Improvement Branch and not the delegate.

There must be a time limit for the CEO to make a decision on an application to vary a Notice of Impairments, with failure to do so resulting in a deemed decision which can progress to internal review.

Does this meet the stated objectives?

	Person centred and strengths based	The information imbalance and communication issues prevents this process being considered person centred
	Create fairer and more consistent budgets	The data issues prevent this being a likely outcome
	Reduce the need for expensive reports	This stage of the process does not involve the use of reports
	Result in simpler plans that are more flexible	This stage of the process does not result in a plan

## Step 2: The Support Needs Assessment

This is the step at which the absence of full disclosure about this process becomes severely problematic.

- What is an NDIA Assessor? What background, skills, experience and training do they have?
- What questions will they be asking participants to elicit the required information about “their daily life, disability support needs and preferences”? Is there a script?
- Will participants and their supports receive these questions in advance so they can prepare?
- How will these questions be made accessible to all participants?
- Will the meeting be booked at a time that is suitable for both the NDIA Assessor and the participant, or by unexpected phone call to the participant (as often happens now)?
- How will the meeting be conducted? By telephone, in person, by video? Will the participant have a choice about this?
- How will participants who do not have a nominee, family member or advocate be supported to engage in this process?
- Will the participant be shown the information being recorded about them or only told?
- Will the NDIA Assessor be trained to understand the function of each piece of information in relation to the funding calculation?
- How will this process be made accessible to all NDIS participants?
- How will the Support Needs Assessment Report be made accessible to all NDIS participants?

Of course the real question is Why have the Support Needs Assessment rules not been made available for consultation?

### THE I-CAN

Then there are the very real questions about the tools being used in this process.

- What evidence is there that the i-CAN version 6 is appropriate for all NDIS participants and will lead to outcomes that are consistent and reasonable? In the context of health professionals [raising their concerns about the tool](#), what confidence can the disability community have that there will not be adverse consequences when relying on it?
- The tool is meant for use by allied health professionals, but the Agency has confirmed that NDIA Assessors won't necessarily be health professionals. What evidence is there that this is a proper and safe use of the tool?
- What is the risk mitigation strategy to ensure that if the use of the i-CAN for all participants by unqualified individuals results in funding cuts that endanger participant safety, that a human decision maker can prevent harm from occurring?

At the time of writing, we are aware of the following scenarios for individuals who have had funding cut by the NDIA:

- An individual whose SDA and SIL funding were settled through a previous Tribunal process had a subsequent Home and Living advice which stripped the SDA and significantly reduced the SIL funding. The individual is now in hospital due to absence of supports and the SDA provider is trying to evict them into homelessness. The matter is only at internal review stage and there are likely many months between now and any outcome. Their entire life is on hold meanwhile and they are experiencing great distress when the hospital seeks to discharge them as they are not receiving medical treatment.

- An individual whose support provider is owed tens of thousands of dollars due to a funding cut and the provider taking their duty of care seriously. The provider is now doing a risk assessment of when they will need to withdraw supports because they simply cannot afford to continue to pay staff for shifts they do not get paid for. The participant will have no options at that point and will be at immediate risk of dying alone in their home.
- An advocacy organisation contacted us about a nominee who is actively talking about murder suicide due to their severe distress about the cuts to funding for the person they care for, and their physical and psychological inability to continue filling in the gaps.
- An individual whose adult children are filling in overnight shifts to stretch the funding. They all have jobs, families of their own and their own responsibilities and needs. They cannot do this indefinitely.

That's just from this week. Our counterparts in other NDIS Appeals services tell us they are hearing the same things. Sudden and inexplicable funding cuts are causing crisis situations with no safeguards at all. If this can happen when human beings are making decisions, it is very clear that this will be even worse when an untested process using a tool not validated for this use is relied on by unqualified NDIS staff who do not have the authority to override the outcome if it is clearly inappropriate and going to cause immediate harm.

## **REPLACEMENT SUPPORT NEEDS ASSESSMENTS**

The requirement that a request for a replacement support needs assessment be made prior to the approval of a plan is fundamentally unfair to the participant. How can they possibly know what impact any information in the support needs assessment is going to have on their funding until a plan is created?

Currently the mechanism for a support needs assessment creating a funding budget has not been published, but even when it has, most participants will be unlikely to understand the mechanics of this process. It is highly likely they will only understand the consequences of information being framed in a particular way is when they receive their new plan. In order to avoid unnecessary reviews and appeals, requests for a new support needs assessment must be available as an option to the participant subsequent to receiving their plan.

## **REVIEW RIGHTS**

The reliance on a Support Needs Assessment based on the i-CAN, which has only been tested when allied health professionals are using it, undermines participant review rights in the same way it proposes a fundamentally unsound means of determining participant support needs.

While the consultation materials state that the internal reviewer (and therefore the ART) will consider whether the support needs assessment accurately captured the participant's disability support needs, this is factually incorrect. The only decisions available to the internal reviewer and the ART are whether to conduct another support needs assessment. Unless the rules provide the discretion to determine what must be included as a factor in that support needs assessment, it will simply be a repeat of the process which already occurred.

There is no evidence in any of the materials made available thus far that an NDIA Assessor, delegate, internal reviewer or the ART will have the knowledge to identify how the support needs assessment resulted in a funding budget that is inappropriate for the needs of the participant.

Does this meet the stated objectives?

✘	Person centred and strengths based	It is clear this process is not about centring the participant, it is about categorising them into a budget model.
✘	Create fairer and more consistent budgets	The issues noted above challenge any likelihood that this process will create fairer and more consistent budgets. Rather, it seems more likely to entrench the current situation of rewarding those who have the capacity to perform well in a system not built for universal accessibility, and failing those with less capacity.
✔!	Reduce the need for expensive reports	This process does not rely on expensive reports. It does however pose significant and unmitigated risks to participants who have every reason to fear that this will not be implemented safely.
-	Result in simpler plans that are more flexible	This stage of the process does not result in a plan

## Step 3: Building a plan

Consultation on this step without the publication of the new budget method is dangerous. It can create a perception that the disability community agrees with what is proposed, when they don't even know what is proposed.

**We reiterate the concerns about the absence of power for a human decision maker to intervene when the outcome of the budget method rules creates an immediate risk for a participant.**

**On what basis does the delegate “review the budget” as part of approving a participant’s plan? Will they have access to the calculation mechanism and the discretion to adjust inputs if there is an outcome which is inconsistent with previous funding levels? Will they be required to conduct any kind of risk assessment in relation to the impact of a funding cut to the participant?**

### STATED SUPPORTS FUNDING

We note the statement that supports will be stated where “the absence of the support may cause harm to the participant”. All funded supports have already been required to be considered reasonable and **necessary** so by definition all funded supports fall into this category.

We note the inclusion of the following supports into the list of stated supports:

- Periodic private vehicle transfer
- Short term respite

#### Periodic payment

There is currently no requirement for participants to provide evidence of how this money is spent. Including it on the list of stated supports implies this will change. This makes plans less flexible, which is the opposite of the stated objective of these changes.

#### Short term respite

The boundary between short term respite and the use of core supports can be very blurred, except when respite occurs in a group setting. Including in the list of stated supports implies that this is the expectation. This would make plans far less flexible and risk the safety of participants and families who cannot (for whatever reason) rely on group-based respite.

Even if the NDIA does not restrict short term respite to group settings, they would have the option to restrict it to certain providers, with the same outcome of reducing flexibility and risking the safety of participants and their families.

The example given, of Jin and her use of short-term respite simply confirms these issues. What possible motivation could Jin or her parents have to use this funding for anything other than the respite, given its importance to all of them? The entities with an interest in accessing this funding for other things would be service providers seeking to maximise their access to Jin’s funding. The only way that making the support stated would prevent this occurring is if there was a link between the support type and who can provide it.

### FUNDING PERIODS

The default must be participant preference. Right now it is at the whim of the delegate and this is creating unworkable outcome, such as funding periods applied to assistive technology. There must be evidence as to why the participants preference has not been implemented to prevent the further risk of harm by delegates making assumptions about how funding is accessed.

As the most basic example, a participant with one month funding periods commencing in December, January or April will be at immediate risk due to the number of public holidays in those months and the higher cost of supports on public holidays.

The example given, that a newly self-managed participant may request shorter funding periods to help them manage their plan is absurd. If a participant has the capacity to self manage, they have no reason to then ask the NDIS to restrict that right.

## RESTRICTIONS ON FLEXIBLE FUNDING

The language in this section is disingenuous, suggesting a participant would request a restriction on their funding so they “set aside a flexible support to be available later in the plan.” They do not need to request a restriction to achieve this, they just need to not use that funding now.

The example given, of Tina, who has experienced fraudulent behaviour from a provider is nonsensical and offensive. Firstly, why is the assumption that past fraud means restricting the choice and control of the participant, rather than prosecuting fraudulent providers? Secondly, if a participant has genuine concerns of being defrauded or financially exploited, how is the solution to restrict a portion of funding to therapy supports, and not to provide decision making support? Does this mean there is an acceptance that the remaining funding can be used fraudulently and the Tina made to feel even worse about her failure to prevent it, but that’s an acceptable outcome because she can still have physio? Lastly, this demonstrates no understanding whatsoever of the complexity of the infiltration of fraudulent providers. They do have the means to access funding restricted to therapy.

This inclusion will allow for the NDIA to make restriction on flexibility of funding.


We refer to the inclusion of funding periods in the legislative amendments. The rationale for this was to prevent harm to participants who were at risk of abuse. It was then implemented as a starting point for all participants by the NDIA, putting many participants at risk immediately. Participants wishes have not been respected and the NDIA has cut funding and then stated that funding periods are required to ensure the participant uses the plan as approved. This simply shortens the time before the participant experiences a crisis situation.

Rules which allow for restrictions must include strict tests for when they will be imposed and they must require the NDIA to articulate the evidence that the requirements have been met. This is the only way that these changes will actually improve flexibility and not provide more mechanisms for the NDIA to restrict it. Currently these restrictions occur with absolutely no evidence of the alleged reasons whatsoever and can cause significant disruption to the participants access to supports.

## APPEAL RIGHTS




The process as described does not provide discretion at any stage of the planning and funding process,<sup>9</sup> thereby removing any discretion from the Administrative Review Tribunal in relation to funding outcomes. This removes a layer of protection for participants adversely affected by this process and creates additional risk to participant safety.

Does this meet the stated objectives?

	Person centred and strengths based	The failure to make public the new budget method rules fails any possible test of this process being person centred
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<sup>9</sup> Aside from those items covered by the targeted assessment process

NDIS rules: public consultation on new framework planning

	Create fairer and more consistent budgets	The failure to make public the new budget method rules fails any possible test of this process being trusted to create fairer and more consistent budgets. Rather, a tool which allows for no human discretion is more likely to mirror and amplify existing inequities.
	Reduce the need for expensive reports	This process does not rely on expensive reports. It does however pose significant and unmitigated risks to participants who have every reason to fear that this will not be implemented safely.
	Result in simpler plans that are more flexible	The proposed changes only include more ways the NDIA can restrict participants using their plans flexibly, they do not provide any evidence of increased flexibility

## Step 4: Using a plan

We note the plan variation rules which allow for a variation due to a significant change in support needs for a short period of time. In our experience in the past 12 months, the need for a plan variation has often been due to the NDIS cutting funding for no apparent reason and putting the participant at immediate risk. There must be a capacity for a plan variation to increase funding while the internal and external review processes are playing out.