



Villamanta
DISABILITY RIGHTS LEGAL SERVICE

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

***New Framework Planning Rules
and
NDIS Supports***

14 October 2026

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Executive Summary

Villamanta Disability Rights Legal Service welcomes the opportunity to provide feedback on the proposed New Framework Planning Rules and NDIS Supports. However, the limited information released for consultation prevents the disability community from assessing the proposals meaningfully. We therefore urge the Department to publish the missing tools and rules, pause the current process, and undertake genuine co-design consistent with the recommendations of the NDIS Review.

We do not consider the materials made available to the community sufficient for a bona fide consultation. Although this submission raises several specific concerns, its brevity should not be interpreted as agreement with the proposals. We have received too little information to provide detailed feedback on how the proposed process would operate. We encourage the Department to reconsider its approach before this process causes harm and to return to the NDIS Review's recommendations.

Without the information required for informed participation, this process does not constitute co-design and falls short of meaningful consultation.

Support Needs Assessment Tool and Rules

LEGITIMATE CONSULTATION REQUIRES DISCLOSURE

Villamanta cannot provide meaningful feedback on a Support Needs Assessment tool that:

- has not been published;
- has not been rigorously tested;
- is not proven to be effective across all types of disabilities; and
- is not proven to be appropriate and safe for use for First Nations, RRR, LGBTQI+, CALD and other disadvantaged participant groups.

We note that the Support Needs Assessment Tool will require, as an input, information about the participant's disability. We reiterate our prior concerns about the significant data loss by the NDIA in relation to the disability of participants.¹ Any tool which relies on incomplete, incorrect, or aged data, carries a significant risk. A tool which determines the supports available to participants on the basis of such data carries extraordinary risks.

While we acknowledge the current planning process is often inconsistent and the outcomes are not always equitable, it is at least intended to be person centred.

The disability community has not seen the Support Needs Assessment tool, and there is no evidence that it can account for the complex ways people with disability require support to participate equally in their communities. Using an unproven tool for this purpose would create a significant risk to the health, safety and wellbeing of our clients. For some participants, it may also put their lives at risk.

We note also that the Support Needs Assessment Rules have not been published. We cannot provide meaningful feedback on a process that relies on Rules which have not yet been published.

CONSULTATION IS NOT CO-DESIGN

We do not consider this "consultation" to be a legitimate attempt to seek the views of the community, given the absence of the most important information about how the proposed process will operate. For absolute clarity, we do not see any way in which this process has been co-designed with the disability community and the people who will be most affected by it, and consider it to carry significant risks for participants which have not been effectively mitigated by co-design and appropriate consultation.

Additional comments about the proposed process

The NDIS exists because participants require support to participate fully in everyday life. Many participants assisted by Villamanta also require support to participate effectively in administrative processes.

Participants with a cognitive impairment frequently experience difficulty recognising, describing or communicating the full extent of their support needs. In practice, participants often minimise their support requirements because they lack insight into their disability, wish to maintain independence, or struggle to communicate the impact of their disability on daily activities. Without adequate support, there is a real risk that assessments will not accurately reflect a participant's circumstances.

These difficulties may be compounded for participants who are First Nations, live in rural, regional or remote areas, are LGBTQIA+, are from culturally and linguistically diverse backgrounds, or experience other forms of disadvantage. Differences in culture, communication and lived experience

¹ Annual Financial Sustainability Report page 207 which states "There have continued to be significantly more participants missing a primary disability in the system compared to previous years." ([Annual Financial Sustainability](#))

between a participant and an assessor may prevent the assessor from understanding the participant's circumstances fully, resulting in an inaccurate Support Needs Assessment.

The consultation materials provide no assurances regarding how assessors will identify participants who require additional decision-making support, how information from advocates and treating professionals will be incorporated into assessments, and what safeguards will exist where participants attend assessments without support.

These issues are particularly important given that support needs assessments will form the foundation of planning and budget decisions. If participants are unable to effectively participate in that process, there is a risk that future supports will not accurately reflect their needs.

Budget Method Rules

LEGITIMATE CONSULTATION REQUIRES DISCLOSURE

Villamanta cannot provide meaningful feedback on Rules which have not yet been published.

The consultation states that the Rules are set out in section 32K of the *National Disability Insurance Scheme Act 2013* (Cth). However, section 32K is legislation, not the Rules themselves. The Act contains enabling provisions under which rules may be developed, but those rules have not been published.

CONSULTATION IS NOT CO-DESIGN

We do not consider this “consultation” to be a legitimate attempt to seek the views of the community, given the absence of the most important information about how the proposed process will operate. For absolute clarity, we do not see any way in which this process has been co-designed with the disability community and the people who will be most affected by it, and consider it to carry significant risks for participants which have not been effectively mitigated by co-design and appropriate consultation.

Plan Variation and Reassessment Rules

While we acknowledge the intention to prevent unscrupulous or conflicted third parties from requesting plan variations and reassessments on behalf of participants, we reject entirely the assumption that all participants who do not have capacity to make these requests themselves have a nominee to do this for them.

They simply do not.

We also reject the assumption that a third party may “notify” the NDIS of concerns and that this provides an adequate safeguard. It does not.

We strongly recommend the Department work with the National Disability Abuse and Neglect Hotline, Disability Gateway, Disability Advocacy Support Helpline, funded disability advocacy organisations and disability peaks to design an escalation process that will ensure safeguards exist for participants at risk.

Such a process did exist in the early days of the NDIS, but has been eroded over successive changes in policy, to the extent that coroner’s reports now refer to the challenges of raising concerns. This cannot be the preferred policy setting – that the issues are raised only after the preventable death of a participant.

NDIS Supports Rules

CO-DESIGN NOT CONSULTATION AFTER THE FACT

We restate our objections to NDIS Support rules developed by the department without co-design with the disability community.

In our experience the majority of the NDIS participant community do not understand the existing NDIS Support Rules. They have not been communicated clearly, and do not reflect the reality of disabled people's lives. They are even more unhelpful to people living in RRR areas and with certain types of disability.

We specifically note the prevention of innovation or cost effective person centred solutions as a result of these rules, and denounce the regressive focus on participants being forced to the "disability shop". Preventing participants from accessing supports simply because others in the community use them is patronising, punitive and does not advance the objectives of the Scheme.

Currently we are seeing NDIS planners use the Support Rules to make unlawful decisions about funding. The internal review decisions are nonsensical, quote non-existent legislative provisions or completely irrelevant sections of the Transitional Rules, and make logical leaps that are unable to be upheld on appeal.

This kind of decision making is dangerous and destructive. It locks participants into adversarial positions repeatedly, and prevents them from getting on with their lives.

Our only recommendation regarding the supports lists would be to start again and co-design them with the disability community so that they achieve the stated purpose. The only purpose they achieve right now is to reduce participant choice and control, allow punitive action against participants by the NDIA, and reduce competition in the market. The big disability providers will have done very well out of these rules, at the expense of the creativity and individuality of participants.

Finally, we reiterate our strong position that the rules should only cover what is funded, and not how funding is spent. We have heard too many stories of participants who are unable to use their funding in meaningful ways due to these rules, even when this would reduce the overall and long term cost of their supports as a whole.

Systemic Safeguards

ACCESSIBILITY AND INDEPENDENT ADVOCACY

Villamanta is concerned not only about individual elements of the proposed framework but also about the cumulative effects and pace of change over the past three years.

At the present time, we are able to assist only 4% of the people who contact us in relation to NDIS Appeals. The funding for independent advocacy has not increased alongside the change occurring and too many people are having to navigate very complex systems, significant and ongoing changes, and poor communication without any assistance at all. The level of distress being communicated to our intake team has never been higher.

As we understand it, mortality continues to increase.

This must change. NDIS participants cannot be expected to understand and navigate this level of change without independent assistance, and the NDIA cannot rely on advocacy as a safeguard when there is insufficient advocacy or access to escalation for this to be effective.

We urge the department to ensure there are adequate safeguards for participants who simply cannot understand how any of these processes work and are reliant on funded supports for their safety and wellbeing.

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.