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From: s22
Sent: Monday, 2 December 2019 5:37 PM
To: s47F(1)
Cc: s22
Subject: NDIS Act Review - submitted [SEC=OFFICIAL]
Attachments: NDIS Act Review - final 2.12.19.pdf

Hi David.

Please find attached the report, as provided in hard copy to the Minister's Office this afternoon.

Kindly,

s22

s22

Assistant Director
NDIS Governance Branch
Department of Social Services

P: s22 **E:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

**REVIEW OF THE
NATIONAL DISABILITY INSURANCE SCHEME ACT 2013**

**REMOVING RED TAPE AND IMPLEMENTING THE
NDIS PARTICIPANT SERVICE GUARANTEE**

DAVID TUNE AO PSM

DECEMBER 2019

LETTER OF TRANSMITTAL

The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services
Parliament House
CANBERRA ACT 2600

Dear Minister

Following my appointment to conduct a review of *the National Disability Insurance Scheme Act 2013* (the NDIS Act), I am pleased to provide you with my report and recommendations on how the legislation could be amended to support the introduction of a Participant Service Guarantee.

In undertaking this review, I have consulted with a range of stakeholders within the disability community, including NDIS participants, their families, friends and carers, providers of NDIS services, disability advocacy bodies, the National Disability Insurance Agency and state and territory governments.

My review concludes that the NDIS Act is broadly fit for purpose, but there are a number of areas that can be amended to remove red tape and improve the participant experience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Tune'.

David Tune AO PSM
02 December 2019

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GLOSSARY

AAT	Administrative Appeals Tribunal
APTOS	Applied Principles and Tables of Support
CALD	Culturally and linguistically diverse
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DRC	Disability Reform Council
ECEI	Early Childhood Early Intervention
ICT	Information and Communications Technology
ILC	Information, Linkages and Capacity Building
LAC	Local Area Coordinator
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual or other gender and sexual diversities
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>
NDIS Rules	Legislative instruments for the <i>National Disability Insurance Scheme Act 2013</i>
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
The Guarantee	Participant Service Guarantee
The Strategy	<i>National Disability Strategy 2010-2020</i>
UNCRPD	United Nations Convention on the Rights of People with Disability

EXECUTIVE SUMMARY

The *National Disability Insurance Scheme Act 2013* (the NDIS Act) was enacted to deliver the National Disability Insurance Scheme (NDIS) – a world first approach to the provision of disability support that puts people with disability at the centre of decision-making through the principles of reasonable and necessary supports and individual choice and control.

Since its inception, the National Disability Insurance Agency (NDIA) has been responsible for the once in a lifetime role of completely transforming the disability support sector, with the key focus over the last three years on transitioning people with disability from existing state and territory service systems to the NDIS. The nature and speed of this transition was highly ambitious.

For many of its participants, the NDIS is helping to improve their social and economic outcomes, increasing their ability to live an ordinary life and achieve their goals and aspirations. However, the implementation of the NDIS has not been smooth and it is evident that the pressure of rolling the scheme out across Australia has directly impacted the NDIA's ability to provide a consistent, effective and high quality service delivery offering.

The intent of the NDIS is supported by all levels of government and the Australian community. However, people with disability have reported frustrations about the administration of the NDIS by the NDIA. Transparency, consistency and timeliness in decision-making are critical issues and people with disability have reported poor experiences when working with NDIA staff and its Partners in the Community.

The NDIA as an entity is not mature. Many of its enabling systems are still being developed and the current ICT system has significant limitations. Appropriate workflow management tools are yet to be fully deployed and significant usability features are in the process of being refined. In addition, more time is needed to strengthen the capability of the NDIA workforce to be understanding and responsive to the needs of people with disability.

1 July 2020 represents one of the most important milestones in the history of the NDIS. This is the date that the NDIS becomes available across all of Australia and the transition of people with disability from state and territory service systems is due to be completed. The next phase of the NDIS presents opportunities to deliver and embed improvements in the way the NDIS is delivered, with a stronger focus on improving the participant experience and maximising the benefits of what the NDIS can offer. However, it is clear that it will still take a number of years before the NDIS is delivering consistent positive experiences for people with disability.

The NDIA has a significant reform program underway, following reviews into the participant and provider experience in 2017 and new initiatives recently announced by the Australian Government. These new initiatives include joint planning approaches, longer plans if a participant's support needs are stable and the ability for participants to see draft plan summaries. These reforms aim to improve the consistency and quality of decisions and reduce significant pain points experienced by participants. The NDIA has also developed a significant forward work program of improvements to its ICT systems, including upgrades to the NDIS website and participant and provider portals.

While these reforms will see improvements to the participant experience, it is still not yet clear that the right operational balance has been found between the NDIA and their Partners in the Community. As the NDIA moves towards maturity, it would be beneficial to trial a service delivery model that has NDIA delegates perform all planning related functions, with a comparative evaluation undertaken to determine whether there are any material improvements to the participant experience when assessed against the current model. The trial would reduce the number of people involved in the planning process, and see the role of Local Area Coordinator Partners moving closer to their originally conceived roles – that is, helping participants connect to services in their community and build the capacity of the community for such interactions.

When considering feedback about the NDIS, it appears that the vast majority of issues are operational in nature or are a lingering effect of the transition from state and territory disability systems. That is to say, the NDIS Act and its accompanying Rules are broadly fit for purpose. However, after more than six years of implementation experience, there are some improvements that could be made to the legislation to improve the participant experience.

The legislative framework of the NDIS

The NDIS service delivery response works well in general for adults with physical disability, but not so well for some other cohorts. In particular, the provision of services to people with psychosocial disability or those with developmental delay has been challenging, with the NDIA's operational response constrained by a lack of clarity in the legislation on appropriate service responses.

The Australian Government can support the NDIA to deliver better outcomes for these cohorts through legislating changes that:

- clarify when an impairment is considered permanent for people with psychosocial disability, appreciating that their needs may be episodic and fluctuate over time;
- clarify that the determination of reasonable and necessary supports for people with psychosocial disability should be aligned with best practice recovery approaches;
- give the NDIA more flexibility to support families to build their capacity in understanding the needs of their child and exercise informed choice and control; and
- move the concept of reasonable and necessary supports for children towards a family centred planning approach.

The concept of reasonable and necessary in the NDIS Act, while not being new to legislative frameworks across Australia, is subject to differing interpretations by people with disability and NDIA decision-makers. This is principally the result of the absence of a clear definition of what constitutes a reasonable and necessary support. This creates confusion around the role and purpose of the NDIS and drives a number of individual cases towards tribunals and courts.

All governments and the NDIA should take a greater role in defining reasonable and necessary in order to provide additional clarity on the services that will be funded by the NDIS. There are a number of actions that can deliver improvements in this area, including:

- providing publicly available and accessible examples of what types of supports are reasonable and necessary;
- making the legislation available in accessible versions such as Easy Read;
- amending the legislation in accordance with recent Disability Reform Council (DRC) decisions on the interface between the NDIS and mainstream service systems;
- resolving ambiguity where a requested support may overlap or have interactions with supports that might usually be considered an ordinary living expense;
- clarifying that supports provided in a participant's plan should not be considered in isolation from other funded supports, reflecting that a plan is a package of supports to help achieve an individual's goals and aspirations; and
- clarifying the role of the NDIS in providing supports when that support is not available through a more appropriate service system.

Importantly, these improvements are intended to reinforce the boundaries of the NDIS, not narrow its scope. If implemented properly, the debate around the role of the NDIS and what is reasonable and necessary can be elevated from discussions about individual participant experiences toward a more appropriate debate between governments and people with disability.

Flexibility is key to positive participant experiences and the current implementation of the NDIS is impacted by excessive complexity. While this complexity is largely driven by NDIA operational procedures, there are some areas of the NDIS Act that are unnecessarily rigid or do not incentivise flexibility. The inability to amend a plan is one of the key frustrations for participants and one of the biggest weaknesses of the NDIS Act.

Allowing a plan to be amended, in appropriate circumstances, would be one of the most effective levers to improve the participant experience. This would allow small changes to plans to be made quickly with a low administrative burden, such as adding capital or equipment supports after obtaining quotes, fixing obvious errors or enabling a fast response in crises. It would also help to resolve current jurisdictional issues between the NDIA and the Administrative Appeals Tribunal.

The Australian Government recently announced new initiatives to give participants more flexibility in using their NDIS funding to achieve their goals and aspirations. This includes through collapsing the 'core' and 'capacity building' budgets into a single budget and giving participants the ability to spend funding across support categories. Notwithstanding these reforms, flexibility should be enshrined into legislation, with a principle that, subject to certain limited circumstances, the default position is that participants should have full flexibility in implementing their plan.

The Participant Service Guarantee

Delays in decision-making and a lack of information are two of the most regular complaints about the NDIS, with many participants indicating they have had to wait many months for the NDIA to contact them or make a decision. As the transition from state and territory disability systems comes to a close, and as the workforce of the NDIA and its Partners in the Community continues to mature, the NDIA is making inroads into improving its administration. This includes reducing backlogs, with the NDIA's Quarterly Report to the DRC for the period ending 30 September 2019 indicating a number of significant improvements in average access and planning timeframes.

Notwithstanding those improvements, it is reasonable to expect that there will always be some gap between participants' expectations of the NDIA and the reality of what the NDIA will be able to provide. The NDIA should aim to reduce this gap as much as possible.

The legislation is silent on when the NDIA will make decisions. In most instances, it prescribes that a decision will be made 'as soon as reasonably practicable'. Understandably, this uncertainty is causing frustration and anxiety for many people with disability. This review was therefore asked to consider what timeframes would be appropriate to insert into legislation to provide more clarity for people with disability as to when decisions will be made, in the form of a Participant Service Guarantee.

As the NDIS transition period has demonstrated, there is a clear tension between the speed and quality of decision-making and the NDIA's current state of maturity. It is also important to recognise that there are risks in providing a one-size-fits-all approach when setting timeframes because the circumstances of each individual are different. Therefore, aside from timeframes for decision-making, a Participant Service Guarantee should set out engagement principles to ensure the NDIA remains accountable for the way it engages with and works alongside people with disability in delivering the NDIS.

The Participant Service Guarantee should be built around five engagement principles:

- **Transparent** – Participants and prospective participants have access to information about the NDIS and their plans that is clear, accurate, consistent, up-to-date, easy to understand and available in formats that meet their needs.
- **Responsive** – Participants and prospective participants are supported and their independence is maximised by addressing their individual needs and circumstances.
- **Respectful** – Participants and prospective participants are valued, listened to and respected.
- **Empowering** – Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.
- **Connected** – The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.

The Participant Service Guarantee should require the NDIA, when requested by a person with disability, to provide an explanation of an access, planning or plan review decision in an accessible format of their choice. This would be consistent with best practice administrative decision-making principles, reinforce robust planning practices, and ensure the NDIS remains accountable to the people it was designed to support.

The Participant Service Guarantee should also empower participants to be able to review and consider a full version of their draft plan before it is approved, inclusive of the estimated plan budget. The provision of a whole draft plan is an important mechanism to ensure decision-making processes are transparent and for keeping the participant at the centre of the planning process.

The timeframes in the Participant Service Guarantee should be ambitious, but achievable. They should recognise that, due to current workforce capacity and ICT constraints, business as usual timeframes may not be deliverable by the NDIA by 1 July 2020, and/or requisite changes to the NDIA's ICT systems may not be deliverable by 1 July 2020. To provide certainty for participants, the Participant Service Guarantee should have a staged implementation, including slightly longer timeframes for the 2020-21 financial year.

From 1 July 2020, new legislated timeframes should be introduced for the vast majority of the NDIA's decision-making processes, including:

- extending the timeframe for participants to provide information to support an access decision from 28 days to 90 days;
- a participant's first plan be put in place within 10 weeks of an access decision; reducing to eight weeks from 1 July 2021;
- a plan implementation meeting to be offered and scheduled no more than four weeks after the approval of a plan;
- a scheduled plan review to commence no later than eight weeks before the scheduled plan review date;
- providing certainty that if the NDIA does not make a decision to undertake an unscheduled plan review within three weeks, it is deemed to have decided to conduct the review;
- an unscheduled plan review process to be completed within six weeks of a decision to conduct it, reducing to four weeks from 1 July 2021;
- the new plan amendment process, which covers the quote approval process for Assistive Technology and Home Modifications, to be completed within four weeks following the provision of information to the NDIA, except for complex circumstances; and
- the internal (merits) review process to be completed within 90 days, reducing to 60 days from 1 July 2021.

These timeframes should only apply to ordinary NDIA administrative processes. Where a participant is gathering additional information, or is otherwise unavailable for a period (for instance they are on a holiday), the timeframes applied to the NDIA should be paused.

Finally, the Participant Service Guarantee should require the NDIA to report on its performance against these metrics and other relevant factors as part of its regular quarterly reporting to the DRC. This will provide important transparency around the administration and reasoning of NDIA decisions.

Conclusion

There is still a long way to go before the NDIS is a mature system. However, by implementing the legislative changes outlined in this report and introducing the Participant Service Guarantee, people with disability will be provided with more certainty on the role of the NDIS and when and how the NDIA will make decisions. Service responses will be more aligned to best practice, particularly for children and their families and those with psychosocial disability, and transparency and flexibility enshrined as a key principle underpinning the delivery of this world-leading scheme.

RECOMMENDATIONS

1. The Disability Reform Council (DRC) add the resolution of the following outstanding policy matters to its forward work program:
 - a. the treatment of chronic health conditions under the NDIS;
 - b. the role of nominees, guardians and supported-decision making under the NDIS, including the intersection between the NDIS and state and territory guardianship legislation;
 - c. the role of the NDIA in undertaking fraud detection and enforcement activities, in consultation with the NDIS Quality and Safeguards Commission; and
 - d. the operation of compensation provisions under the NDIS Act.
2. The NDIA trials an arrangement where all planning related functions are undertaken with a person who has delegation to approve the plan, and compares the benefits of that approach with the roll out of Joint Planning Meetings.
3. The Commonwealth provides additional funding to support people with disability to navigate the NDIS, with a review of demand to occur as part of the next review of NDIS costs, currently scheduled for 2023.
4. Governments and the NDIA provide more clarity around the definition of 'reasonable and necessary', with:
 - a. the NDIA publishing information, in accessible formats, about how it determines when a support is reasonable and necessary;
 - b. updating the NDIS Rules to reflect the DRC's agreements on the boundaries between the NDIS and mainstream service systems;
 - c. the DRC working to resolve the interface between the NDIS and ordinary living costs;
 - d. amending the NDIS Act to clarify that reasonable and necessary supports are considered together as a package; and
 - e. amending the NDIS Act to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.
5. The NDIA gives priority to ICT upgrades to enable online access processes and allow people with disability to track the status of NDIA processes relating to them.
6. The Commonwealth publishes accessible versions of the NDIS Act and NDIS Rules, to help people with disability understand the legislative basis of the NDIS.

7. The NDIS Act is amended to:
 - a. allow evidence provided to the NDIA about a prospective participant or participant to be used for multiple purposes under the NDIS Act, including access, planning and plan review processes; and
 - b. provide discretionary powers for the NDIA to require a prospective participant or participant undergo an assessment for the purposes of decision-making under the NDIS Act, using NDIA-approved providers and in a form set by the NDIA.
8. The NDIS Act and Rules are amended to:
 - a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment is permanent, recognising that some conditions may be episodic or fluctuating; and
 - b. remove references to 'psychiatric conditions' when determining eligibility and replace with 'psychosocial disability'.
9. The NDIS Act is amended to give a prospective participant up to 90 days to provide information requested by the NDIA to support an access decision, before it is deemed they have withdrawn their access request.
10. The NDIA develops a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS, with a dedicated focus on Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, and people with psychosocial disability.
11. The NDIS Act is amended to reflect that a plan must be facilitated and approved in accordance with the timeframes outlined in the Participant Service Guarantee.
12. The NDIS Rules are amended to reinforce that the determination of reasonable and necessary supports for children with disability will:
 - a. recognise the additional informal supports provided by their families and carers, when compared to children without disability;
 - b. provide families and carers with access to supports in the home and other forms of respite; and
 - c. build the capacity of families and carers to support children with disability in natural settings such as the home and community.
13. The NDIS Act is amended to provide more flexibility for the NDIA to fund early intervention support for children under the age of seven years outside a NDIS plan, in order to develop family capacity and ability to exercise informed choice and control.

14. The NDIA undertakes a review of its operational guidelines when funding Supported Independent Living, with an emphasis on increasing the involvement of participants, families and carers in the decision-making process and the principles of choice and control.
15. The NDIS Rules are amended to clarify that supports in a participant's plan should be used flexibly, except in limited circumstances, such as capital supports.
16. The NDIS Rules are amended to:
 - a. set out the factors the NDIA will consider in funding support coordination in a participant's plan; and
 - b. outline circumstances in which it is not appropriate for the providers of support coordination to be the provider of any other funded supports in a participant's plan, to protect participants from provider's conflicts of interest.
17. The NDIS Rules are amended to give the NDIA more defined powers to undertake market intervention on behalf of participants.
18. The NDIA works with governments, researchers and experts in the provision of disability support to establish an accessible source of publically available information about evidence-based best practice approaches, to assist participants in exercising informed choice and control.
19. The NDIS Act is amended so a participant who requests to 'plan manage' their NDIS funding be subject to the same considerations that apply when a participant seeks to 'self-manage'.
20. The NDIS Act is amended to introduce a new Category D rule-making power that sets out the matters the NDIA must consider when deciding whether to undertake an unscheduled plan review.
21. The NDIS Act is amended to introduce a new Category D rule-making power giving the NDIA the ability to amend a plan in appropriate circumstances.
22. The NDIS Act is amended to remove the duplicate use of the word 'review'.
23. The NDIS Act is amended to clarify the Administrative Appeals Tribunal's (AAT) jurisdiction, including the power for a plan to be amended while a matter is before the AAT.

24. The NDIS Independent Advisory Council develops a new independent participant satisfaction survey, with reporting included in the NDIA's quarterly reporting to DRC.
25. That the NDIS Act is amended to legislate a Participant Service Guarantee as a Category C rule, to be updated from time to time, with:
 - a. new timeframes for decision-making, engagement principles and performance metrics, as set out in Chapter 10 of this report;
 - b. relevant existing timeframes for decision-making moved from the NDIS Act to the new rule;
 - c. prospective participants and participants being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
 - d. participants being empowered to receive a full draft plan before it is approved by the NDIA; and
 - e. a review within two years of the rule being enacted.
26. The NDIS Act is amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Participant Service Guarantee.
27. The NDIS Act and Rules are amended to:
 - a. remove trial and transition provisions;
 - b. reflect agreed recommendations arising from the 2015 review of the NDIS Act; and
 - c. reflect current best practice drafting standards, and other amendments as proposed in this report.
28. The NDIS Act is amended to reference the National Disability Strategy as in force from time to time.
29. The new National Disability Strategy being developed for beyond 2020 makes reference to how it complements and builds on the NDIS.

CHAPTER 1 – INTRODUCTION

- 1.1. In June 2019, the Australian Government commissioned a review of the NDIS Act, with a focus on streamlining NDIS processes and removing red tape for participants and providers. Specifically, the review examines participants' experiences of the NDIS and opportunities for improvement, and honours a commitment made during the 2019 Election campaign to introduce a Participant Service Guarantee.
- 1.2. The Participant Service Guarantee, subject to consideration by Parliament, is intended to be legislated and take effect from 1 July 2020. It will set standards and timeframes for NDIA decision-making as it affects NDIS participants, their families and carers. It will also have a focus on specific cohorts, including children and people with disability requiring Assistive Technology and Home Modifications.

Scope of the review

- 1.3. The Terms of Reference for this review focus on removing legislative impediments to positive participant and provider experiences and supporting the implementation of the Participant Service Guarantee. Accordingly, this review does not consider broader issues affecting the general operation of the NDIS and is taking the fundamental objectives and principles of the NDIS Act and the scheme as given.
- 1.4. In undertaking this review, the experiences of people with disability, their families and carers with the administration of the NDIS by the NDIA have been considered in order to inform any legislative change that gives effect to the Participant Service Guarantee or contribute to increasing the efficiency of the scheme's administration. Box 1 outlines the Terms of Reference for the review.

The review is to consider:

1. opportunities to amend the NDIS Act to:
 - a. remove process impediments and increase the efficiency of the Scheme's administration; and
 - b. implement a new NDIS Participant Service Guarantee.
2. any other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences.

In undertaking this review, regard should be given to:

1. the objectives and principles of the NDIS Act;
2. the experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes;
3. the roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services;
4. current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation framework; and
5. recommendations agreed by the Council of Australian Governments from the 2015 Independent Review of the NDIS Act.

Within the scope of the review, there should be broad consultation with:

1. people with disability, their families and carers;
2. the disability services sector;
3. Ministers and officials from the Commonwealth and state and territory governments; and
4. the NDIA.

Box 1: Terms of Reference for this review

Consultation activities

- 1.5. This review was designed to be shaped by the experiences of people with disability, their families and carers. To support this, a range of consultation activities were undertaken to seek feedback from participants about their experiences with the NDIS, what should be included in the Participant Service Guarantee, and what they felt was important to consider in this review of the NDIS Act.
- 1.6. On 26 August 2019, the review called for written submissions to be made by 31 October 2019. The review received 201 submissions from a range of stakeholders, including participants, their families and carers, service providers, advocates and peak bodies. Of these, 152 submissions have been published on the review's webpage (the Commonwealth Department of Social Services' Engage website). A list of these published submissions is at Appendix A.
- 1.7. On 9 September 2019, an online survey was published to understand how participants and the people who support them experience the NDIS. The survey closed on 31 October 2019. It was available in long-form (up to 109 questions) and short-form (up to 49 questions). In total, 1,273 usable responses were received to the long-form survey and 467 to the short-form survey. A breakdown of the survey responses is at Appendix B.
- 1.8. Throughout late September and October 2019, 15 face-to-face community workshops were held in every capital city and a regional location in each state and territory.
- 1.9. Targeted consultations were also conducted with Aboriginal and Torres Strait Islander people so they could have their say in culturally appropriate and safe spaces. Six workshops were held for this audience, led by a peak body representing the interests of Aboriginal and Torres Strait Islander people with disability.
- 1.10. Seven focus groups for people with intellectual disability, people from culturally and linguistically (CALD) backgrounds and people with psychosocial disability were also undertaken. These focus groups were conducted in Sydney, Melbourne, Adelaide, Brisbane and Perth.
- 1.11. The NDIA Board, senior officials from the NDIA, state and territory disability ministers, senior officials from the state and territory governments and key disability agencies including advocacy organisations, peak bodies and national providers met with the Reviewer or a member of the secretariat. A list of these people and organisations is at Appendix C.

- 1.12. Across all engagement platforms, responses to this review were materially consistent, with many expressing frustration, dissatisfaction and sometimes anger about the way the NDIS is currently being implemented. This is consistent with the Terms of Reference for this review, which were designed to examine issues that could lead to improvements in the performance of the NDIS.
- 1.13. Implicit in this approach is that responses to this review may not reflect a representative sample of all participant experiences – that is, responses to this review are likely to have a negative bias. However, this does not diminish the relevance of those responses. Instead, it provides for a focused examination of areas that can be improved in order to strengthen the participant experience across the whole NDIS eligible population.

Reports that have informed this review

- 1.14. This is not the first review of the NDIS Act that has been commissioned since its inception in 2013. In addition, it is not the first report that has made recommendations to improve how people with disability interact with the NDIA and experience the NDIS.
- 1.15. Previous reviews, reports and inquiries have been considered where appropriate. These include:
 - a. the 2015 Independent Review of the NDIS Act, as commissioned by the Council of Australian Governments (COAG) and required by the NDIS Act;
 - b. previous Productivity Commission inquiries, including its most recent review of NDIS costs in 2017;
 - c. previous and current inquiries of the Joint Standing Committee on the NDIS;
 - d. the NDIA's 2017 Pathways Review, released in February 2018; and
 - e. the Quarterly Reports provided by the NDIA Board to the DRC, which are publicly available on the NDIS website.
- 1.16. These reviews provided a valuable reference point, allowing consideration of any outstanding recommendations that have not yet been implemented in either the legislation or the operational practices of the NDIA. This review also drew on other reports and analysis as identified in the relevant chapters.
- 1.17. In developing recommendations for this review, additional information, data, research and analysis of policy options was sometimes necessary. Where needed, the Commonwealth Department of Social Services undertook that work, in consultation with the NDIA.

Structure of this report

- 1.18. Chapter 2 provides background on the establishment of the NDIS, the experience of the trial and transition period and the actions undertaken by the NDIA to date to improve participant and provider experiences with the NDIS.
- 1.19. Chapter 3 considers how the NDIS engages with people with disability, and the participant experience. It also recommends actions to improve the transparency of NDIA decision-making, including when determining whether a support is reasonable and necessary.
- 1.20. Chapter 4 considers the evidence required to support NDIA decision-making and opportunities to reduce the burden on prospective participants and participants in producing or obtaining information required for the purposes of becoming a participant and of developing or reviewing a plan.
- 1.21. Chapters 5 to 9 explore each connection point in a participant's NDIS journey, from navigating the access process to their experience of developing, implementing and reviewing their plan, or appealing an NDIA decision.
- 1.22. Chapter 10 sets out what should be included in the Participant Service Guarantee, including timeframes for decision-making and engagement principles to support positive participant experiences with the NDIS. It also considers reporting arrangements to ensure the NDIA delivers on the requirements set out in the Participant Service Guarantee.
- 1.23. Chapter 11 considers other options to modernise the legislation to ensure it is fit for purpose as the NDIS continues to evolve.

CHAPTER 2 – BACKGROUND AND CONTEXT

About the NDIS

- 2.1. The NDIS is the most significant social reform of its kind since the introduction of Medicare. It was established in 2013 through the NDIS Act and represents a social insurance model of care for eligible Australians with disability.
- 2.2. Prior to the NDIS, disability services were delivered under a patchwork of block funded and procured services administered by each state and territory government. This system was seen as being ‘underfunded, unfair, fragmented and inefficient’ with many people with disability not receiving supports or services they required how, when or in the way they needed them¹.
- 2.3. As an insurance-based scheme, the NDIS takes a lifetime approach to a participant’s support needs and their goals and aspirations. It provides important assurance both to those with permanent and significant disability and those who may acquire such disability in the future, that they will receive the support they require. The NDIS also seeks to empower them, through providing individual funding, to purchase the services and supports they need from a competitive and consumer-driven marketplace.
- 2.4. The objectives of the NDIS (as outlined in the NDIS Act) include:
 - a. supporting the independence and social and economic participation of people with disability;
 - b. providing reasonable and necessary supports, including early intervention supports, for participants;
 - c. enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - d. facilitating the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
 - e. promoting the provision of high quality and innovative supports to people with disability.

¹ Productivity Commission. (2011). *Disability Care and Support: Overview and Recommendations*, p.2.

- 2.5. A key principle of the NDIS is that all people with disability have the same fundamental rights as all members of Australian society to participate in the social and economic life of the community and to make their own choices and decisions. However, it does not work in isolation toward this end.
- 2.6. As outlined in the National Disability Strategy, ensuring inclusion of people with disability in their community and enabling them to access the supports they need to realise their full potential is a shared responsibility of all Australian governments, non-government organisations, businesses and the wider community.
- 2.7. The NDIS is not intended to replace all the services and supports provided elsewhere in government or the community. While the NDIS is designed to benefit all Australians with disability, only a small proportion will become NDIS participants. Of the estimated 4.4 million Australians with disability, around 500,000 (those people with a 'permanent and significant' disability) will receive individualised supports under the scheme (see Figure 1).

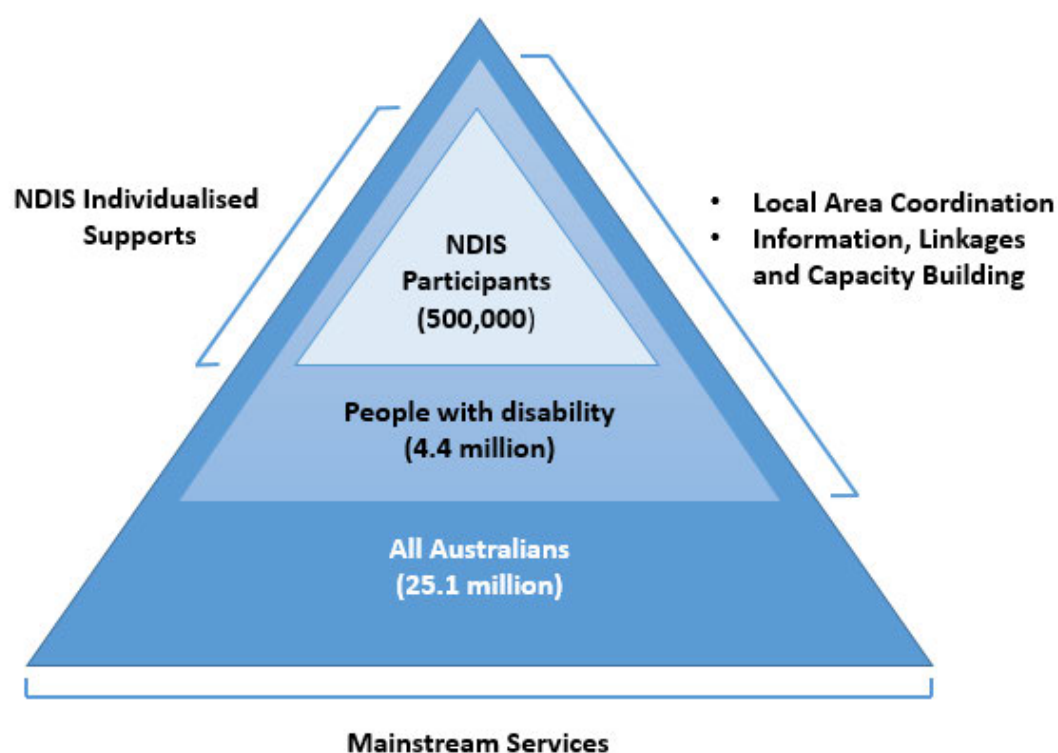


Figure 1: The NDIS and other service systems²

² Population statistics, including disability statistics, are based on 2018 ABS data. The number of NDIS participants is the projected number of participants by 2022-23.

- 2.8. The legislative framework for the NDIS needs to be considered alongside other policies and legislation, such as the *Disability Discrimination Act 1992* (Cth), the *Carer Recognition Act 2010* (Cth), the *Disability Services Act 1986* (Cth), the National Disability Strategy and the COAG agreed 'Applied Principles' that guide the interaction between the NDIS and mainstream supports. It also needs to be considered alongside state and territory legislation, and in conjunction with other obligations Australia is a party to, such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- 2.9. It is also important to acknowledge the NDIS only gives effect to the UNCRPD in part. The UNCRPD does not address how the Australian Government should implement it, nor does it assign responsibilities to particular service systems to provide people with disability the supports they need to fully and effectively participate in society on an equal basis as their peers without disability. Rather, all governments, including the states and territories, have an important role in ensuring service systems remain inclusive, accessible and designed for all Australians.

Summary of the legislative architecture

- 2.10. The NDIS is established by two tiers of legislation.
- 2.11. The first tier is the NDIS Act. The NDIS Act is essentially a framework: it establishes the NDIA as the body responsible for delivering the NDIS, sets out the general definition of eligibility and the governance arrangements that underpin the NDIS, including the way governments work together to make decisions and the role of the NDIA Board and Independent Advisory Council. The NDIS Act also establishes the NDIS Quality and Safeguards Commission to oversee the quality and safety of NDIS supports and services.
- 2.12. The second tier is the NDIS Rules, which are legislative instruments that sit under the NDIS Act, set out further laws on matters of detail in relation to the operation of the NDIS, and must be read in conjunction with the NDIS Act.
- 2.13. There are two categories of NDIS Rules:
- a. rules made by the Commonwealth Minister responsible for the NDIS in relation to the administration of the NDIS by the NDIA; and
 - b. rules made by the NDIS Quality and Safeguards Commissioner, as delegated by the Commonwealth Minister responsible for the NDIS, in relation to the role and function of the NDIS Quality and Safeguards Commission as set out in the NDIS Act.

- 2.14. The NDIS Rules made for the purpose of the administration of the NDIS by the NDIA go to issues such as:
- a. when a person becomes a participant;
 - b. when a support is reasonable and necessary;
 - c. when a person should be appointed as a nominee to act on behalf of a participant;
 - d. when a person is responsible for undertaking actions and making decisions on behalf of children;
 - e. how participants can manage the funding in their plan;
 - f. how the NDIS works alongside other service systems; and
 - g. arrangements for the protection and disclosure of NDIS information.
- 2.15. The NDIS Rules made by the NDIS Quality and Safeguards Commissioner are in relation to the NDIS Quality and Safeguards Commission's stated powers under the NDIS Act, including: the registration requirements NDIS providers must comply with, worker screening arrangements and reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.
- 2.16. This review only considers the operation of the NDIS Rules made for the purpose of the administration of the NDIS by the NDIA. It does not consider those made by the NDIS Quality and Safeguards Commissioner, unless there are consequential impacts arising from recommendations made in this report.
- 2.17. The NDIS Act provides for the role of states and territories in the making of NDIS Rules. There are four categories of rules requiring different levels of consultation or agreement with states and territories before the Commonwealth Minister for the NDIS or the NDIS Quality and Safeguards Commissioner may make or amend them:
- a. Category A rules are those that relate to significant policy matters with financial implications for the Commonwealth and states and territories, or which interact closely with relevant state and territory laws. The unanimous agreement of the Commonwealth and all states and territories is required for their making or amending;
 - b. Category B rules relate to an area, law or program of a particular state or territory, or to the commencement of the facilitation of the preparation of plans of participants identified wholly or partly, and directly or indirectly, by reference to that state or territory. These rules cannot be made or amended without the agreement of that state or territory;
 - c. Category C rules require the agreement of the Commonwealth and a majority of states and territories as they still relate to policy issues, but are not expected to have a financial impact; and

- d. Category D rules are considered to be more administrative than policy in character, with states and territories needing only be consulted before their making or amending.
- 2.18. Where this review makes recommendations in relation to existing NDIS Rules or the rule-making powers set out in the NDIS Act, it considers the intention of these consultation requirements and the roles of states and territory governments in their making or amending.

The NDIS rollout

- 2.19. From 1 July 2016, the NDIA commenced the full-scale rollout of the NDIS across Australia, with a goal to transition more than 400,000 participants into the NDIS over four years through a mix of phasing arrangements. In some states and territories participants phased into the NDIS based on the region they lived in and, in others, based on how old they were.
- 2.20. In Western Australia, the rollout of the NDIS occurred differently, with the Commonwealth and Western Australian governments first agreeing to a Western Australia-delivered but nationally consistent NDIS from July 2017, before agreeing to the NDIA-delivered model from 1 July 2018.
- 2.21. The NDIS transition period was a unique and the most complex period in the life of the NDIS. The transition was closely linked to the dismantling of existing state and territory disability support systems and transferring support structures towards a market-based system where eligible participants receive funding based on need and are supported to exercise choice and control in the planning and delivery of their supports.
- 2.22. On 1 July 2018, New South Wales and South Australia were the first jurisdictions to complete the transition of their existing clients and move into full scheme arrangements. Victoria, Tasmania, the Australian Capital Territory and the Northern Territory joined them on 1 July 2019.
- 2.23. The transition to full scheme in Queensland and Western Australia is ongoing, with efforts in Queensland currently focused on transitioning people into the NDIS who have not previously received disability supports from the Queensland Government and were expected to join the scheme before 1 July 2019. Efforts in Western Australia are focusing on the transition of people currently receiving disability support from the Western Australian government. These people are expected to transition to the NDIS by 1 July 2020.

- 2.24. As at 30 September 2019, 311,744 participants were being supported by the NDIS. Of this number, 114,069 (37 per cent) were receiving supports for the very first time, helping them to live active and independent lifestyles and achieve their goals and aspirations³.
- 2.25. On 1 July 2020, when the NDIS becomes available for people with disability who live on the Christmas and Cocos (Keeling) Islands, the NDIS will be available across all of Australia. This represents the completion of the transition period, with the NDIS entering a new phase of implementation.

Implementation challenges

- 2.26. The sheer scale and complexity of the transition period inevitably led to implementation challenges, and significant criticism of the NDIA. While there is overwhelming support for the NDIS across all levels of government and the community, it is clear from consultation feedback and submissions made to this review that many of the benefits the NDIS seeks to achieve are yet to be consistently realised.
- 2.27. Feedback to this review indicates some participants:
- a. have found the transition to the NDIS confusing and frustrating, with some citing they 'missed' the supports offered under state and territory systems, particularly active case management;
 - b. are frustrated about delays in, and seek more transparency around how the NDIA makes decisions;
 - c. want to have more support to become informed and effective consumers;
 - d. feel the NDIS is too complex and difficult to navigate;
 - e. feel they are not recognised as the experts in their disability; and
 - f. feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.
- 2.28. This review heard that, in combination, these issues have resulted in some participants reporting their engagement with the NDIS has led to lasting negative impacts on their well-being.

³ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.17.

“I would be happier to go back before NDIS. It is a complicated process and my daughter is much worse off. It has caused a lot of stress for our family.”

Carer of NDIS participant, regional New South Wales

“Families who have endured hardship as a result of inadequate plans may be traumatised by the process. I become unwell each time my daughter has a review meeting. I know my family’s ability to stay together is reliant on the NDIS and that’s something no parent should have to imagine.”

Carer of NDIS participant, metropolitan South Australia

“Dealing with the processes from meeting access to having my plan approved – I was on a verge of having a mental and emotional breakdown. The stress it caused for not only myself but also my entire family was not fair.”

NDIS participant, regional Queensland

- 2.29. The speed and pace of rollout was highly ambitious given the magnitude of the reform that the NDIS represents. This review, however, is not the first to raise that there have been trade-offs between the scale and pace of implementation and the quality of participant experiences. Similar concerns have been consistently acknowledged during the transition period (see Box 2).

Productivity Commission – 2017 Inquiry into NDIS Costs

“It is no surprise, given the size, speed and complexity of the reform, that there are transitional issues with the rollout of the NDIS. All major reforms are followed by a (sometimes protracted) period of disruption and adjustment... most transitional issues are expected to be ironed out as the scheme rollout is completed and the scheme matures... however, if transitional issues are not dealt with quickly and effectively, they can become entrenched problems that endure in the longer term and affect the success and sustainability of the scheme.” (p.76)

“Planning processes are currently not operating well. The speed of transition and performance indicators that focus on participant numbers have placed pressure on the National Disability Insurance Agency to finalise plans quickly, and the quality of plans has been compromised.” (p.181)

Commonwealth Ombudsman – 2018 Report on the administration of reviews under the NDIS Act

“We acknowledge the NDIA’s resources are limited and, since commencement of the national rollout, the Agency has been under considerable pressure to ensure it meets its various bilateral targets. This pressure is likely to continue for several years, until the Scheme is fully implemented; however, it should not be used as a reason to deprioritise or delay other work, especially where the decisions in question affect participants’ daily lives.” (pp.17 – 18)

National Institute of Labour Studies – 2018 Final Report, Evaluation of the NDIS

“The evaluation has found that on the whole, the objectives of the NDIS and its high level design are working very well. However, hindsight suggests that the speed of implementation was too fast and that more thought needs to go into the practical aspects of the NDIS rollout. Some of the practical issues appeared to be getting solved during the three-year evaluation period, some remained largely unchanged, and some appeared to be getting worse.” (pp.xxiii – xxiv)

NDIA – 2018 Improving the NDIS Participant and Provider Experience

“From the commencement of transition in July 2016 and as the number of participants entering the Scheme ramped up, it became obvious that the NDIA’s processes and systems had not always resulted in a participant and provider experience of a consistently high standard. Systems and processes migrated to at transition posed Information and Communication Technology (ICT) challenges. This combined with the use of telephone contact to develop participant plans and the very pace of participants entering the Scheme collectively caused many participants and providers to report poor plan experiences.” (p.8)

- 2.30. This review acknowledges there are a number of factors that have contributed to how participants have experienced the NDIS to date, including:
- a. the pressure to meet the participant intake targets set by all governments as part of bilateral agreements for the transition period;
 - b. the quality of data provided by all governments to support the transition of people with disability from state and territory service systems. In some cases, this data was inadequate to allow the NDIA to make timely decisions about a participant's eligibility for the NDIS and the supports in their plan;
 - c. the quality of the NDIA's enabling systems, including its ICT solutions and workflow management tools; and
 - d. the need for a rapid expansion of a workforce capable of implementing NDIS processes under the NDIS Act.
- 2.31. This review does not infer the NDIS is failing to improve outcomes for participants once they have become a participant, have a plan in place and are accessing supports. Rather, longitudinal outcomes data demonstrates participant outcomes are improving the longer they are in the NDIS⁴. A three-year analysis of participant outcomes demonstrates that community and social participation increases as participants spend more time in the NDIS, as does their view that the NDIS is helping them have more choices and control over their lives⁵.
- 2.32. This review also acknowledges the NDIA has developed a number of strategies to address these issues and improve the participant experience. Much of this work was generated following a 2017 review of the participant and provider pathways, which the NDIA initiated to address people's feedback about their experience with the NDIS and to identify areas for improvement. Some of the improvements rolled out following the pathways review have included:
- a. specific pathways for participants with complex needs, or who enter under the ECEI gateway;
 - b. specific service streams for people with psychosocial disability and hearing loss, to deliver targeted support that provides those participants with an experience more suited to their specific disability needs; and
 - c. service enhancements to meet the communication and engagement needs of people from different backgrounds or regions, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people living in remote and very remote communities, and people who identify as LGBTIQ+.

⁴ NDIA Quarterly Report to DRC for the period ending 30 September 2019, pp.26-30.

⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, pp.89-94.

- 2.33. The NDIA began rolling out baseline service improvements nationally in June 2019 to give effect to the pathway reforms, including:
- a. a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers;
 - b. a consistent point of contact for participants;
 - c. enhanced planning communication products in a variety of formats;
 - d. face-to-face pre-planning and plan implementation meetings at the discretion of the participant;
 - e. improved linkages between NDIA planners and the Partners in the Community workforce, including Local Area Coordinators (LAC) and Early Childhood Early Intervention (ECEI) Partners; and
 - f. improved training for NDIA planners and Partners in the Community.
- 2.34. Provider improvements have also been rolled out or are underway, including:
- a. more clarity on pricing, following an independent price review in 2017;
 - b. efficiencies to payment processing and the creation of a dedicated provider payment team, including working to develop and implement solutions that address the root causes of provider payment issues, and developing a payments strategy to support an improved future payments platform;
 - c. the implementation of a National Providers Engagement team that helps providers engage with and navigate the NDIS; and
 - d. improved MyPlace provider portal functionality.
- 2.35. Further information on the operational improvements previously implemented by the NDIA to improve the participant and provider experience (or which are currently in the process of being implemented) is provided at Appendix D.
- 2.36. These reforms are having an effect. As outlined in the NDIA's report to DRC for the September 2019 quarter:
- a. wait times for access decisions reduced from 38 days in the June 2019 quarter to 12 days;
 - b. first plans are being approved faster, from 133 days in the June 2019 quarter to 88 days.
 - c. unscheduled plan reviews as a proportion of NDIS participants decreased from 30.5 per cent in the March 2017 quarter to 16.1 per cent; and
 - d. complaints from participants and providers are also tracking downwards and are at their lowest levels for more than two years⁶.

⁶ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.7.

- 2.37. To better understand the impact of the NDIS on participants and their families and carers, the NDIA has also been measuring outcomes for participants, recognising how far they have come since they entered the NDIS and acknowledging their different starting points. Data for the period July 2018 to September 2019 indicates that nationally participant satisfaction across a number of indicators has consistently been in excess of 80 percent in a number of areas, particularly:
- a. between 93 and 87 per cent of participants rated their satisfaction with the planning process as 'Very Good' or 'Good';
 - b. between 97 and 93 per cent felt their planner listened to them;
 - c. between 96 and 93 per cent considered that they had enough time to tell their story;
 - d. between 95 and 91 per cent reported that their planning meeting went well; and
 - e. between 85 and 80 per cent felt that planners helped them think about their future⁷.
- 2.38. Notwithstanding these improvements and the NDIA's current program of work to improve the participant experience, this review notes many of the operational improvements currently underway are yet to be rolled out nationally or evaluated for their effectiveness.
- 2.39. Furthermore, while the NDIA's data indicates there have been significant improvements across the NDIS pathway, this review heard that the NDIA has not been getting it right the first time for every participant and ongoing effort is needed to realise all the expected benefits of the NDIS.

New 2019 commitments

- 2.40. In October 2019, the Australian Government announced an increase in the NDIA workforce of around 800 positions to ensure the NDIA can deliver on the pathways reforms, including implementing the improvements that will form part of the Participant Service Guarantee.

⁷ NDIA Quarterly Report to DRC for the period ending 30 September 2019, pp.32-33; NDIA Quarterly Report to DRC for the period ending 30 September 2018, p.14.

- 2.41. The Australian Government has also committed to expand the NDIS Community Connectors program to assist people with disability and their families in hard to reach communities to navigate the NDIS and get the services they or their children need. This expansion will provide \$20 million over two years from 2019-20, building on the NDIA's Remote Community Connector Program and other activities undertaken by the NDIA's Partners in the Community.
- 2.42. The expanded Community Connectors program will assist people in hard to reach communities to engage with the NDIS, and support them throughout the access, planning and implementation processes. Hard to reach communities will include Aboriginal and Torres Strait Islander peoples, CALD communities, people with psychosocial disability, and ageing parents or carers of children with disability.
- 2.43. In addition, new initiatives were announced in November 2019 to resolve existing pressure points for participants and ensure faster, higher quality and transparent decision-making. These include joint planning meetings and the provision of draft plan summaries to strengthen the focus on goals and outcomes and provide participants with a greater understanding of, and confidence, in their NDIS plan. These initiatives will roll out nationally in 2020 and are further discussed in Chapter 3.
- 2.44. The Australian Government and NDIA have also committed that all NDIS participants will have a single point of contact with the NDIS and the ability to have a longer plan of up to three years if their support needs are stable. This work is expected to improve participants' experiences with the NDIS as they will not have to tell their story multiple times to different people. It is also expected to support participants who are ready to develop longer-term goals to achieve better outcomes, as longer plans will provide certainty for them and the providers delivering their supports.
- 2.45. This review understands that as at 30 September 2019, 93 per cent of participants now have a "My NDIS Contact", although it is noted the single point of contact results in participants being given a contact name but generally not a direct phone number or email.

Future focus

- 2.46. 1 July 2020 is an important milestone for the rollout of the NDIS across Australia. It reflects a change of focus from transitioning state and territory disability service systems to resolving outstanding implementation issues and working towards a mature NDIS, with around 500,000 participants expected to benefit from the scheme by 2023.

- 2.47. A 2014 review stated the NDIS was *“like a plane that took off before it had been fully built and is being completed while it is in the air”*⁸. Building on that metaphor, five years on, the plane is flying but the passengers are experiencing some turbulence. In order to ensure the NDIA is able to deliver an efficient and effective scheme, the next phase of NDIS implementation will need to have a focus on:
- a. building the trust of participants, their families and their carers when engaging with NDIS processes;
 - b. activities to support new people with disability to access the NDIS; and
 - c. expediting access to funded supports and reducing the number of unnecessary steps in the participant pathway.
- 2.48. However, the NDIS is already a large and complex system, meaning further improvements to support positive participant experiences will take time to embed within NDIA operations, including making the required changes to ICT systems. It is therefore reasonable to expect it will take several years before the NDIS is operating in a fully efficient and effective manner.
- 2.49. In addition, there are many policy and practice challenges that will need to be addressed to ensure the NDIA can fully deliver on its promise to people with disability, particularly in relation to:
- a. fully overcoming delays across all decision-making processes, to ensure timely access to supports when people with disability actually need them;
 - b. resolving ambiguity in the construction of supports so plans meet participant expectations and always have a clear link to the participant’s goals and aspirations;
 - c. actively supporting people with disability to build their capacity to identify their support needs, goals and aspirations, self-advocate and navigate the market;
 - d. improving the capability and capacity of the NDIA workforce, including Partners in the Community;
 - e. supporting the development of a robust marketplace of disability service providers that keeps pace with demand; and
 - f. ensuring disability service providers are acting in the best interests of participants.

⁸ Whelan, J., Acton, P. and Harmer, J. (2014). *A Review of the Capabilities of the National Disability Insurance Agency*, p.7.

Other issues

- 2.50. This report does not consider all aspects of the NDIA's service delivery. This is because this review was specifically asked to evaluate the particular legislative changes that would be required to improve participants' experiences with the NDIS. Nevertheless, one of the intentions of this report is to suggest areas where operational changes would support legislative changes that impose timeframes or other requirements as part of the Participant Service Guarantee.
- 2.51. This review has not considered the effectiveness of the NDIA's current approach to Information, Linkages and Capacity Building (ILC) investment as the Terms of Reference are focused on the experience of NDIS participants with the administration of NDIA decision-making. This review does, however, acknowledge ILC is a fundamental aspect of the NDIS that seeks to build the capacity of mainstream services and community programs to create connections between all people with disability and the communities in which they live.
- 2.52. This review acknowledges feedback that called into question the scope of the NDIS, as set out in the NDIS Act, and feedback suggesting the role of the NDIS, and the NDIA in delivering it, is not well understood. For example:
- a. the principles of 'choice' and 'control' were seen by some participants as reinforcing a view that they, as experts in their own lives and needs, would be able to receive funded supports through the NDIS of the type and at the level they felt was appropriate, without the NDIA having authority to make decisions to that end;
 - b. there is some confusion around who the NDIA 'speaks for', acts 'on behalf of' or ultimately, 'serves' – is it people with disability or government interests?; and
 - c. there is some confusion about the role of the NDIA in managing, advising and reporting on, the financial sustainability of the NDIS.
- 2.53. This review also acknowledge there is a tension between the role of the NDIS in supporting the functional impact of impairments that arise due to a chronic health condition and confusion around the respective roles and responsibilities of, and how the NDIS works alongside, the health system. This issue was noted in the 2015 Review of the NDIS Act but is yet to be resolved. It is a critical issue, however, more significant and detailed policy work needs to be undertaken before it can be addressed. This should be a policy priority of governments.

- 2.54. This review also notes feedback suggesting the role of all governments in providing policy stewardship of the NDIS is not clear, including their ability to influence NDIA decision-making. Some submissions referred to policy announcements by governments or stated objectives in Intergovernmental Agreements and considered them binding upon the NDIA. Others indicated they felt the NDIA had ‘broken their promises’ when the NDIA acted in ways they perceived were inconsistent with political undertakings – for example, that they ‘would not be disadvantaged’ in the transition from state and territory disability systems.
- 2.55. Some of these frustrations will be addressed by effective implementation of the Participant Service Guarantee, as outlined in Chapter 10 of this report. However, they are generally outside the remit of this review as they ultimately regard the role and function of the NDIS itself, and of the NDIA in delivering it. Accordingly, this review does not make any explicit recommendations on these issues, and instead suggest the most appropriate vehicle for such consideration is the next review of the NDIS Act, currently scheduled for 2021.
- 2.56. This review acknowledges feedback suggesting there is a need to review the nominee provisions of the NDIS Act in relation to their intersection with guardianship and administration legislation in the states and territories. This issue is unlikely to be resolvable in isolation. Accordingly, this review does not make any recommendations on this issue but consider it appropriate for governments, through the DRC, to commission a review of the interoperability between Commonwealth and state and territory legislation as it applies to nominee and guardianship provisions. The intent should be to identify opportunities to ensure a nationally consistent approach to nominee, guardianship and supported decision-making arrangements for people with disability.
- 2.57. Finally, this review acknowledges feedback suggesting legislative reforms may be needed to ensure the integrity of the NDIS, including through providing the NDIA with explicit powers to undertake fraud detection and enforcement activities and strengthening the provisions around the interface between the NDIS and state and territory compensation schemes. These matters cannot be achieved without close examination of the regulatory interface between the NDIA and the NDIS Quality and Safeguards Commission and the legal and practical dilemmas about the valuation and liabilities of compensation benefits made under state and territory statutory schemes. Furthermore, they are beyond the Terms of Reference for this review which focus on improving the participant experience of NDIA decision-making.

2.58. Accordingly, this review does not make any recommendations on these issues but encourages further policy work to be undertaken by governments. The Australian Government recently said the NDIS was about 80 per cent there, with 20 per cent left to go⁹. These issues form part of that last 20 per cent, and efforts should be undertaken to resolve them as soon as possible.

Recommendation 1: The Disability Reform Council (DRC) add the resolution of the following outstanding policy matters to its forward work program:

- a. the treatment of chronic health conditions under the NDIS;
- b. the role of nominees, guardians and supported-decision making under the NDIS, including the intersection between the NDIS and state and territory guardianship legislation;
- c. the role of the NDIA in undertaking fraud detection and enforcement activities, in consultation with the NDIS Quality and Safeguards Commission; and
- d. the operation of compensation provisions under the NDIS Act.

⁹ Minister for the NDIS, the Hon Stuart Robert MP, National Press Club address of 14 November 2019.

CHAPTER 3 – ENGAGEMENT AND NAVIGATION

KEY FINDINGS

- ✓ Improvements to the participant experience could occur by ensuring all planning processes are done with a person who has delegation to make the decision.
- ✓ There is no clear definition of when a support is reasonable and necessary. This is leading to different interpretations and driving confusion and frustration for people with disability, LAC partners, NDIA delegates, tribunals and courts.
- ✓ Additional support should be provided to assist people with disability to navigate the NDIS and its processes.
- ✓ People with disability have the right to understand the reasons behind decisions the NDIA makes regarding their eligibility for the NDIS and the supports provided in their plans.
- ✓ Participants should be provided with a whole draft plan before it is approved to keep them at the centre of the planning process.
- ✓ The legislative framework of the NDIS and NDIA administrative practices need to enshrine transparency as a principle underpinning all their engagement with people with disability.

- 3.1. The NDIS is having a positive impact for many participants. These outcomes become particularly evident the longer a person is in the scheme, as they continue to develop their confidence in navigating the provider market and implementing their plan. However, the complexity of the NDIS (as a system in itself) is causing significant confusion and frustration for many people with disability.
- 3.2. Consultation feedback suggests that some people with disability have found it difficult to navigate through 'the bureaucracy of the NDIS' and that the NDIA is not delivering what the NDIS promised them. The vast majority of people with disability who participated in consultations reported that they could not find accessible information about the NDIS or how to lodge an access request and that talking to the NDIA left them feeling disempowered and not valued as an expert in their disability.

- 3.3. Consultation feedback also suggested that people with disability do not understand how the NDIA makes decisions about their eligibility for the NDIS and the supports provided in their plan, including when a support is reasonable and necessary. Submissions also indicated there is a disconnect between the person responsible for planning and the person with sufficient delegation to make decisions, resulting in unnecessary levels of bureaucracy and people with disability needing to repeat their stories to different people, which can be traumatising.

Reforms to the planning process

- 3.4. Under current arrangements, once a person with disability becomes an NDIS participant they are assigned a 'My NDIS Contact' to assist and guide them with the planning process. In the majority of cases, the contact will be one of the NDIA's Partners in the Community (e.g. a LAC or ECEI Partner). However, where a participant has more intensive or complex needs, their contact will be an employee of the NDIA. The NDIA advise that, currently, around 70 per cent of participants are assigned a 'My NDIS Contact' from Partners in the Community, with the remaining 30 percent assigned to the NDIA.
- 3.5. Where the 'My NDIS Contact' is a Partner in the Community, they will work with the participant and their representatives, including their families and carers, to develop a plan. This involves discussing the participants support needs, goals and aspirations and the informal, community and mainstream supports available to them. Once the Partner has drafted a plan containing the reasonable and necessary supports proposed to be funded by the NDIS, the plan is sent to an NDIA delegate for approval. As currently set out in the NDIS Act, the NDIA Chief Executive Officer (CEO) can only delegate plan approval powers and functions to an NDIA employee.
- 3.6. In approving the plan, the NDIA delegate may make amendments to it, based on NDIA operational procedures or other considerations they need to be satisfied that the supports in the plan are reasonable and necessary. This review has heard that, in at least some cases, the NDIA delegate may not have met the participant or discussed any changes with them prior to the plan being approved.
- 3.7. This process has driven a disconnect between the NDIA and participants, resulting in plans that do not necessarily reflect planning discussions. In addition, it has complicated the participant experience with many citing anxiety and frustration in having to repeat their story unnecessarily by requesting plan reviews so the supports they asked for, but were not funded, can be reconsidered.

“LAC just seems to be a conduit for information with no contact with planner by person with disability, information becomes second hand and there seems to be little communication between LAC and planner.”

Family member and carer of NDIS participant, metropolitan New South Wales

“Completely inadequate plan and absolute shambles of a planning process. Information presented was not read or considered. Erroneous assumptions were made. The Chinese whispers from the LAC to the planner did not come through clearly – another major flaw with the planning process: LACs gathering information which is then passed on to someone who does not meet the person with disability or have the conversation with them – absolutely disastrous.”

Family member and carer of NDIS participant, regional New South Wales

“LACs have too many clients and cannot do their jobs properly, one LAC told me that their caseloads aren't even capped. How can they support people adequately if they are so time poor that they can't return phone calls or answer emails within a day or so the participant is likely to have an extremely serious problem such as lack of access or if the plan isn't spent they will lose money in the next plan.”

Carer of NDIS participant, regional Victoria

- 3.8. In its 2011 report, the Productivity Commission conceived the role of Partner organisations as helping people with disability connect to services in their community and building the capacity of the community for such interactions. That is, the original concept of the NDIS always envisaged that it might be more appropriate for some NDIS functions to be outsourced.
- 3.9. As the NDIS has been rolled out, due to the speed of transition and the available workforce, this role has been expanded to include certain planning functions. As a result, LACs and ECEI Partners are now being asked to undertake dual roles of planning and coordination for the majority of the NDIS eligible population. There are indications that a focus on planning has been at the expense of their coordination role.
- 3.10. With an ongoing focus on increasing the number of participants to 500,000 by 2023, there will be an ongoing tension between the Partners' two roles. Therefore, it is important that the balance is right and that the interface with NDIA delegates is as effective and streamlined as possible.

- 3.11. The NDIA have rolled out two new processes in response to feedback from participants about the disconnect between the processes of planning and plan approval: Plan Alignment Meetings and Joint Planning Meetings.
- 3.12. Plan Alignment Meetings involve a meeting between the LAC and NDIA delegate to provide the delegate with greater insight into the participants support needs, goals and aspirations and to work through clarifications.
- 3.13. Joint Planning Meetings are for participants preparing their first plan, and involve a meeting between the LAC, NDIA delegate and the participant and their representative, following the Plan Alignment meeting. Joint Planning Meetings are designed to give participants the opportunity to ask questions of both the LAC and NDIA delegate, so they understand the supports to be funded in their plan, and why other supports will not be funded. Importantly, a key goal of the meeting is to promote transparency in the way information flows between the LAC and the NDIA and to be able to provide an approved plan to the participant during the meeting. Joint Planning Meetings have not yet been rolled out for people with disability entering the NDIS through the ECEI gateway, given the specific focus and expertise of ECEI Partners.
- 3.14. Feedback from an early trial of Joint Planning Meetings in Victoria during 2018 suggests that it delivers multiple benefits, including:
 - a. the LAC and NDIA delegate have a better understanding of the participant and their needs, which translates to better explanations being provided to the participant of the reasonable and necessary supports and other elements of their plan;
 - b. in the majority of cases (85.4 per cent), the plan was able to be approved at the planning meeting and provided to the participant, with a further 10.9 per cent of plans approved within five working days;
 - c. participants and their representatives reported they felt more involved in the process; and
 - d. participants who were unable to have their plan approved at the meeting understood the reason why, and in most instances the delay did not impact their overall satisfaction with the process.
- 3.15. In November 2019, the Australian Government announced the NDIA will expand the pilot and roll out joint planning meetings across Australia from April 2020, along with the provision of draft plan summaries. Providing a draft plan summary will enable the participant to review and amend their personal details, goals, living arrangements, informal and other community supports, and social and economic participation prior to a plan being approved.

- 3.16. Importantly, these strategies will ensure NDIA planning decisions are consistent with participant expectations because the participant, the LAC and the NDIA delegate will collectively discuss a working version of the plan and supports to be included before the plan is approved.
- 3.17. Notwithstanding these benefits, it seems reasonable to question whether the addition of a Joint Planning Meeting is simply adding additional complexity and time to the participant experience and increasing the NDIA's administrative burden, and whether there are other more structural approaches that could be undertaken to improve the participant experience and deliver administrative efficiencies.
- 3.18. One potential option could be to reduce the need for Joint Planning Meetings by bringing all planning related functions undertaken by LACs into the NDIA, such that a participant, including their support network, only has to engage with the person who has delegation to approve their plan. LACs would still be responsible for helping participants connect to services in their community, build the capacity of the community for such interactions, and provide input on these aspects for the NDIA delegate to include in building and approving a plan that captures all supports (community, mainstream/government, informal, and formal).
- 3.19. This would reflect a shift in the way the NDIS is currently implemented, and move the administration of the NDIS towards the model originally envisaged by the Productivity Commission.
- 3.20. A second option could be to provide LACs with legislative delegation to make plan approval decisions. However, this approach would only be addressing the symptom, as opposed to driving operational processes towards the most effective balance of NDIA staff and Partners.
- 3.21. Moving to a system where NDIA staff do all planning related functions for the majority of participants (excluding ECEI), would require a significant adjustment to the NDIA's operational planning footprint and require a well-developed workforce strategy between the NDIA and its Partners, noting existing contractual arrangements would need to lapse or be amended.
- 3.22. Given the significance of such a change to current operational arrangements, any change to the planning process needs to be tested against current arrangements, through an appropriate comparative evaluation. Otherwise, rushing to amend the NDIA's operational footprint and formally changing the role of Partners may create perverse outcomes for the participant experience.

- 3.23. Therefore, this review considers that there is merit in the NDIA trialling an arrangement where NDIA delegates undertake all planning related functions (except for people entering the NDIS through the ECEI gateway).
- 3.24. Subject to an evaluation of the participant experience, the NDIA should then proceed to implement the model that, based on the evidence, achieves the best outcome for participants. This review notes, however, that any trial may have a requisite impact on the NDIS average staffing limit.

Recommendation 2: The NDIA trials an arrangement where all planning related functions are undertaken with a person who has delegation to approve the plan, and compares the benefits of that approach with the roll out of Joint Planning Meetings.

Navigation support

- 3.25. Regardless of the role of NDIA delegates and noting the existing NDIA reform program, a mature NDIS may not see a material improvement in the overall complexity or bureaucracy of the scheme.
- 3.26. Consultation feedback suggests people with disability who have support to navigate the NDIS from initial entry to being able to fully access and implement their plans tend to achieve better outcomes than those who do not have the help they need to navigate the system by themselves. This review has heard that this is driving a higher demand for advocacy support, both to help people navigate the NDIS and to deliver capacity-building supports that were intended to be delivered by the Partners in Community, but may have been lost due to a focus on planning. Indeed, anecdotal evidence suggests that many advocacy organisations across the country are reporting they have had to establish or expand waiting lists because of the NDIS, with evidence some people with disability are being turned away.
- 3.27. Taking into account the time it will take for the NDIA to mature and current operational reforms to be embedded, there is a need to provide additional support to help people with disability navigate the NDIS, exercise informed choice and control, understand and implement their plans and have their voice heard in matters that affect them. This kind of support is more commonly referred to as supported decision-making and is particularly important for people with limited capacity to make decisions or self-advocate, noting it should always enable core NDIS principles, such as independence, choice and control, community inclusion and linkages to other service systems.

- 3.28. However, in keeping with the principles of the NDIS, it may not always be the responsibility of, or appropriate for, the NDIA or NDIS service providers to provide supported decision-making style supports. Therefore, the Australian Government could consider providing additional funding to third parties who are sufficiently independent from the NDIA to undertake these functions.
- 3.29. However, providing this additional support is not without risk. It will be important to ensure that implementation does not result in dependency that is at odds with the principle of increasing the capacity of people with disability.
- 3.30. Initial estimates are that an injection of around \$45 million over three years to 2022-23 would be appropriate, noting there is no robust data available about the level of unmet need. In addition, while there may be some ongoing need, demand for these services is expected to reduce over time. Accordingly, as the NDIS moves into a new phase of implementation, it would be sensible for additional supports to be reviewed in the context of the next scheduled review of NDIS costs in 2023.
- 3.31. The funding of a navigator role by the Commonwealth Government is consistent with its responsibility for the NDIS Appeals program and other NDIS specific advocacy support. This is different to the shared responsibility of both the Commonwealth and state and territory governments to fund independent advocacy supports that are accessible to all people with disability for issues outside the NDIS.

Recommendation 3: The Commonwealth provides additional funding for people with disability to navigate the NDIS, with a review of demand to occur as part of the next review of NDIS costs, currently scheduled for 2023.

- 3.32. Consultation feedback also suggests that funded support coordination in plans is critical to help participants reduce the burden of managing their plan and enable them to maximise the benefits of their funding. In some cases, it was suggested the NDIA should fund this support more generally for NDIS participants.

- 3.33. This review considers that this feedback is likely to be another symptom of Partners in the Community not being able to effectively fulfil dual coordination and planning roles. As a result, and while likely to be the least effective of the options to address current operational arrangements, the NDIA could be more generous in its interpretation of when it is reasonable and necessary to provide funded support coordination, noting that currently 39 per cent of active participants already have funded support coordination in their plans¹⁰.
- 3.34. However, the market for support coordination is still developing in response to NDIS demand and there are locations where the market would be thin and/or there are issues around the quality of service provision. As such, any move to increase the use of funded support coordination would need to be accompanied with a comprehensive market development strategy to ensure service providers were able to effectively assist participants to get the best outcomes from their NDIS supports and make the transition from being passive recipients of supports to informed consumers. This issue is further discussed in Chapter 7.

Reasonable and necessary

- 3.35. 'Reasonable and necessary' is one of the first terms people hear about when they start to engage with the NDIS. However, despite being the most important term, as it defines the supports that are funded under the NDIS, there is no clear definition of what it actually means.
- 3.36. The legislative concept of 'reasonable and necessary' is not unique to the NDIS, with similar constructs being legislated in other compensation schemes in Australia, such as state and territory motor accident lifetime care and support schemes¹¹.
- 3.37. However, in its application under the NDIS Act, it is clear from the NDIS rollout that there is yet to be a consistent understanding between people with disability and the NDIA as to what constitutes a reasonable and necessary support.

¹⁰ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.103.

¹¹ See, for example: the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (South Australia), *Motor Accidents (Lifetime Care and Support) Act 2006* (New South Wales) and *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (Australian Capital Territory).

“I felt the ‘reasonable and necessary’ test was very subjective and my planner couldn’t understand how it was necessary or reasonable that I have a bag for my wheelchair even though my occupational therapist had stipulated that as I have limited mobility, it was necessary to achieve my goals of independence.”

NDIS participant, regional Queensland

“Reasonable and necessary is not the easiest to understand and navigate, which I also suspect is leaving people out on a limb because they do not understand this term clearly and what is included.”

Family member and carer of NDIS participant, metropolitan Victoria

“Better clarify ‘reasonable and necessary’. For someone like me, this is a very vague term, implying a compromise between goals and supports.”

NDIS participant, regional Victoria

- 3.38. Fundamentally, the confusion results from ‘reasonable and necessary’ being defined in the legislation through high-level criteria around what constitutes a support in-scope for NDIS funding and those other supports more appropriately funded by another service system or through a participant’s ordinary income (including income support).
- 3.39. This is complicated by reasonable and necessary being, in large, a discretionary determination made on a case-by-case basis having regard to each participants individual circumstances. Combined with limited (or at least not easily accessible) information on the NDIS website on how an NDIA delegate makes a reasonable and necessary decision, there is considerable challenge for delegates in applying the ‘reasonable and necessary’ criteria consistently.
- 3.40. However, what is clear is that legislative responsibility for determining what is reasonable and necessary, within the established principles, is vested solely with NDIA delegates.
- 3.41. When combined with an immature NDIA workforce and the NDIA not providing explanations of its decisions, confusion around when a support is reasonable and necessary is driving people with disability to seek formal reviews of their plans and, in some cases, escalating issues to the Administrative Appeals Tribunal (AAT) for resolution.

- 3.42. In considering the facts of the matter before it, the AAT is also making determinations as to what is, or is not, reasonable and necessary. While the AAT is not a Court, and its decisions are not binding, it does provide persuasive guidance for the types of support that could be funded by the NDIS. This review also notes that the AAT's decisions, while having regard to the objects and principles of the NDIS Act, may, or may not be making the decisions intended when the legislation was drafted.
- 3.43. This review is not assessing the appropriateness of AAT decisions. Rather, it proposes that all governments need to take a greater role in resolving the definition of 'reasonable and necessary'. In particular, this review considers five key actions are required to provide clarity to participants and NDIA delegates about what is reasonable and necessary.
- 3.44. Firstly, the NDIA should provide clearer advice on how it decides whether a support is reasonable and necessary, including practical examples, such as case studies or cameos. These should be readily available on the NDIS website and other platforms in accessible formats. Currently, 'reasonable and necessary' is described in vague terms, often simply replicating the legislative criteria. Case studies should address key areas of confusion for participants, for instance, ordinary living costs, health interfaces and transport.
- 3.45. Secondly, the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* should be updated to provide greater legislative guidance for NDIA decision-makers in determining when a support is reasonable and necessary. This update should have regard to the recent and anticipated decisions made by the DRC on the interface between the NDIS and mainstream service systems. This is particularly important because while the NDIA must have regard for the decisions of the DRC, the DRC's decisions are not law and do not have formal standing in the context of NDIA delegate decisions.
- 3.46. Thirdly, the DRC should clarify the interface between the NDIS and a participant's ordinary living costs, in order to provide further direction to NDIA delegates in circumstances where it is not clear whether a support is directly attributable to a participant's disability. This can occur where a support provides outcomes that are not solely related to a participant's disability, or where a support would be considered an ordinary living cost for the wider Australian population, but it is not clear if a participant would have purchased that support if not for their disability.

- 3.47. Fourthly, the NDIS Act should be amended to provide clarity to NDIA delegates that, while they must decide that supports in a participant's plan are reasonable and necessary, it is also the function of the reasonable and necessary test to consider how supports are considered as a package in the participant's plan. While this is already inferred through the concept of a 'plan' in the NDIS Act, it is worth clarifying this interaction more explicitly.
- 3.48. Finally, the NDIS Act should be amended to clarify that the absence of a support being provided by another service system, where that service system is considered to be the appropriate service delivery mechanism for that support, does not infer a responsibility on the NDIS to fund that support. On face value, this could appear to be a negative for people with disability as it could potentially enforce, or exacerbate, service gaps for participants. However, this clarification would provide further certainty to participants and all governments over the role of the NDIS, driving the debate more appropriately towards the reason why the support is not being provided by the other service system.
- 3.49. Importantly, these actions are not intended to narrow the intended scope of the NDIS. Rather, they are intended to ensure participants and governments have a strong understanding of the boundaries of the NDIS. If implemented appropriately, this elevates the debate on the role of the NDIS and what is reasonable and necessary from individual participant experiences to a focus on the structural and systemic issues.

Recommendation 4: Governments and the NDIA provide more clarity around the definition of 'reasonable and necessary', with:

- a. the NDIA publishing information, in accessible formats, about how it determines when a support is reasonable and necessary;
- b. updating the NDIS Rules to reflect the DRC's agreements on the boundaries between the NDIS and mainstream service systems;
- c. the DRC working to resolve the interface between the NDIS and ordinary living costs;
- d. amending the NDIS Act to clarify that reasonable and necessary supports are considered together as a package; and
- e. amending the NDIS Act to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

Transparency

- 3.50. Further to issues around the interpretation of reasonable and necessary supports, consultation feedback suggests the NDIA is not always explaining its decisions to participants and this is leading participants to request reviews to seek explanations and/or correct what they feel are errors in their plans.
- 3.51. Survey data indicates participants feel there is a lack of transparency in decision-making and that this is driving a lack of trust and confidence in NDIA processes, even if the NDIA's decisions were legitimate. The vast majority of participants responding to the long-form survey reported they did not understand the reasons why NDIA made decisions and that the NDIA did not provide them with information to understand the decision and what it meant for them (see Figure 2).

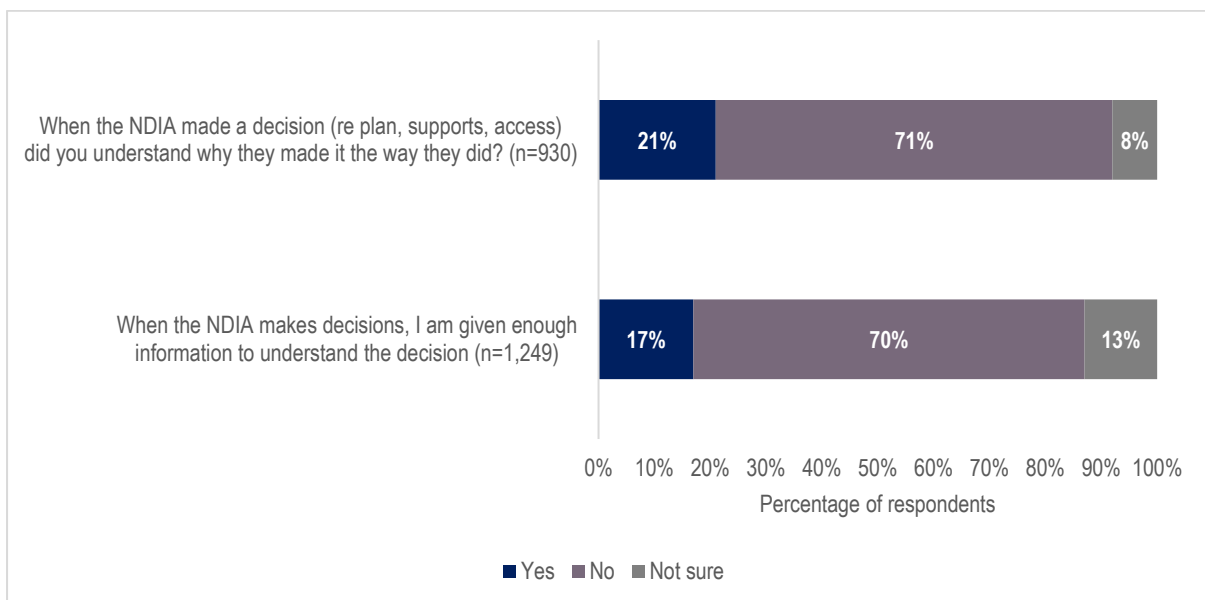


Figure 2: Explanation of NDIA decisions (long-form survey)

- 3.52. The survey data is supported by other consultation feedback reinforcing that participants want explanations of how the NDIA makes decisions, including when a person becomes a participant, why supports were funded or not funded and why funding levels were reduced from previous plans.

“The decisions made during plan reviews need to be explained to the participant. We need to know why services, equipment or home modifications are denied.”

NDIS participant, regional Victoria

“They [NDIA] should be required to explain the plan – e.g. give a breakdown of what has been agreed to be funded; to be accountable & provide explanation of why they say ‘no’ to things.”

Carer of NDIS participant, regional Victoria

“Actually explain why supports were not included, or hours of support were reduced, then listen and offer advice or next steps.”

Carer of NDIS participant, metropolitan Victoria

- 3.53. There would appear to be a link between participants’ reported experience of NDIA decision-making and the rapid scale up of participants entering the NDIS. A number of participants reported that planners ‘quickly moved on’ to the next person and that planners did not work with them to ensure they understood why certain supports were or were not included in the plan. To the extent that pressure to meet participant intake targets has influenced the NDIA workforce, it appears this has influenced the quality of NDIA decision-making.

“When we did get a rushed new plan instead of including all of our daughter’s new goals and changes of circumstances, they copied and pasted her original plan from 2017 onto her new 2019 plan! No changes, no updates.”

Carer of NDIS participant, regional New South Wales

“We were rushed in our planning process this time because our plan was due to expire and we had not been called up for a review – I had to chase it up. We did not have all the people at the meeting we wanted because of the late notice.”

Carer of NDIS participant, metropolitan Western Australia

“We believed that in the planning meeting the LAC would listen to our needs and goals and create a plan to reflect these things. That did not happen.”

Carer of NDIS participant, remote Victoria

- 3.54. It should be noted, however, that the NDIA quarterly report to DRC for the period ending September 2019 indicates that 85 per cent of people who entered the NDIS in that quarter reported their plans were clearly explained, compared to 81 per cent in previous quarters¹².
- 3.55. The NDIS is still evolving. As the NDIA and Partners in the Community workforce continue to mature and NDIA processes are further embedded, it is reasonable to expect the NDIA's processes for explaining decisions will also improve. A best practice explanation of a decision would set out how the supports in the participant's plan relate to both the participant's functional impairment/s as well as their individual goals and aspirations, and be provided in an accessible format.
- 3.56. Requiring the NDIA to explain its decisions would reinforce more robust planning practices, reduce duplication and ensure the NDIS remains accountable to the people it is designed to support. People with disability have the right to understand the reasons why a particular decision was made, and how it was made, including what information was taken into account in making that decision. Explaining reasons for decisions is also important in enabling participants to decide whether or not to exercise their right of review or appeal if they disagree with an NDIA decision, and if they do, that they can do so in an informed manner.
- 3.57. Failure on the part of the NDIA to provide an explanation of the basis for its decisions disempowers participants and impedes their capacity to exercise informed choice and control. While this review understands the NDIA is currently providing formal statements of reasons for participants who have requested an internal (merits) review of an NDIA decision, it would be consistent with best practice administrative decision-making principles that a participant should have the right to seek an explanation of NDIA decisions without needing to progress to internal (merits) review.
- 3.58. While a person affected by a decision made under the NDIS Act has a right to request reasons for decision pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) this review considers that recourse to the processes of this Act should not be the first avenue for a person to obtain evidence of an NDIA decision.

¹² NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.96.

- 3.59. Providing people with disability with an explanation of a decision should be a routine operational process for the NDIA when making access, planning and plan review decisions. However, in the event this does not occur, the Participant Service Guarantee should empower the person with disability to require the NDIA provide this information in a manner that is accessible to them (see Chapter 10 and Recommendation 25).

Draft plans

- 3.60. In November 2019, the Australian Government announced that participants will be provided with draft plan summaries from April 2020. These will be provided at the conclusion of pre-planning discussions, and set out:
- a. the participant's goals, objectives and aspirations; and
 - b. the participant's environmental and personal context, including their living arrangements, informal community supports and other community supports, and social and economic participation.
- 3.61. Notwithstanding the Australian Government's commitment, this review has consistently heard that the participant experience would be improved if full draft plans were made available to participants prior to the NDIA delegate approving the plan. Almost all submissions stated this would keep participants at the centre of the planning process. Draft plans were also articulated as a key mechanism to reduce the incidence of issues raised throughout this review, such as unscheduled review requests, appeals or difficulties in implementing their plan.

“The NDIS Act should require that a planner provide a proposed NDIS plan with reasons for decision-making to the participant and their nominated support people and allow for discussion of the plan NDIS before it is finalised.”

National Legal Aid

“Draft plans should be available before they are finalised for participants of their carers to review. We had the experience several years ago where an administration error led to a huge delay in approval of an equipment budget that had already been allocated in the plan”.

Carer of NDIS participant, regional New South Wales

“[We urge] the NDIA to involve people living with disability in the planning process, perhaps through a review process of draft plans before they are lodged with the NDIA for approval. This would align with the Convention on the Rights of Persons with Disabilities, which states that ‘persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’.

JFA Purple Orange

- 3.62. In the early years of trial, some participants were given the option of seeing their whole draft plan, inclusive of the estimated plan budget. The NDIA advised that while this practice was helpful in picking up basic errors and refining for goals and aspirations, it did not increase participants’ satisfaction with the planning process or expedite plan approval timeframes.
- 3.63. The NDIA also advised the practice led to disagreements about the dollar value of the draft plan, rather than the supports listed in the plan, and that this further delayed the timely provision of funded supports to participants. One potential inference from this outcome is that some participants’ goals were to get the highest dollar amount possible, or that providers who have commercial interests were driving participants to seek more funding.
- 3.64. Thus, allowing a participant to be provided with a draft plan creates a perverse outcome if participants believe it is their role to decide what funding is included in a plan. As mentioned previously, the decision of what is contained in a plan is vested with the NDIA delegate based on the information available to them at the time.

- 3.65. Therefore, the provision of a draft plan will never resolve issues where the NDIA delegate makes a decision that is contrary to a participant's expectations. Rather, where disputes occur, it is the role of the internal review process, and if necessary the AAT, to determine whether the NDIA delegate's decision is correct. For it to be an effective tool, the purpose of a draft plan would need to be centred on participant education and the removal of errors or anomalies as the plan is built by the NDIA.
- 3.66. Notwithstanding the intent of introducing plan summaries, the plan summary is also introducing a new form of documentation for a participant to consider, as it does not include all the information that would be contained in a plan, including the budget. It seems at odds both with the intent of reducing red tape for participants that a participant is made to review another type of document, and with the idea that a mature NDIS should work closely with participants under the banner of transparent and clear decision-making processes.
- 3.67. The review notes that in other insurance systems, information about support offerings, including the dollar values of what can be claimed, are routinely provided to consumers before a commitment is made (for instance private health insurance, travel insurance, home insurance etc.). As a system, it seems odd that the NDIS would be constructed differently, regardless of the fact that the insurable impairment has already been realised.
- 3.68. Therefore, on balance, this review considers it is preferable that participants should be empowered, under the Participant Service Guarantee, to review and consider a draft version of the entire plan rather than a plan summary. As per the draft plan summaries, the full draft plan would be provided in advance of the final planning discussion (or Joint Planning Meeting), and with sufficient time for the participant to review the content (see Chapter 10 and Recommendation 25). This review notes that this would likely require additional meetings with a participant, and therefore would have impacts to the NDIA's operating model.
- 3.69. In providing a full draft plan, it should be the ordinary expectation of the NDIA to manage the expectations of participants, and build the understanding of what the NDIA will, or will not provide so that it is demonstrable that the NDIS is designed to fund all reasonable and necessary supports, and it is not a fight for every cent. The review understands that there are no technical or legislative barriers to providing draft plans.

Accessible information

- 3.70. A significant number of people with disability who participated in the consultations indicated the information they could access about the NDIS was not disability-friendly or available in alternative formats, such as Easy Read, Auslan, Braille or languages other than English. Others stated that the NDIA assumed participants had a high degree of digital literacy and that, instead of responding to queries directly, would direct them to the NDIS website, which proved too difficult to navigate.

"The website has so much stuff on there and it is simply too overwhelming, it needs to be written in layman's terms and less of it. I gave up because I couldn't figure it out."

A person with disability, remote South Australia

"The [NDIA] website for example does not have an easy to use search function that locates the information people really need to see. Search for a term and you receive a dump of everything that features that word. The engine does not prioritise most frequently accessed documents or participant fact sheets and booklets which are most likely to be helpful."

Every Australian Counts

- 3.71. Many respondents asked for an improved online experience, with the ability to download and print forms and any other documentation they may need to apply for the NDIS, including an option to upload required evidence to support NDIA decision-making. While the NDIA have advised that some forms can be downloaded from the NDIS website, it appears they cannot be easily found.
- 3.72. There is merit in the NDIA making better use of information technology and digital solutions to improve the participant experience. Digital communications provide a service delivery platform that enables more readily available information for those who prefer to use such technologies or for whom it is more convenient. For example, online access is potentially preferable for younger people and far more convenient for people with mobility issues or those who live in rural and remote communities.
- 3.73. As a first step, this could mean that a copy of the form a person needs to complete to apply for access to the NDIS should be freely available on the NDIS website, along with detailed information about what must be provided to support an access decision. This would serve to empower and allow prospective participants to understand and commence the access processes in their own time, and at the pace in which they feel comfortable.

- 3.74. This review understands that, moving forward, the NDIA is exploring new options to make it easier for people to apply for the NDIS online, while mitigating risks that people apply on a person's behalf without consent or misunderstand the requirements that are needed to support decision-making. This review understands that an online access request option is expected to roll out in 2020-21 financial year.
- 3.75. However, feedback to this review indicates that providing more information up front about the NDIS will not solve participants' greater concerns – that is, that they were not kept informed of NDIA decision-making after the submission of their access request or in the process of developing, approving or reviewing their plan. Some indicated the NDIA should have a service like a mobile app that keeps them informed of where their request is 'up to in the queue', and that longer timeframes for decision-making would be tolerable if they knew when the decision was likely to be made.

“A visual tracking option [to track requests] at the beginning of the portal page could improve communication between the Agency and the participants, their carers/families and support network (including advocates). This will also reduce the time they spend calling the NDIA directly.”

Advocacy for Inclusion

- 3.76. Clear, consistent, easy to understand and accessible information is critical to allow people with disability to make informed decisions about their supports. Notwithstanding the NDIA's work to date in improving its communication and engagement practices (see Appendix D), consultation feedback indicates that many people with disability either:
- a. do not know about those improvements;
 - b. still consider them to be inaccessible;
 - c. do not know where to find, or rely on social and online peer groups to obtain, information about the scheme; or
 - d. find that their experience does not reflect the process as set out in the information they have been able to find.
- 3.77. Some participants also reported that they could not obtain accessible information at all stages in their NDIS journey. For example, some cited that while pre-planning information was available in Easy Read, their plan and information to help them implement their plan were not.

- 3.78. It is essential that the NDIA continue to improve its information products to better equip people with disability to become informed consumers. On this basis, the Participant Service Guarantee should commit the NDIA to ensure all participants and prospective participants have access to information about the NDIS, their plans and supports, that is clear, accurate, consistent, up-to-date, easy to understand and in formats that meet their needs (see Chapter 10 and Recommendation 25).
- 3.79. Furthermore, the NDIA should consider the benefits of introducing online tracking systems for both prospective participants and participants as part of its existing efforts to upgrade its ICT functionality.

Recommendation 5: The NDIA gives priority to ICT upgrades to enable online access processes and allow people with disability to track the status of NDIA processes relating to them.

- 3.80. There is also merit in the Commonwealth Government and the NDIA exploring opportunities to provide accessible and alternative formats of the NDIS Act and NDIS Rules, similar to the online Social Security Guide that provides a simple interpretation of key provisions underpinning social security legislation. This would assist all people with disability to exercise an informed understanding of the legislative provisions that inform the administration of the NDIS and the NDIA's decisions about a person's eligibility for the scheme and the supports provided in their plans.

Recommendation 6: The Commonwealth publishes accessible versions of the NDIS Act and NDIS Rules, to help people with disability understand the legislative basis of NDIS.

CHAPTER 4 – EVIDENCE TO SUPPORT DECISION-MAKING

KEY FINDINGS

- ✓ Standardised functional capacity assessments would improve the quality and consistency of NDIA decisions. If undertaken at the point of access it would also improve the participant experience by mitigating the need for the participant to provide further information about their functional capacity later in their NDIS journey.
- ✓ The administrative and financial burden felt by both prospective participants and participants to provide evidence to the NDIA should be minimised.
- ✓ Greater clarity should be provided surrounding the requirement for, use and form of information required to support decision-making.
- ✓ The impact of secondary impairments should not be a barrier to planning. A participant's 'primary' disability does not solely determine the supports funded or not under the NDIS.

- 4.1. Experience has shown that the evidence provided by prospective participants and participants is diverse, and at times does not effectively assist the NDIA to make consistent decisions. This is influenced in part by confusion as to what evidence is required to support decision-making, particularly when a person has multiple impairments affecting their functional capacity or where their support needs are episodic or fluctuating.
- 4.2. To improve the quality of decision-making, the NDIA must have access to the best and most relevant evidence related to a person's functional capacity. This will assist the NDIA in properly discharging its functions where the statutory criteria requires it to be satisfied of certain matters – for example, whether or not a person meets the eligibility criteria or that a support is reasonable and necessary.

Strengthening the use of functional capacity assessments

- 4.3. Functional capacity assessments support processes that ensure people who would be eligible for the NDIS become participants and get the right level of support in their plan. Functional capacity assessments that are robust and evidence-based and meet the NDIA's needs at the point of access will result in plans being developed and approved faster and ensure that access and planning decisions are made consistently and directed towards improving functional capacity. It will also reduce the administrative burden on participants by mitigating the need to provide further evidence of functional capacity later in their NDIS journey.
- 4.4. However, this review heard that it is unclear what evidence is needed to support decisions about a person's functional capacity, and there is no actively promoted or standard format for prospective participants, participants and their health professionals in which to provide that evidence. This has resulted in people submitting evidence that is not always fit for purpose, varying in quality and consistency and requiring back-and-forth interaction to obtain what is needed for the NDIA to be satisfied in discharging its functions under the NDIS Act.
- 4.5. Understandably, this is driving disengagement for people with disability and those involved in assessment and planning processes. It has also resulted in a large number of people with disability requesting reviews of access and funding decisions on the basis it was unclear what information was used by the NDIA to make the decision.
- 4.6. The reliance on operational guidelines to streamline access decisions during the transition period has led to downstream problems for some participants because the NDIA does not have enough evidence of their functional capacity to make robust planning decisions (see Chapter 5). Some participants reported that they needed to provide the NDIA with more information and/or undergo examinations or assessments when developing their plan in order to ensure they got all the supports they needed. Understandably, those participants found this process frustrating because they did not understand why further information was required when the NDIA had already decided they had met the access criteria.
- 4.7. In addition, some participants who had already had a first plan reported they were required to provide further information about their functional capacity in order to develop and approve their second plan, even if their circumstances had not changed and it was apparent that their needs had neither improved or deteriorated.

“Why does the NDIS require participants or their advocates to prove annually why they or their children require the support they need. This causes huge amounts of stress and anxiety to both participants or parents and is not necessary especially when the nature of the participant’s disability mean that their condition will not improve and in most cases will worsen with age.”

Carer of NDIS participant, regional New South Wales

“It was embarrassing to have to keep proving disability, when evidence was already provided during the initial application, particularly in relation to the psychosocial disability.”

Carer of a former NDIS participant, regional New South Wales

“All information had already been supplied with the original application. Having to provide more evidence just so the original information could be confirmed was both unnecessary and stressful, not to mention, costly.”

Carer of NDIS participant, metropolitan South Australia

- 4.8. This is not a surprising outcome when taken in the context of pressure on the NDIA to meet intake targets. Indeed, it is likely to continue until the impact of streamlined access decisions and the provision of inconsistent evidence formats wash through the system. It is at this point that planning processes for all participants will be simpler and NDIA decision-makers can have increased confidence in setting longer plans with less frequent scheduled review dates.
- 4.9. Nevertheless, a contributing factor is the loose and discretionary way an ‘assessment’ is defined in the legislation. It is not clear that the primary purpose of any information a person with disability must produce, or any assessment or examination they must undergo, for the purpose of access or planning processes is to demonstrate, amongst other things, the functional impact and permanency of their impairment/s.
- 4.10. In addition, the legislation does not expressly allow for information collected for the purposes of one decision to be used for another. For example, the legislation does not clearly permit the use of information collected for the purposes of making an access decision to also be used for the purposes of preparing, approving and reviewing a participant’s plan.

- 4.11. When combined, these issues create significant confusion as to what evidence is required to support NDIA decision-making and when additional evidence is required. The legislation should be amended to recognise the importance of appropriate assessments and what they can be used for, noting it is a reasonable expectation that participants might need to undertake further assessments from time to time to ensure their plans remain fit for purpose.
- 4.12. To improve the participant experience and make it more streamlined, it would also be logical to allow the NDIA to use information, assessments and reports about a person's functional capacity to be used for various purposes throughout their NDIS pathway.
- 4.13. However, in reinforcing the importance of functional capacity assessments, the NDIA needs to appropriately consider and make decisions guided by the outcomes of those assessments. Some consultation feedback indicated that some planners are either not fully considering the reports participants provide or are not sufficiently taking into account the recommendations of experts.

“If the NDIA actually looked at the information we provided with the access request and the conditions and what they do to someone’s body they would’ve realised there was no need for putting me or someone like me through an extremely tedious, stressful and complex situation of gathering supporting documentation and evidence.”

NDIS participant, regional Victoria

“There are many frustrating examples of LACs and planners not reading material provided by participants, their families or the professionals that support them.”

Every Australian Counts

“People with disability and their families and carers go to considerable effort and expense to obtain professional or specialist reports – only to find they are not read or dismissed in preparation of plans.”

National Disability and Carer Alliance

- 4.14. Planners need to recognise that they are not necessarily the experts on a person's functional capacity. Planners must always carefully consider any information that a person provides when making decisions and should not fill gaps in assessments with their own judgements. While planners may bring expertise and evidence about appropriate supports that could be funded by the NDIS to help the person overcome the functional impact of their impairment, planners should not make decisions about a person's functional capacity without supporting evidence.
- 4.15. More generally, the culture of the NDIA and its Partner workforce needs to appreciate that people with disability (and the people providing functional capacity assessments on their behalf) are experts in their disability. This would be in keeping with the general principles guiding the NDIA's actions in implementing the NDIS, as set out in section 4 of the NDIS Act.
- 4.16. It also must be appreciated that many people with disability rely on a shared sense of identity and need that has emerged from their diagnosis. As an example, this is particularly relevant for the deaf community and people with autism. In strengthening the use of functional capacity assessments to support decision-making, the NDIA will need to recognise the significance of this shift for some people with disability.

Individualised planning

- 4.17. The general principles at section 4 of the NDIS Act reinforce that the objectives of the NDIS are to place individualisation at the heart of planning and maximise a participant's ability to exercise choice and control over the disability supports they need to achieve their goals and aspirations. The principles also reinforce that people with disability should be supported in all their dealings and communications with the NDIA to ensure their capacity to exercise informed choice and control is maximised.
- 4.18. Notwithstanding this intention, this review has heard that participants do not feel the NDIA is taking an individualised approach to planning. Some participants reported their impression was that the NDIA was using a 'formula' based on pre-existing criteria or their diagnosis to determine their supports. Others indicated what was put in their plan did not reflect what was discussed in their planning meeting or that the planner disregarded the information they had provided.
- 4.19. Others stated that the plan they received did not link to their goals and aspirations, looked like a stock plan for a person with a certain type of disability or contained obvious errors, such as misspelt names or old addresses.

“I felt that I was not listened to at all, it was not an individual experience and I was given a horrible plan. It had nothing about my disability in it and ignored all my requests. It included information about my family when I didn't mention them as they do not support me and are not in my life.”

NDIS participant, regional Victoria

“In my current plan they couldn't even spell my surname right!”

NDIS participant, regional Victoria

“Every plan meeting is very different. You never know what is going to happen in each planning meeting, which is stressful as it makes you unsure of whether you're ready. The last few planning meetings we have had I feel the planners don't listen to us and in some cases have not read reports or evidence we or therapist have given. Sometimes what we have spoken about does not reflect the plan that's been approved and there is absolutely no feedback as to why this happens.”

Carer of NDIS participant, metropolitan Western Australia

- 4.20. The way the planning process is undertaken was one of the main complaints heard throughout this review. It is evident that the lack (or the perception of a lack) of individualisation in planning is leading a small number of participants to feel let down and misled by a scheme intended to give them choice and control.

Consistency of decision-making

- 4.21. Consultation feedback suggests the NDIA is not making consistent decisions during planning. Some participants with similar disability support needs reported they received very different types and values of supports in their plans, where the differences did not appear to be linked to their goals and aspirations or their informal supports. This was particularly evident in cases of young siblings with the same disability and similar levels of functional capacity.

“[There is] complete inconsistency in plans and planners for people with the same needs and goals. Makes it very hard and confusing.”

NDIS participant, regional Victoria

“Many carers have reported that the information or assurances provided by LACs that supports would be included in the plan have not been reflected in the plans they have received from the NDIA, resulting in significant distress on receiving plans that do not fund many of the agreed supports. The lack of direct contact with NDIS planners in many cases limits communication between the planner and the participant and their carer, creating confusion and frustration for participants and carers as they do not understand why some decisions have been made nor been able to discuss alternatives or provide further evidence.”

Carers Australia NSW

“Feedback suggests a disconnect between the participant and the planner. Many feel they have not been heard or understood by the planner and this can translate into a plan that they are unhappy with.”

Unpublished submission

- 4.22. It is, however, important to note that a participant’s goals and aspirations are not intended to have a significant bearing on the level of funding provided in their NDIS plan. Rather, when comparing two participants with the same or very similar, functional capacity, of the same age and living in the same region, the NDIS is not designed to provide more funding for one participant over the other on the basis that their goals and aspirations are more expensive.
- 4.23. Nevertheless, consultation feedback demonstrates there is a clear tension between consistency of decision-making and the individualised planning approach, and that more work needs to be done by the NDIA to find appropriate operational responses.
- 4.24. The NDIA is currently undertaking work in this regard by reforming how it uses ‘typical support packages’ during planning. Typical support packages use input from guided questions to help determine what kinds of support a participant would ordinarily need to meet their disability support needs and then adjusts for goals and aspirations and other relevant factors.

- 4.25. This work is appropriate to the extent it provides more powerful tools for the consistent construction of plans and baseline comparisons and gives participants greater certainty about what they could ordinarily expect in their plan. However, these tools should remain sufficiently flexible to accommodate and recognise the participant's specific needs, goals and aspirations. Further, the use of tools such as these will never replace the need for trained planners who recognise that a participant's support needs will vary over time, depending on their individual circumstances.

A new model – independent sourcing of functional capacity assessments

- 4.26. In its 2011 inquiry, the Productivity Commission recommended that functional capacity assessments should be drawn from independent health professionals to promote independent outcomes and provide national consistency in assessment approaches.
- 4.27. In late 2018, the NDIA undertook a pilot project to demonstrate whether sourcing independent functional capacity assessments improved consistency, accuracy and reliability of NDIA decisions. The pilot was deployed in nine areas across NSW. Assessments were offered to 500 people who had either applied for access but needed more evidence, participants who had been granted access but planning had not commenced, and participants who were approaching a scheduled plan review. A single service provider, the Benevolent Society, was engaged to conduct the assessments and the NDIA funded the cost of functional capacity assessments for the individuals participating in the pilot.
- 4.28. Pilot evidence indicated that sourcing standardised functional capacity assessments resulted in higher quality and more consistent decisions and more equitable plan outcomes for participants with similar characteristics. NDIA staff and Partners reported the information contained in the assessments informed their conversations with participants, which in turn increased their levels of confidence in developing plans. They also found the assessments gave helpful insights and more detailed information about the participant's disability and functioning in different areas of life.

- 4.29. The benefits that have arisen from this pilot indicate it is worth implementing nationally for every person with disability who would like to test their access for the NDIS or who require further evidence to support decision-making about the supports in their plan. If scaled up, this could significantly mitigate the current financial barriers that exist for people with disability seeking to navigate the NDIS. It would also decrease the likelihood that a participant would need to undergo further assessments and produce additional information at the plan development and review stage, unless their circumstances had changed.
- 4.30. The Australian Government recently announced the pilot will re-commence in the Nepean Blue Mountains area of NSW in December 2019, with a view to establishing a national panel of independent and appropriately skilled and qualified assessors. The program will roll out across Australia from July 2020.
- 4.31. As with the original pilot, this review understands that assessments will be offered free of charge and will help to inform a person's eligibility for the NDIS and the supports included in their plan. The functional capacity assessment tools that would be used by the independent assessors would also ensure that all relevant information is captured regardless of disability type, such that planning decisions are blind to the identification of a primary disability.
- 4.32. The roll out of this program will constitute a significant role change for the NDIA's Partners in the Community and is expected to increase their ability to focus on linkages with community and mainstream supports and pre-access processes for prospective participants. It will also represent a change of role for planners, allowing them to focus on goal planning and implementation.
- 4.33. This change in approach will require extensive consultation with participants, the disability sector, service providers and the NDIA workforce. Fundamentally, however, the success of the program will largely be dependent on:
 - a. the willingness of prospective participants and participants to work with NDIA-approved functional assessors; and
 - b. those assessors providing truly independent functional capacity assessments, so they are not perceived as agents of the NDIA or a tool designed to cut supports from participants.

- 4.34. The NDIS Act should be amended to support the use of functional capacity assessments as proposed above. However, there are a number of key protections that need to be embedded as this approach rolls out, including:
- a. participants having the right to choose which NDIA-approved provider in their area undertakes the functional capacity assessment;
 - b. participants having the right to challenge the results of the functional capacity assessment, including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment;
 - c. the NDIA-approved providers being subject to uniform accreditation requirements that are designed and implemented jointly by the NDIA and appropriate disability representative organisations;
 - d. the NDIA providing clear and accessible publicly available information, including on the NDIS website, on the functional capacity assessments being used by the NDIA and the available panel of providers.
- 4.35. One of the biggest risks in implementing the new functional capacity assessment process will be disengagement – that is, people with disability refusing to interact with any of the NDIA-approved providers. As with the NDIS as a system more generally, this is a particular risk for Aboriginal and Torres Strait Islanders, those from CALD backgrounds and those with psychosocial disability.
- 4.36. Given this, the depth of the NDIA-approved panel of assessors must be sufficient to mitigate any engagement risks for these cohorts as well as any other issues relevant in specific locations, communities, or for particular disability types.
- 4.37. Therefore, this review considers that, in at least the short term, the NDIA should not implement a closed or deliberately limited panel of providers to undertake functional capacity assessments. Rather, engagement issues need to be monitored closely and the panel of approved providers should be dynamic and evolve to ensure the new approach does not drive disengagement. Where structural or localised engagement risks are identified, the NDIA should actively engage with participants and the market to ensure the availability of appropriate providers of functional capacity assessments.
- 4.38. Notwithstanding this, it may not always be possible to source an appropriate provider, or there may be particular individual circumstances where it is more appropriate for non-NDIA approved providers to undertake the assessments. In addition, functional capacity assessments would not always be required, for instance if a participant's functional capacity is stable.

- 4.39. Therefore, it is reasonable that the NDIS Act is amended to enable the NDIA to require the provision of a functional capacity assessment by a NDIA-approved provider, but that this power be discretionary. To support this, the NDIA will need to develop clear operational guidelines for decision makers in exercising this discretion.

Recommendation 7: The NDIS Act is amended to:

- a. allow evidence provided to the NDIA about a prospective participant or participant to be used for multiple purposes under the NDIS Act, including access, planning and plan review processes; and
- b. provide discretionary powers for the NDIA to require a prospective participant or participant undergo an assessment for the purposes of decision-making under the NDIS Act, using NDIA-approved providers and in a form set by the NDIA.

Mitigating cost as a barrier to producing information

- 4.40. During consultations, concerns were raised about the financial capacity of people with disability to pay for the cost of producing information or undergoing assessments and examinations so the NDIA could make access and planning decisions.
- 4.41. Many submissions stated that this cost is beyond the financial capacity of individuals and/or their families and, as a result, there is a significant number of people with disability who would otherwise be eligible but are being priced out of the NDIS. Anecdotal evidence suggests a participant and their family may incur out-of-pocket costs of several thousand dollars, with no surety they will be found eligible for the NDIS, or that they will have sufficient funding in their NDIS plan to offset the impact of those costs.

“We were told we needed to have more than one professional write a report to say my son needed services. However, we could not afford to see another professional (we saw an OT through the public system). We were stuck, we had no money to see a therapist but we needed a therapist to help us get access to NDIS funding.”

Carer of NDIS participant, metropolitan Australian Capital Territory

“I supplied information personally but they didn’t accept it. I provided the same information to an OT who wrote it in a report at a personal cost of \$2,000 out of pocket and the information was then believed.”

NDIS participant, regional New South Wales

“Many of our clients struggle with the everyday reality of living in poverty and cannot afford to pay for the detailed reports and support evidence the NDIA typically requests.”

National Legal Aid

- 4.42. A significant number of submissions suggested the NDIA should be required to consider the financial impact on prospective participants in producing information to support a decision about their eligibility for the NDIS. Some submissions also stated that an existing participant should not be disadvantaged, if the NDIA needed further information to support a decision about their plan, by being forced to pay for that out of their plan funding.
- 4.43. This review understands that, once a person is a participant, the costs of additional assessment requirements are generally included for in their plan budget. The NDIA have also advised that with the introduction of independent functional capacity assessments, any associated costs will become an administrative expense to the NDIA, with no cost to the prospective participant or participant.
- 4.44. Section 6 of the NDIS Act already provides broad powers for the NDIA to provide support and assistance (including financial assistance) to prospective participants and participants in relation to doing things or meeting obligations under, or for the purposes of, the NDIS Act. Taking into account that other supporting material may be required by the NDIA to support decision-making, the NDIA should consider whether there are other areas where increased use of this power would remove cost as a barrier to the NDIS, noting there could be interactions with other service systems, including Medicare rebates.

Recognising the impact of secondary impairments

- 4.45. A person meets the disability access criteria in the NDIS Act if they have an impairment or impairments that are, or likely to be, permanent, and where the impairment or impairments result in substantially reduced functional capacity in undertaking one or more of the six activities in section 24(1)(c) of the NDIS Act. The NDIS Act then provides that a plan of reasonable and necessary supports will be developed for the person, following a positive access decision.
- 4.46. However, the legislation does not explicitly set out how planning decisions should be made if a person has multiple impairments. While the NDIA captures information relating to secondary disabilities or impairments, it appears such information currently has limited use in assessment and planning processes.
- 4.47. Consultation feedback suggests that some prospective participants and participants were required to choose their 'primary' disability and advised that the NDIS will not provide supports for any other disability they may have. This review also heard of instances where participants reported they had to submit a second access request on the basis the NDIS would not provide supports for a secondary impairment unless that secondary impairment also satisfied the access criteria when considered in isolation.

“Requiring participants to identify a primary disability not only goes against scheme intent but also has a number of practical consequences. The first is that it forces people to choose – many participants have more than one disability. Which one is primary depends on many factors including timing, circumstances, environment. The ones that have a greater impact may vary from data to day, or from circumstance to circumstance. Identification of a primary disability also takes no account of the way multiple disabilities interact. As a result, the decision to commit to a primary disability means people are missing out on vital supports.”

Every Australian Counts

“It was difficult to label varying disabilities as primary and secondary as they all impact function. So many reports required!”

Carer of NDIS participant, regional South Australia

“The NDIS when making their decision should consider the applicant as a whole, not just their primary disability. All of the person’s disabilities go to making the person as a whole not just the degree of their primary disability.”

Carer of NDIS participant, regional Queensland

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- 4.48. In circumstances where a prospective participant or participant has multiple disabilities, the NDIA has advised the disability causing the greatest impact on functioning will be listed as the primary disability. Where it is unclear which disability results in greater functional impact, further advice is sought from the treating health professional (where consent is provided) or from the participant to determine which should be listed first. The NDIA has also confirmed that holistic assessments of the impact of the person's functional impairment drives all planning decisions, and the setting of a plan budget occurs independently of how disability type is recorded.
- 4.49. The legislation does not distinguish between a primary or secondary disability. Rather, the planning process, as set out in Part 2 of Chapter 3 of the NDIS Act, provides that a holistic approach should be taken to planning. It does not matter how many disabilities a person may have, or which satisfied the access criteria.
- 4.50. While recording primary disability may be relevant for data and research purposes, the NDIA should take every effort to inform participants that the recording of primary disability does not in any way affect the supports they are to receive under the NDIS.

CHAPTER 5 – BECOMING A PARTICIPANT

KEY FINDINGS

- ✓ There is significant confusion about the NDIS eligibility criteria, particularly in respect of demonstrating ‘permanency’ for psychosocial impairment/s and whether diagnoses are sufficient evidence of functional impairment.
- ✓ Additional clarity should be provided on when a person meets the access requirements to enhance the responsiveness of the NDIS to people with disability.
- ✓ The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed people with disability have the capacity to navigate the access process without help.
- ✓ More concerted efforts are needed to engage with people with disability who may be eligible for the NDIS, but have not yet connected with the NDIA. This is particularly important for Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial disability.

- 5.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans, which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to participation of people with disability), Part 1 (Becoming a participant) and Part 2 (Participants’ plans).
- 5.2. This review’s analysis of Part 1 of Chapter 3 centred on issues relating to the eligibility criteria and the process of making an access request. It also considered the requirements set out in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules) to the extent they could be amended to remove blockages to access and confusion about eligibility requirements.
- 5.3. It is estimated that the NDIS will benefit 500,000 Australians by 2023. In order to reach this estimate the NDIA will need to connect with approximately 190,000 people who are anticipated to benefit from the NDIS, but have not yet become participants. To this end, this review considered ways to reach out to people with disability who have not previously accessed disability support or may be reluctant to engage.

Eligibility criteria

- 5.4. To become a participant in the NDIS, a person makes an access request to the NDIA. On receiving an access request, the NDIA will then determine whether or not the person meets the eligibility criteria. These criteria include: the person was under the age of 65 when the access request was made, satisfies residency requirements and either the disability or early intervention requirements, as set out in sections 21 to 25 of the NDIS Act.
- 5.5. A small number of submissions indicated the NDIS should be available to people with disability who were older than 65 after the NDIS rolled out in their area or acquired their disability after the age of 65 years. A small number also questioned the appropriateness of the residency requirements. However, the question of who should (or should not be eligible) to become a participant is one relating to the broader parameters and design of the scheme. Accordingly, this review does not make any findings or recommendations in relation to the age or residency requirements.
- 5.6. Considerable feedback was provided on the disability requirements and the criteria that a person's impairment/s are or are likely to be permanent and that it/they must result in substantially reduced functional capacity. The key issues raised on these criteria were how permanency is determined for people with psychosocial disability and if a medical diagnosis or condition is (or if it should be) considered a proxy for evidence of functional capacity.

Permanency

- 5.7. In the Becoming a Participant Rules, paragraph 5.4 states (in relation to section 24(1)(b) of the NDIS Act) that *“an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment”*. Likewise, clause 5.6 states:

“An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).”

- 5.8. The current legislated requirements in relation to permanency have created particular challenges for people with psychosocial disabilities, given the episodic and fluctuating nature of severe and persistent mental health issues.
- 5.9. Consultation feedback indicates health professionals who assist prospective participants with psychosocial disabilities to make an access application have found the assessment processes inconsistent, with people with similar clinical and psychosocial disability needs and circumstances receiving different outcomes. It appears that, in at least some cases, this inconsistency is a result of insufficient guidance being provided to health professionals about the form of evidence needed to support a decision about the prospective participant's eligibility for the NDIS. This has led to wide variety in the quality of information being provided to the NDIA to support access decisions.

“The forms were not really appropriate for my disability as it is mental health not physical or intellectual disabilities. Both my GP and Psychiatrist filled the forms out to the best of their ability and returned them to the NDIA, when I was then told I was not successful in my application.”

NDIS participant, metropolitan South Australia

“The measure of permanency may be adequate for some other disabilities, [but] it does not recognise that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery, potentially (sometimes episodically) over the course of their lives. It fundamentally fails to acknowledge the episodic nature of psychosocial disability.”

Mental Health Australia

- 5.10. These issues are not helped by the lack of a working definition and no clear guidelines for assessing the permanency of mental health issues in the context of available medical or other treatment. This is problematic for a number of reasons, including:
- a. many people with mental health conditions do not consider their situation as resulting in a psychosocial disability that is permanent and ongoing;
 - b. the impact of psychosocial disability can fluctuate over time, both as a consequence of the condition and in response to factors in the individual's life;
 - c. people with mental health conditions may have limited or sporadic engagement with mental health services, making it difficult to provide adequate evidence of treatment history;
 - d. some impacts primarily relate to the mental health condition but others may be related to co-existing physical disabilities or health issues;
 - e. the outcomes of clinical treatments on functional capacity or in isolation from other factors that contribute to poor mental health are unpredictable and not well-supported by a significant body of evidence; and
 - f. this has led to a heavy reliance and focus on formal diagnosis and treatment.
- 5.11. It needs to be appreciated that functional capacity for these people can be cumulative and variable, even when the symptoms of their condition do not appear to be ongoing or permanent. That is, their disability can continue even when the symptoms of the condition are not apparently active or present and where active treatment or intervention may not be required.
- 5.12. The more appropriate option is to embrace a holistic approach when determining eligibility for the NDIS for people with psychosocial disability, considering the person's functional capacity at a point in time and what service response will be needed when their support needs change. Accordingly, this review considers greater weight should be given to functional capacity assessments than diagnoses in determining permanency for people with psychosocial disability.
- 5.13. Best practice approaches to coordinated mental health and psychosocial care and support emphasise the person's strengths and abilities. This is to be expected, given the relationship between the person, their supporters and mental health teams is directed towards supporting recovery and improved health and wellbeing. However, some submissions suggested the provision of strengths-based evidence may adversely affect the outcome of a person's application to access the NDIS as it makes it difficult to demonstrate permanency of functional impairment in the context of the disability access requirements.

- 5.14. Some submissions also indicated there is a common view in the sector that prospective participants should be encouraged to present ‘on their worst day’ in order to improve their chances of being granted access. This practice undermines the capacity of an individual, the long-term work of the mental health sector in driving systemic reform towards recovery-focused approaches, and the intent of the NDIS in supporting people to build their capacity to achieve their goals and aspirations.

“Since the introduction of the NDIS Legislation and Rules, the mental health sector has raised concerns about the use of the term ‘permanent’ to describe an impairment related to a psychiatric condition. This terminology is opposed to recovery-oriented practice, widely accepted as good practice in psychosocial disability work.”

Mental Health Australia

“In order to be eligible for the NDIS, an individual must demonstrate that they have a permanent impairment or an impairment that is likely to be permanent. This criteria is inconsistent with the recovery focus of mental illness or the episodic nature of psychosocial disability – a condition that fluctuates in severity and impact over time in different ways for different people.”

National Mental Health Commission

- 5.15. The Becoming a Participant Rules should be amended to provide further and more specific clarification of the criteria that should apply, and the evidence that must be provided, when determining the permanency, or likely permanency, of psychosocial disabilities. Such clarification should align with emerging bodies of evidence and best practice mental health care approaches which emphasise the language of empowerment and capacity building, recovery and ability over that of disability, impairment and illness.
- 5.16. The Becoming a Participant Rules should also be amended to differentiate between what is considered when assessing the permanency and related functional impacts of a physical disability in the context of recovery and treatment. This is particularly important because the legislation does not currently take into account the reasons why a person might be able or unable to do certain things.
- 5.17. Furthermore, the legislation and operational arrangements should appreciate that the episodic nature of psychosocial disabilities will mean that some people will have fluctuating support needs. The use of functional assessment tools needs to take this into account with planning processes accommodating such fluctuation.

- 5.18. Importantly, while this may result in utilisation of funded supports changing over time, when the participant is not drawing down on the support, it does not mean that the support is no longer needed and should not be funded, or in an extreme example, that the person's status as a participant should be revoked. This would be a perverse and detrimental outcome to the participant and an erroneous application of the legislation.

"I can be extremely unwell mentally and still appear to be quite 'functional' according to the NDIS. Someone like me who is intelligent, well educated and who has knowledge and insight into their mental illness can appear to be far more functional than they actually are. The reality is that most of the time, I am so depressed and distressed that I am suicidal yet I am still pushing myself through each day just to exist."

Written submission – no state or location provided

"Services for people with psychosocial disability need to be responsive to people's actual needs to lead an ordinary life, including a recognition in NDIS plans of the importance of psychosocial and peer support for people experiencing mental health issues to re-engage in the community."

National Legal Aid

- 5.19. Furthermore, the legislation currently includes references to a psychiatric condition when determining whether a person is eligible for the NDIS, which is an artefact of a medicalised rather than recovery-based model. In keeping with best practice approaches, the words 'psychiatric condition' should be replaced with the more commonly used phrase of 'psychosocial disability'.

Recommendation 8: The NDIS Act and Rules are amended to:

- a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment is permanent, recognising that some conditions may be episodic or fluctuating; and
- b. remove references to 'psychiatric conditions' when determining eligibility and replace with 'psychosocial disability'.

Resolving confusion between functional impairment and diagnosis

- 5.20. Section 24(1)(c) of the NDIS Act states one of the access requirements is that a person's impairment or impairments result in *"substantially-reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication; social interaction; learning; mobility; self-care; self-management."*
- 5.21. There is significant public confusion about the evidence required to support NDIA decision-making in regard to this requirement. This is not helped by the NDIS Act being silent on the nature of the information required in a relevant assessment for determining whether or not a person meets the eligibility criteria (see Chapter 4).
- 5.22. Confusion has arisen particularly with respect to the operational guidelines the NDIA used in the trial and transition period to manage the volume of people transitioning from state and territory service systems. These guidelines relied on a medical model and the presence of a diagnosis to help streamline a decision about a person's eligibility for the scheme.
- a. The 'List A' operational guidelines set out conditions/diagnoses likely to meet the disability requirements in terms of permanency and functional impact. In the vast majority of cases, a person will go on to meet access if they have a condition or diagnosis on this list.
 - b. The 'List B' operational guidelines set out permanent conditions/diagnoses for which functional impact is variable and where further assessment of functional capacity is generally required before the access decision can be made.
- 5.23. As result of these lists, there is a widespread assumption that diagnosis correlates to functional capacity, and that if a person has a diagnosis on either of these lists, they will be eligible for the NDIS. Conversely, there is also an assumption that if a person has a diagnosis not on either list, they will not be eligible for the NDIS. Neither of these statements is true. In all cases, any person can test their eligibility for the scheme by providing the NDIA with evidence of their functional capacity, irrespective of any diagnosis they may or may not have.
- 5.24. The NDIA must proactively address this confusion by making it clear what is required to support decision-making and explain why the presence of a diagnosis alone is not a proxy for eligibility. This information should be freely available on the NDIS website for all people with disability to access.

Timeframes for making an access decision

- 5.25. Under section 20 of the NDIS Act, if a person makes an access request, the NDIA must, within 21 days of receiving it, decide whether or not the prospective participant meets the access criteria or request they provide further information to support that decision. Under section 26(1) of the NDIS Act, if further information is requested from the prospective participant, the NDIA must, within 14 days of receiving that information, decide whether or not the prospective participant meets the access criteria.
- 5.26. During the transition period, the *National Disability Insurance Scheme (Timeframes for Decision Making) Rules 2013* permitted the NDIA to double the length of these periods during the first 12 months of a region's rollout. This gave the NDIA 42 days to make the access decision or request further information from the prospective participant and 28 days to make the access decision upon the receipt of that information. This provision is no longer enforceable in most parts of Australia as the rollout of the NDIS across all states and territories (except Western Australia) is now complete¹³.
- 5.27. Considerable feedback was provided in consultations about delays between applying for the NDIS and having the outcome of their access decision. 55 per cent of participants responding to this question in the long form survey indicated it took more than three months for the NDIA to make a decision about their eligibility for the NDIS. This is unsurprising given the pressure of the transition period and the rapid scale up of participants entering the NDIS.
- 5.28. When asked what timeframe would be appropriate for inclusion in the Participant Service Guarantee, 74 per cent of survey respondents indicated a period of up to one month would be reasonable (see Figure 3).

¹³ The NDIA still has the power to double the length of the period in certain parts of Western Australia and the Christmas and Cocos (Keeling) Islands. This is because some areas of Western Australia only began transitioning to the NDIS on 1 July 2019 and the Christmas and Cocos (Keeling) Islands will not transition until 1 July 2020.

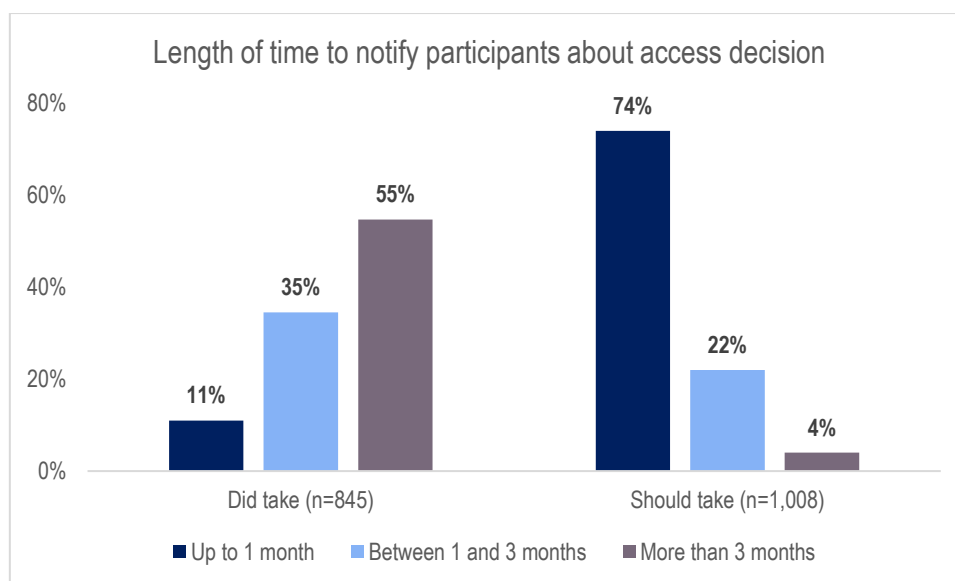


Figure 3: Timeframes for notification of access decisions (long-form survey)

- 5.29. The NDIA has provided data to this review demonstrating the national average timeframe for an access decision to be made in the 2018-19 financial year was 15 days, with only 10 per cent of access requests requiring further information from the participant in order to make the decision. The NDIA has also provided data indicating the current national average for an access decision to be made following the receipt of the last piece of required evidence is 17 days.
- 5.30. The NDIA Quarterly Report to DRC for the period ending September 2019 also demonstrates there has been a commensurate reduction in timeframes in making access decisions when compared to previous quarters, with an average 12 days for resolution of an access decision, compared with 38 days at 30 June 2019¹⁴.
- 5.31. Taking into account survey responses and the NDIA's current performance in reducing the time taken to make access decisions, there is no significant reason to amend the current legislative requirement that the NDIA make a decision about a person's eligibility (or request further information) within 21 days of receiving the access request.
- 5.32. There also does not appear to be a case to amend the requirement that the NDIA make a decision about a person's eligibility within 14 days of the participant providing the additional information requested. Rather, the Participant Service Guarantee should affirm these timeframes noting they are in keeping with participant expectations (see Chapter 10 and Recommendation 25).

¹⁴ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.34.

Deeming of access decisions

- 5.33. As discussed above, in certain circumstances, the NDIA may require a prospective participant to provide further information, or undergo an assessment or examination and provide a report, to decide whether or not they meet the access criteria.
- 5.34. Currently, the NDIS Act provides that, should the NDIA request additional information from the prospective participant, the requested information must be provided within 28 days. If the information is not provided within 28 days the access requested is deemed to be withdrawn, unless the NDIA is satisfied it was reasonable for the prospective participant not to have complied with the request. However, the NDIA has the ability to prescribe a longer timeframe for the prospective participant to provide the information.
- 5.35. Consultation feedback indicates the 28 day period for the prospective participant to provide the requested information was inadequate. Some submissions stated it took between two to three months to provide the requested information, owing to lengthy wait times for appointments to see their health professional or to save enough money to pay for the cost of the assessment – and that was without factoring in the time lost in mailing documents through the post. In these instances, respondents felt their access request should not be withdrawn because they were still actively trying to provide the information the NDIA had asked for, or had already sent it to the NDIA but it had not been received or registered.

“The current 28 day timeframe that people have to apply is not currently very fair if you need paediatricians to fill out access request forms. It often take a lot longer than the 28 days to get an appointment and have the forms filled out and returned. I was really worried and needed to ask for an extension but wasn't sure I could do this or that it was possible. Trying to get the information in 28 days when not everyone has it to hand is stressful.”

Carer of NDIS participant, metropolitan Queensland

“When given forms to fill in and submit, you [NDIA] only give us 28 days, after that, it gets rejected. However, the NDIA can take 6 to 8 or more months to reply to us. In my case, my Doctor had to go overseas for a family emergency and was gone for a month so I could not get the form filled in by the allocated timeframe, so my application was rejected. Circumstances beyond my control meant I had to wait longer, but there was no way I could get an extension on the 28 day time period.”

NDIS participant, regional New South Wales

- 5.36. This review understands the NDIA doubles the timeframe to 56 days. This is in recognition that 28 days is not always reasonable as many difficulties in obtaining the information are not always in the prospective participant's direct control. However, as the extension of the 28 day timeframe still relies on the NDIA recognising that a longer period is appropriate, this review considers prospective participants are not given sufficient assurance that they will be given an appropriate amount of time to provide the requested information.
- 5.37. It could also be argued that no deeming provision should apply, on the basis that it is the prospective participant's application and they should be able to take as long as they like to respond to a request for more information. However, this may lead to excessive administrative burden for the NDIA, with many applications not able to be finalised or closed in the system.
- 5.38. On balance, given the drivers of time delays as reported by participants and notwithstanding efforts to streamline functional capacity assessments (see Chapter 4), the Participant Service Guarantee should extend the 28 day timeframe to 90 days (see Chapter 10 and Recommendation 25).
- 5.39. This review also considers that, should the prospective participant not provide the information within the 90 day period, their access request should not automatically be deemed to have been withdrawn. Rather, it should only be withdrawn after the 90-day period has lapsed and the NDIA has taken all reasonable efforts to contact the participant and confirm whether they are still trying to get the additional information. Importantly, a prospective participant's access request should only be withdrawn if the prospective participant indicates they do not wish to be a NDIS participant and/or cannot be contacted after all reasonable measures have been taken.
- 5.40. The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed that people with disability have the capacity to navigate the access process without help and that a failure to provide the information within the requested timeframe is an indication they no longer wish, or do not need, to access supports under the NDIS.

Recommendation 9: The NDIS Act is amended to give a prospective participant up to 90 days to provide information requested by the NDIA to support an access decision, before it is deemed they have withdrawn their access request.

Assertive outreach

- 5.41. With the transition of people who previously received support from Commonwealth and state and territory programs almost complete, an increasingly important focus for the NDIA is reaching out to people with disability who have not previously accessed disability support services or are reluctant to engage.
- 5.42. The NDIA cannot rely on people approaching the NDIS of their own accord nor assume that people with disability have the capacity or confidence to navigate the NDIS by themselves. It is also important to appreciate that there are many people with disability in the Australian community who may fear or distrust government, stemming from a history of trauma, social discrimination and isolation, either because they have a disability or because of their cultural background.
- 5.43. Outreach activities need to build the capacity of vulnerable people with disability to engage with the NDIS, particularly those who are at risk of falling through the gaps because their needs are complex, challenging or who may be resistant to asking for support. Outreach activities should include a dedicated focus on Aboriginal and Torres Strait Islander people, people from CALD backgrounds and those with psychosocial disability.
- 5.44. The NDIA has implemented a substantial program of work to support these priority cohorts to engage with the NDIS. This includes publically releasing a number of strategies, including an Aboriginal and Torres Strait Islander Engagement Strategy, Cultural and Linguistic Diversity Strategy, and Rural and Remote Strategy. These strategies were developed in consultation with external stakeholders including people with disability and peak organisations, and identify key priority and action areas for these specific population groups.
- 5.45. The Australian Government also recently announced new initiatives to assist people in diverse and hard to reach communities to navigate the access, planning and plan implementation process (see Appendix D).
- 5.46. Notwithstanding this work, the NDIA's activities should be underpinned by an holistic outreach and engagement strategy. Such a strategy could set out how people with disability in these cohorts will receive the support they need to access the NDIS and navigate its processes. It could also set out how the NDIA will work alongside partner agencies and mainstream services to ensure no person with disability falls through the cracks. There is also merit in the concept of dedicated outreach teams for hard to reach communities to increase engagement and accessibility, with consideration given to ongoing reporting of outcomes at both participant and community levels.

- 5.47. Such a strategy would complement the goal of supporting the NDIS to benefit around 500,000 Australians by 2023, recognising those people with disability not already in the scheme are some of the most vulnerable and hardest to engage. The remainder of this chapter discusses key themes arising from consultations that would assist in informing future efforts in this area.

Aboriginal and Torres Strait Islander people

- 5.48. The proportion of Aboriginal and Torres Strait Islander participants in the NDIS at 30 September 2019 was 5.9 per cent or 18,252 people¹⁵. The September 2019 quarter saw a higher proportion of Aboriginal and Torres Strait Islander participants entering the NDIS (6.5 per cent) than previous quarter combined (5.8 per cent)¹⁶.
- 5.49. However, while participation in the NDIS is growing over time, this review heard that knowledge of the NDIS and the function of the NDIA remains limited for people with disability in regional and remote communities, particularly those communities that include a higher proportion of Aboriginal and Torres Strait Islander peoples.

“The awareness raising process that is fundamental to the successful roll out of the NDIS in Aboriginal and Torres Strait Islander communities nationally has not been seen or heard of in any capacity by most communities visited.”

First Peoples Disability Network, Consultations Final Report

- 5.50. The targeted consultations for Aboriginal and Torres Strait Islander people provided evidence that the NDIA’s existing outreach and engagement strategies are not effectively embedded within rural and remote communities. It was also suggested many Aboriginal and Torres Strait Islander people in these communities, who would likely be found eligible for the NDIS do not know how to, or are choosing not to, engage with the NDIS.

¹⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.78.

¹⁶ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.20.

“The consultation revealed a deep frustration and angst with how the NDIS was being implemented in Aboriginal and Torres Strait Islander communities. The barriers to access and difficulties with the processes were widespread, chronic, and were showing no signs of improvement. The prevailing sense from the workshop was that cultural and social issues affecting access to the NDIS by Aboriginal and Torres Strait Islander people had been placed in the ‘too hard basket’ by the NDIA, and that they were not taking the issues of Aboriginal and Torres Strait Islander people seriously”.

First Peoples Disability Network, Consultations Final Report

“There is a sizeable group who may not even realise the NDIS exists and they may be eligible for support. They are likely to have other forms of social disadvantage and may have limited interaction with other government systems. They may be people who have good reasons to fear government bureaucracies.”

National Disability and Carer Alliance

- 5.51. Culture was reported as being more significant than disability in terms of identity for Aboriginal and Torres Strait Islander people. That is, they firstly identified as a member of the Aboriginal community, rather than as a person with disability. Some participants stated current assessment tools were culturally inappropriate and reiterated that Indigenous definitions and perspectives of health and disability should be incorporated into the NDIS, with engagement framed around core cultural values, such as family, culture and country.

“Greater promotion by the NDIA of flexible application processes for potential participants who are transient and itinerant is required. In order to progress an NDIS application, the standard process by NDIA requires evidence of addresses which are not applicable to itinerant represented persons with significant mental health issues and who may also be Indigenous. These people may be very easily disadvantaged by the process with the outcome being that they do not pursue NDIS applications because it is too difficult.”

Unpublished submission

“Unfortunately, many Aboriginal and Torres Strait Islander people’s engagement with the NDIA is inflexible, inaccessible and not culturally safe. Engaging in the “proper way” with Aboriginal and Torres Strait Islander participants requires respectful, sensitive and participant led relationships.”

National Legal Aid

- 5.52. It is evident that greater promotion of the NDIS is required to ensure Aboriginal and Torres Strait Islander people with disability receive supports that will help improve their quality of life. In this regard, consultation feedback reinforced that engaging with Aboriginal and Torres Strait Islander people in the 'proper way' is critical to supporting them through NDIS processes.
- 5.53. Any engagement with Aboriginal and Torres Strait Islander communities needs to begin with a process of establishing trust within the community and acknowledging that there are diverse understandings and levels of awareness of disability among Aboriginal and Torres Strait Islander peoples. The importance of this cannot be overstated in remote community contexts.
- 5.54. Consultation feedback also stressed that different issues are present in urban, rural, remote and very remote populations and these communities cannot be homogenised. Given the diversity existing across Aboriginal and Torres Strait Islander nations Australia wide, no single model will work or be culturally appropriate. This reinforces the importance of building an outreach and engagement model from the ground up, with local communities at the centre to ensure it is fit for purpose.
- 5.55. One of the most significant barriers to inclusion and access for Aboriginal and Torres Strait Islander people is the absence of information about the NDIS in their primary spoken language. For many people living in remote Australia, particularly in the Northern Territory and Cape York Peninsula, English was reported as being their third or fourth learned spoken language. Even when English is spoken, people reported it was difficult to read, as literacy rates among the general population are variable, and so too for people with disability.
- 5.56. Consultation feedback also suggested that, because both Aboriginal and Torres Strait Islander cultures have stronger oral traditions than written traditions, Aboriginal and Torres Strait Islander people are more likely to find out about the NDIS from speaking to someone. This suggests the best prospects of an Aboriginal and Torres Strait Islander person engaging with the NDIS will be if the information is provided by a trusted member of their own community, in the language spoken within that community.
- 5.57. It is apparent that for Aboriginal and Torres Strait Islander people, language is a barrier to understanding the NDIS and what it might offer them, and a fundamental barrier to increased engagement.

- 5.58. Though not specific to the NDIS, Aboriginal and Torres Strait Islander people may also have a rational fear or mistrust of government agencies and service providers, resulting from racially-based intergenerational and historical mistreatment, social exclusion and discrimination. In delivering outreach activities, it must be recognised that discussions about disability may not be easy for Aboriginal and Torres Strait Islander people and historical perceptions, past experiences and beliefs may hinder engagement. The task ahead for the NDIA in overcoming these issues is significant.

“Participants who have experienced trauma may be acutely aware of power-relations and susceptible to influence. This may cause them to request different supports depending on who they are talking to. In this way, participants may present inconsistent goals and support requests, and ultimately have their requests dismissed. This behaviour is not uncommon in the planning process and can be a significant barrier to the articulation of goals, particularly if the planner is not sensitive to the participant’s behaviours and needs.”

Advocacy for Inclusion

People from culturally and linguistically diverse background

- 5.59. Once the NDIS is fully rolled out, it is expected around 20 per cent of NDIS participants across Australia will be from a CALD background. The proportion of participants with a CALD background in the NDIS at 30 September 2019 was 8.7 per cent or 27,030 people¹⁷. Like Aboriginal and Torres Strait Islander people, the September 2019 Quarter saw a higher proportion of CALD participants entering the NDIS (11.5 per cent) than previous quarters (8.4 per cent)¹⁸.
- 5.60. This review heard that, while the proportion of participants from a CALD background is growing, current participation rates are significantly below those anticipated at the onset. This may be attributed, in part, to Australians from culturally diverse backgrounds being historically under-represented in the disability sector and facing additional challenges in terms of inclusion in their communities. This extends to their ability to access and navigate the NDIS.

¹⁷ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.79.

¹⁸ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.20.

- 5.61. The various ways CALD communities understand and approach disability can influence whether or not individuals access the NDIS, or see the need for it in their lives. The availability of easily understood information in a person's preferred language, medium and format has a significant impact on their confidence in engaging with the NDIS, and then in turn, drawing on the supports in their plan.
- 5.62. In this regard, a number of submissions recommended increasing assertive outreach programs to help locate and connect people from CALD backgrounds with the NDIS, particularly those experiencing isolation or disadvantage.

“People from Aboriginal and Torres Strait Islander and CALD backgrounds and people who live in remote and very remote communities will not necessarily access the scheme through engagement processes that rely on them to initiate access through a phone call to a 1800 number.”

Queenslanders with Disability Network

“Assertive outreach should be prioritised, funded and implemented to identify and connect with isolated people and communities who cannot otherwise engage in the NDIS.”

Victorian Council of Social Services

- 5.63. The targeted consultations for CALD communities reinforced the need for more accessible, less complex and translated information and communications. Some participants noted the process for accessing the NDIS is difficult if they do not speak English and information about the NDIS is not available in their first language. Almost all stakeholders stressed the importance of independent face-to-face interpreter services so that everybody in the room hears ‘the same thing at the same time’, and questioned whether current interpretation arrangements were relaying their story as they told it.
- 5.64. As for Aboriginal Torres Strait Islander people, people from CALD backgrounds outlined there can be distrust of authorities and that more time is needed to build trusting and collaborative relationships, particularly with local CALD organisations, leaders and role models, before moving on to more formal discussions around access and planning processes. Indeed, a key theme of discussions was the primacy of respecting and valuing cultural needs of CALD communities and the importance of the NDIS being responsive to language and cultural needs, supported by a culturally competent workforce.

“The NDIS relies heavily on people finding their own way to the door. That is not easy for a whole range of people – people who have multiple forms of disadvantage, people who come from a culturally or linguistically diverse background, people who come from an Aboriginal or Torres Strait Islander background. Then there are those who have a very good reason to fear government services. We need to use trusted networks and organisations to reach these people...”

Every Australian Counts

“Increasing awareness of the NDIS among new migrants and providing interpreting services may increase participation rates for people with diverse backgrounds.”

Queensland Government

- 5.65. Consultation feedback also reinforced that when engaging with people with disability from CALD backgrounds the critical role of family-centred practice must be recognised, particularly in those communities where collectivist notions of identity are more prevalent and valued. In this regard, submissions reinforced that notions of culture and community must be at the forefront of discussions, with extra support provided in order to support people with disability and their families to engage with the NDIS.
- 5.66. It is also evident that, despite the work currently underway by the NDIA to strengthen its engagement with CALD communities, more effort is needed to embrace a higher level of cultural responsiveness. Otherwise, the current barriers and challenges that exist for people with disability from CALD communities will continue to prevent them from utilising NDIS services to the extent that they are entitled to, or even at all.

People with psychosocial disability

- 5.67. Australians living with severe mental health conditions and psychosocial disability are among the most disadvantaged people in our community. Many experience challenges with communication and social inclusion, finding suitable housing and employment and maintaining their physical health. The lack of community awareness and support can have major bearing upon their lives. This extends to their understanding of, and their ability to access, the NDIS.

- 5.68. The Productivity Commission estimated that approximately 64,000 of the 600,000 Australians living with severe and persistent mental health conditions will be eligible to access the NDIS once it is fully rolled out. While the proportion of participants with psychosocial disability is growing – 10 per cent of participants who entered the NDIS in the September 2019 quarter had a psychosocial disability compared with 9 per cent in previous quarters combined – there were still fewer than 27,864 or 9 per cent of participants with a primary psychosocial disability at 30 September 2019¹⁹. This indicates there is still a long way to go in reaching out to this cohort.
- 5.69. Feedback and practice in clinical mental health services suggests people with psychosocial disability require higher levels of support to engage with support services and face some specific challenges understanding and accessing the NDIS. These include:
- a. information and marketing programs are not well targeted to people with mental health issues as they do not associate with the disability community;
 - b. participants' mental health circumstances can limit their capacity to understand their need for additional support;
 - c. the requirements of putting together the evidence to navigate the NDIS is seen as too burdensome or beyond the skills and abilities of some people living with psychosocial disability, particularly for people who do not have support from an existing service provider or informal supports;
 - d. many people with severe mental health issues do not identify as having a lifetime disability associated with their mental health issues. The language of disability and permanency is unfamiliar to many people with mental health issues, is different to the recovery language used by mental health professionals and does not reflect the episodic nature of some conditions;
 - e. many submissions stated it can be very expensive and time consuming to obtain the required information from health professionals to demonstrate their eligibility, with some professionals indicating it can take up to 20 hours to prepare the required documentation; and
 - f. many health professionals are reluctant to determine their clients conditions are permanent, due to uncertainties of the outcomes of medication or treatments and lack of NDIS or academic guidance on criteria for permanency. Many health professionals see themselves as working in a strengths recovery-based rather than a deficit model.

¹⁹ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.81.

- 5.70. These issues result in many people with psychosocial disability not engaging with the NDIS, when they may benefit from such engagement. Indeed, a small number of submissions indicated that some people, who might be eligible for the NDIS, are choosing to withdraw or defer their application for these reasons.

“Many people accessing Mission Australia’s mental health services feel overwhelmed by the NDIS application process. Concerningly, a significant number of people with complex needs are not applying for NDIS due to the complexity of the application process, despite their access workers opinion that the clients are likely to meet the eligibility criteria and offering to support them throughout the application process.”

Mission Australia

- 5.71. There is a clear need for assertive outreach strategies to support people with psychosocial disability to access the NDIS. This may include strengthening existing relationships and networks with community mental health and other support providers and additional investment from all levels of government. This is not a new idea - it has been well documented for many years that more concerted and targeted efforts are needed to ensure the NDIS engages with the entire eligible population of Australians with psychosocial disability.

Recommendation 10: The NDIA develops a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS, with a dedicated focus on Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, and people with psychosocial disability.

CHAPTER 6 – DEVELOPING A PLAN

KEY FINDINGS

- ✓ Uncertainty around the planning process is frustrating participants, with delays in plan approval preventing timely access to vital supports aimed at improving quality of life and well being.
- ✓ There is some ambiguity around whether the NDIS or another service system is responsible for the delivery of particular supports. Greater clarity should be provided as governments, through the DRC, agree to the respective roles and responsibilities of the NDIS and mainstream service systems.
- ✓ Planning processes should consider the broader supports families and carers need to maintain their caring roles, noting current arrangements place an overreliance on the informal supports they provide.
- ✓ More flexibility is needed in the ECEI pathway to maximise the benefits of early intervention supports for children with disability.
- ✓ In all cases, planning processes should be transparent and maximise the ability of participants to drive decisions that impact their daily lives.

- 6.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to participation of people with disability), Part 1 (Becoming a participant) and Part 2 (Participants' plans).
- 6.2. This review's analysis of Parts 1A and 2 centred on three key issues:
 - a. the reasonable timeframes for developing and approving plans;
 - b. what should be considered as part of determining when a support is reasonable and necessary; and
 - c. opportunities to maximise the benefits of early intervention for young children with disability and encourage family-centred planning approaches.
- 6.3. This review also considered the requirements set out in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (the Supports for Participants Rules) to the extent they could be amended to provide greater clarity on when a support is reasonable and necessary.

Background to planning

- 6.4. A participant's NDIS plan comprises two elements:
- a. the participant's statement of goals and aspirations, which is prepared by the participant, or by the NDIA on behalf of the participant, and specifies the participant's goals, objectives, aspirations and circumstances; and
 - b. the statement of participant supports, which is prepared with the participant and approved by the NDIA, and sets out, among other matters, the reasonable and necessary supports that will be funded by the NDIS.
- 6.5. In deciding whether to approve a statement of participant supports, the NDIA must have regard to the participant's statement of goals and aspirations. The NDIA also needs to be satisfied of a number of other matters, including that:
- a. the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
 - b. the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
 - c. the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
 - d. the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide; and
 - e. the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems.
- 6.6. The NDIA's decisions about what supports are reasonable and necessary are guided by the NDIS Act and Rules, relevant operational guidelines and COAG's agreement on the roles and responsibilities of the NDIS and other service systems (see Chapter 3).
- 6.7. There are five steps involved for a participant in developing their plan:
- a. thinking about their support needs and deciding their goals and aspirations;
 - b. meeting with their planner or LAC to discuss the goals, activities and tasks they want to achieve and what supports they need;
 - c. considering how to manage their NDIS supports, including deciding whether or not they want to manage their own budget;
 - d. choosing service providers and using their funded supports; and
 - e. reviewing and updating their plan.

- 6.8. The NDIA has published a number of documents to help participants prepare for their planning meeting, including checklists and ideas for thinking about their immediate support needs and their current and future goals. For example, following the 2017 pathways review, the NDIA released three new participant booklets on the NDIS website. These booklets provide practical information about the NDIS for participants and prospective participants, as well as their families, carers and the wider community. The booklets provide advice on how to prepare for a planning meeting and implement a plan. The booklets are intended for use throughout a person's NDIS journey to record key information, write questions and collect thoughts.
- 6.9. The NDIA has also published a number of other fact sheets and tools on the NDIS website to provide guidance on the process of developing and implementing a plan and identifying opportunities to connect with mainstream and community-based services.

Timeframes for commencing planning

- 6.10. The NDIS Act does not set a fixed timeframe for how long it should take to develop and approve a participant's plan. While internal operational guidelines provide some advice on the priority of plan development for particular cohorts, the current legislative requirement is that the NDIA commence facilitating the preparation of a participant's plan '*as soon as reasonably practicable*'.
- 6.11. Consultation feedback demonstrates participants are seeking more certainty around timeframes for planning, including when they will have their first meeting with a planner and how long it will take to approve their plan. Many submissions reported planning processes are taking too long to commence and too long to complete and this is disempowering, frustrating and delaying access to vital supports.

“It took more than six weeks for the NDIA to contact me to book in my first planning meeting following receiving notification that I had been granted access to the NDIS. I thought that there might have been a mistake in granting me access because it took so long!”

NDIS participant, regional Queensland

“We received a letter on the 2nd January 2018 saying we were approved [for NDIS access], and we would be contacted for our first planning meeting. I walked into an NDIS office in late May 2018 and we didn’t even have a worker assigned to our request at that point. Almost five months and nothing. It was only when I personally asked questions that we were then contacted to set up a planning meeting.”

Carer of NDIS participant, regional Queensland

“My NDIS eligibility was approved quickly then I waited 13 months for my first planning meeting which only happened due to direct intervention by my local MP to the Minister.”

NDIS participant, regional Victoria

6.12. Considerable feedback was provided about delays in commencing planning. 40 per cent of survey respondents responding to this question in the long-form survey indicated it took more than three months to have their first planning meeting. When asked what timeframe would be appropriate, if a timeframe for this were to be included in the Participant Service Guarantee, 86 per cent indicated it should occur up to one month following a positive access decision (see Figure 4).

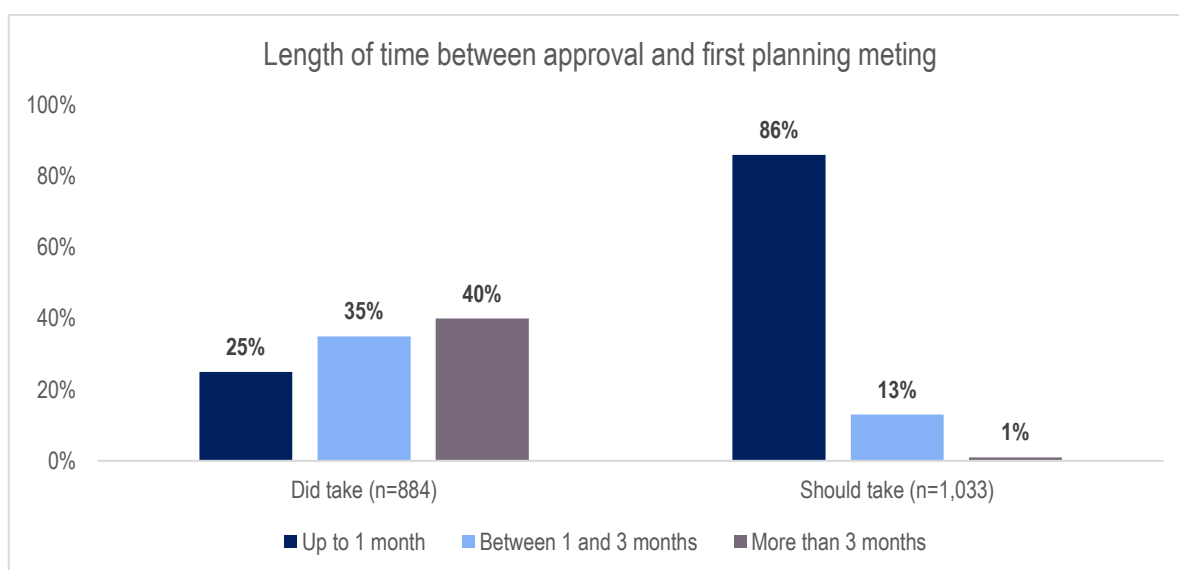


Figure 4: Timeframe for plan meeting (long-form survey)

- 6.13. Unsurprisingly, and as with access decisions, the delays reported in commencing planning correlate with the ambitious scale and speed of the NDIS transition period. As has been noted previously, it is reasonable to expect that as the scheme matures, the volume of participants requiring their first planning meeting will reduce and therefore the NDIA should become quicker in commencing planning after a positive access decision.
- 6.14. The NDIA has provided data to this review, which demonstrates the national average for the time it took for the first planning meeting to be held following the date of an access decision was 66 days, based on 2018-19 data as at 30 September 2019, with a commensurate reduction compared to previous quarters.
- 6.15. Notwithstanding the NDIA getting faster at scheduling planning meetings, the NDIS Act should provide further clarity about when and how planning will commence. In this regard, section 32 of the NDIS Act, which sets out the NDIA must “*facilitate the preparation of a participant’s plan as soon as reasonably practicable*”, should be clarified to state that ‘facilitation’ means the commencement of planning and the approval of a plan. The Participant Service Guarantee should then prescribe a timeframe for the plan approval process to occur (see Chapter 10 and Recommendation 25).
- 6.16. The Participant Service Guarantee should also prescribe that the NDIA must offer a first planning meeting but not require it to be held within a set timeframe. This is because the meeting would have to be at a mutually agreeable time for the participant and the NDIA. Nonetheless, the NDIA must be flexible in accommodating the availability of the participant and hold the planning meeting at the first available opportunity which is convenient for the participant.
- 6.17. When combined, this would provide important surety to new participants that the NDIA will be responsive to developing a plan that is fully individualised and tailored to the participant’s goals and aspirations.

Timeframes for plan approval

- 6.18. The NDIS Act does not set a timeframe for a plan to be approved. Rather, the plan is only approved once the NDIA has received the participant’s statement of goals and aspirations and when it is satisfied that the supports in the statement of participant supports are reasonable and necessary. In some cases, to make that decision, the NDIA may require the participant or another person to provide further information.

- 6.19. This review heard that participants, their families and carers have experienced lengthy delays in getting their plan approved, often with no communication from the NDIA as to why or when they can expect it. 43 per cent of respondents to the long-form survey said it took between one and three months for the NDIA to approve their plan following their first planning meeting and 18 per cent of survey respondents said it took longer than three months to get their first plan approved (see Figure 5).

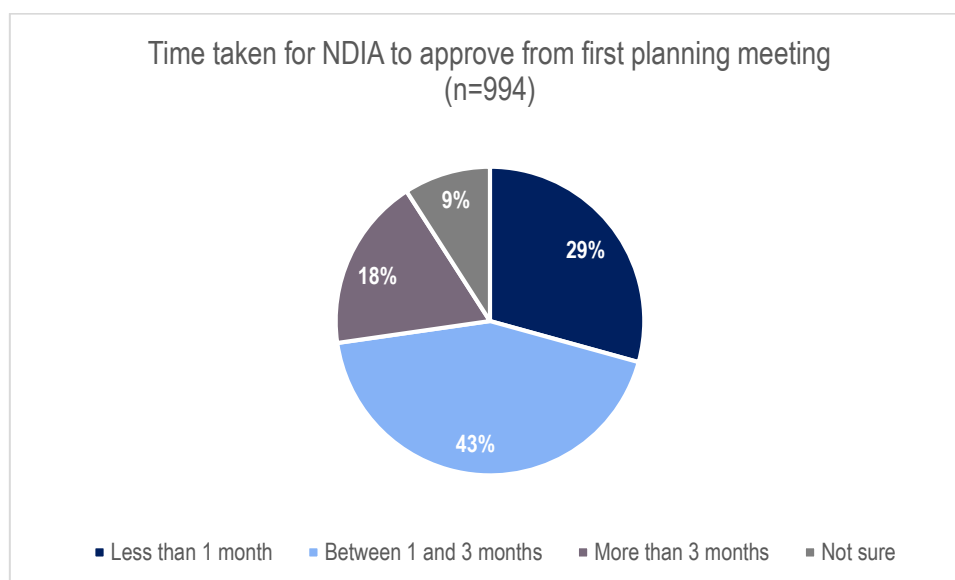


Figure 5: Timeframe for plan approval (long-form survey)

- 6.20. This feedback is broadly consistent with data from the NDIA indicating that in the 2018 – 19 financial year the average time for a plan to be approved following the first planning meeting was 51 days, or 117 days following the date of the participant's access decision. The NDIA is continuing to get faster at first plan approvals, with first plans in September being completed in 88 days following the date of the access decision, down from 133 days in the June quarter²⁰.
- 6.21. A significant driver of delays in approving a plan is whether the NDIA has requested additional information from the participant, such as a quote for Assistive Technology or Home Modifications, or has requested that they undergo an assessment to provide further evidence of their functional capacity. The latter has been an issue for a significant number of participants who transitioned from state and territory disability systems, where the streamlined access arrangements meant the NDIA did not have sufficient evidence of the functional impact of their disability to make planning decisions (see Chapter 5).

²⁰ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.35.

- 6.22. It is reasonable to expect the NDIA will continue to become more efficient in developing plans and that participants who have been in the NDIS for some time will become more experienced in understanding what supports have been effective in helping them overcome the social and economic barriers resulting from the functional impact of their impairment. When partnered with stronger use of standardised functional assessments, this would be expected to deliver shorter planning timeframes.
- 6.23. However, notwithstanding these efforts, as a first principle, a participant's ability to access NDIS supports should not be delayed while they obtain any additional information for a support. For example, a participant who needs a wheelchair should not have to wait to access their other NDIS supports while they work with the NDIA to obtain and approve a quote for the wheelchair.
- 6.24. Rather, participants can and should expect to have certainty about when they will be able to access their NDIS supports, even if all of the supports cannot be funded initially due to the need to produce further information. Therefore, the Participant Service Guarantee should specify a timeframe for a plan to approved and the NDIA provided with powers to later amend the plan without requiring a full plan review to be undertaken (see Chapters 8 and 10 and Recommendation 25).

Recommendation 11: The NDIS Act is amended to reflect that a plan must be facilitated and approved in accordance with the timeframes outlined in the Participant Service Guarantee.

The interface between NDIS and other service systems

- 6.25. The interactions between the NDIS and mainstream services are guided by the Principles to Determine the Responsibilities of the NDIS and Other Service Systems agreed by COAG in April 2013 and updated in November 2015. This document gives effect to the intention that the NDIS is not expected to provide for all the supports a participant may need to fully and effectively participate in society on an equal basis as people without disability. An abridged form is contained in a schedule to the Supports for Participants Rules.
- 6.26. At the operational level, this review heard there is a lack of clarity about the respective lines of responsibility between the NDIS and mainstream service systems. This is resulting in boundary issues and funding disputes, service gaps and confusion for NDIS participants, poor quality planning and inconsistent decisions about when a support is reasonable and necessary.

“The complexity of the client’s support needs and life circumstances may be exacerbated by intersecting with mainstream interfaces. The Office of the Public Guardian has observed that planning is particularly challenging when the planner is required to interact with the justice system, mental health system or child protection system to facilitate the client’s transition to the NDIS.”

Office of Public Guardian Queensland

“Some plans are inconsistent with the agreed roles and responsibilities of the NDIS and other service systems as defined in the Applied Principles and Tables of Services (APTOS) and are therefore not including all the appropriate reasonable and necessary supports.”

Queensland Government

“It is widely recognised that there remains a tension between mainstream services and the NDIA where cost shifting occurs, especially where in-kind contributions still exist in mainstream systems (such as the education sector) and responsibilities are blurred (such as between the NDIS and mental health sector).”

Unpublished submission

- 6.27. At the start, it needs to be recognised that as long as people with disability can access supports across a number of service systems, there will be interface issues. The key aim is for service systems work well together so people receive the right services and achieve the best possible outcomes.
- 6.28. Significant work has been undertaken by all governments through the DRC to clarify the boundaries between the NDIS and other service systems and resolving funding and service delivery issues for the seven priority areas of: Health, Justice, Mental Health, Child Protection and Family Support, Personal Care in Schools and School Transport.
- 6.29. The most significant outcome to date was the DRC’s agreement in June 2019 on how the NDIS interacts with the health system and how the NDIS will support families with children who are unable to live in the family home because of their complex support needs. Further progress was also made at the DRC’s October 2019 meeting in regard to improving the provision of transport supports under the NDIS and interface issues with mainstream mental health and justice systems. Box 3 summarises the DRC’s key agreements in relation to these priority areas.

*Box 3: Summary of recent DRC decisions*Health – June 2019 meeting

- DRC agreed the NDIS will fund specific disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability
 - This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports (this is a non-exhaustive list).
- DRC agreed that the following health supports being excluded from being provided/funded through the NDIS:
 - Consistent with the APTOS, items and services provided as part of diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions, and which are not part of the everyday life of a person with disability and / or resulting from the disability.
 - Medically prescribed care, treatment or surgery for an acute illness or injury including post acute care, convalescent care and rehabilitation.
 - Sub-acute care including palliative care, end of life care and geriatric care, as set out in the APTOS.
 - Items and services covered by the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme.
 - Treatment, services or supports delivered by a doctor or medical specialist, including diagnosis and assessment of a health condition.

Child Protection and Family Support – June 2019 meeting

- DRC agreed to clarify roles and responsibilities relating to children and young people who are unable to live in the family home because of their complex disability support needs.
- Memoranda of understanding were subsequently agreed with states and territories to focus on achieving the best outcome for the child or young person.
- From 1 September 2019, the NDIA commenced funding 24/7 staffing for children in accommodation outside the family home, as well as disability supports. States and territories are responsible for board and lodging for children in these arrangements, as well as coordinating mainstream services as needed. The NDIA is continuing to work with families to ensure NDIS-related supports are in place to help keep families together.

Transport – October 2019 meeting

- DRC agreed to interim measures to increase transport funding for NDIS participants who are significant users of taxi subsidy schemes.
- DRC agreed to the full reimbursement of states and territories for the continuation of their schemes for NDIS participants until longer-term transport support policy and funding is resolved.

Mental Health – October 2019 meeting

- DRC committed to improving access to the NDIS for people with psychosocial disability through a range of strategies, and priority areas for improvement to the access process, building a stronger focus on 'recovery' in the NDIS, and to better respond to the episodic nature of psychosocial disability.
- DRC agreed to strengthen information sharing, transparency and collaboration between Commonwealth, state and territory government funded mental health services and the NDIA.
- DRC agreed to the establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs, noting that this would be developed in consultation with states and territories.

Justice – October 2019 meeting

- DRC agreed the NDIA will introduce Justice Liaison Officers in each state and territory to work across their justice systems. The Officers will provide a single point of contact for workers within each state and territory justice system, providing a coordinated approach to supporting NDIS participants in youth and adult justice systems.
- DRC agreed that targeted resources and training will be developed and implemented to improve the coordination of supports for NDIS participants interacting with the justice system.
- DRC agreed to improve information sharing processes between the states and territories and the NDIA to ensure NDIS participants interacting with the justice system received the supports they required.

6.30. The DRC's momentum needs to be maintained and the respective roles and responsibilities of the NDIS and other service systems for the other priority interface areas resolved as quickly as possible. This is critical in ensuring participants receive the services they need and do not fall through the gaps as the NDIS transitions to maturity.

- 6.31. Having better clarity about roles and responsibilities will help, but only if the NDIS and other service systems are held to account for their delivery. Here, this review recognises that the DRC's decisions, in their specificity, are not legally binding. Rather, under section 12 of the NDIS Act, DRC only has powers to make recommendations about policy matters that relate to the NDIS or arise under the NDIS Act.
- 6.32. On this basis, the Supports for Participants Rules should be amended in accordance with the recent DRC decisions and as DRC continues to finalise its position on each other interface area, so as to remove legal ambiguity for NDIA decision makers about which service system is responsible for the delivery of supports (see Chapter 3 and Recommendation 4).

Family-centred approaches

- 6.33. The NDIS Act recognises the role of families and carers in supporting their loved ones with disability, including children. For example, one of the guiding principles of the NDIS is to strengthen, preserve and promote positive relations between children and their parents, family members and other people who are significant in their life. The NDIS principles also specify children's plans, where possible, should strengthen and build the capacity of their families and the carers who support them.
- 6.34. When determining the supports that will be funded by the NDIS, the NDIA is required to take into account what is 'reasonable' to expect families, carers, informal networks and the community to provide. The Supports for Participant Rules provide further advice to help the NDIA decide what is 'reasonable'.
- 6.35. In the case of children, the Supports for Participants Rules state the NDIA must consider what is 'normal' for parents to provide in terms of care and support and the suitability of other family members to provide such supports. The NDIA is also required to consider the age and capacity of family members and carers, the extent of any risks to their wellbeing as well as any risks to the child's wellbeing.
- 6.36. In making these decisions, some submissions indicate the NDIA does not appreciate that caring for a child with a disability can be a very challenging and demanding experience and one that impacts both the physical and emotional capacities of the caregiver, whether this is a parent or an informal or paid carer. These impacts can adversely affect the whole family and their capacity to provide a stable and supportive home environment.

- 6.37. Other submissions indicate NDIS operational policies place an overreliance on the informal supports provided by family members, including siblings, and further supports should be provided by the NDIS to maintain consistency and stability in the home environment, including relieving caregivers from any stress they may be experiencing.

“[The NDIS should] recognise family burnout exists and establish protocols for prevention, diagnosis and associated treatment options. The whole family suffers from the child's disability, including siblings.”

Carer of NDIS participant, regional Victoria

“Support families. For children there needs to be a family centred practice to build the capacity of the parents to support the child with disability. Many of the group funded or block funded supports for families and siblings have gone. Supporting siblings and families will help prevent future issues and therefore long term costs.”

Carer of NDIS participant, metropolitan Victoria

“I would like NDIS to take the time to really understand myself and my family's needs and my goals. Help me manage my disability so I can reach my goals and live a normal life. To help support and understand that my siblings need support as well to reach their goals. That my disability impedes all my family members especially my siblings as they miss out on so much emotionally, their education and social activities because my family (informal supports) are always supporting me.”

Carer of NDIS participant, regional Queensland

- 6.38. Before the NDIS was introduced families and carers were able to access supports through a number of national and state and territory programs. The supports provided through these programs were commonly called ‘respite’ but the word ‘respite’ has not been consistently used under the NDIS. This is in keeping with a philosophy that the word can be perceived as promoting the incorrect, but unfortunately prevalent, notion that people with disability are a burden on their families and loved ones. However, notwithstanding the word used to describe such supports, improving the capacity of families and carers is critical to supporting them to provide quality care and capacity building support to their loved one with disability.

- 6.39. Evidence suggests planning outcomes directly relate to the ability of the participant and their family or carer to 'speak NDIS'. This review has also heard that if a family asks for 'respite' in a plan that request is denied on the basis the plan is intended to improve the capacity of the person with disability and the family will get sufficient rest periods because the plan will provide for sufficient services to meet the participant's needs. On the other hand, if the family or carer asks for additional paid care support in the family home or 'short-term accommodation', they will often receive supports which have a similar effect.
- 6.40. At the October 2019 DRC meeting, the NDIA committed to providing an implementation update on the initiatives underway to clarify the language of respite supports and to review internal and external communications, staff practice guides, and training material to embed this change. This review understands that the NDIA is rolling out new changes before the end of 2019 to clarify the provision of respite supports under the NDIS, including:
- a. updating the standard text in plans to state that core and capacity building supports can be used flexibly to fund respite activities;
 - b. updating guidance for NDIA planners and delegates and Partners in the Community to clarify the use of the term; and
 - c. promotion of guidance materials to external stakeholders through various mechanisms including the NDIS website, states and territories, the sector and peak bodies, newsletters and fact sheets.
- 6.41. The NDIA has also advised further changes will occur in 2020 to update the catalogue of NDIS supports and NDIS price guide to have an explicit reference to respite, so all participants and providers are clear on the scope and intent of services that can be delivered with NDIS funding.
- 6.42. The other significant challenge faced by families with children and young people with disability is being unable to work because of their caregiving requirements. Some submissions indicated parents and carers would like to work, but are unable to, because caring for the person is seen by the NDIA as their parental responsibility. To this extent, consultation feedback suggests there is little understanding of the higher-level support families are required to provide to meet their child's everyday needs, when compared to families or parents of children without disability.

“[There is] no understanding of the intersecting issues of other family members with disabilities and the extra demands on informal supports.”

Carer of NDIS Participant, regional New South Wales

“Expecting carers, who provide huge amounts of unpaid support to participants, to manage a separate program is an unrealistic burden that doesn’t take into consideration everyday family life. It also means that carers are forced to take more administrative time away from what their core role should be, caring for the participant, to navigate support provisions to the detriment of the participant.”

Unpublished submission

“There is no understanding or consideration given to the impact on informal carers. There is no provision to help – even in cases where a person with disability requires 24 hour support and the carer may not have left the house in years, been able to seek medical attention or been able to cook dinner.”

Carer of NDIS participant, metropolitan Victoria

- 6.43. To deny the right of families and carers to support, either in the home or not, works against the broader intent of the NDIS in strengthening the capacity of informal supports to provide a stable and supportive environment for people with disability. The NDIA should seek to ensure participants and their families and carers are informed about the supports that can be used to promote and sustain informal care, recognising that failure to provide adequate support proportionately increases the risk of families being stretched to breaking point and in extreme circumstances, relinquishing care of their children.
- 6.44. Consultation feedback also indicated that family-centred supports such as social and community support, family capacity building and peer group learning and support are typically not funded for young children. The experience of having a child with an intellectual or developmental disability almost inevitably has a significant impact on the family, including siblings, and they need such support.
- 6.45. The review also heard the planning principles in section 31 of the NDIS Act read well for adults, however they do not sufficiently emphasise the NDIS will seek to strengthen and build the capacity of families and carers to support young children with disability – for example, supports being directed by the participant (section 31(b)) and being underpinned by the right of the participant to exercise control over his or her life (section 31(g)).

- 6.46. Further, submissions indicated planners are focusing on individual therapy when developing plans for children, rather than considering what other supports or activities would be beneficial for the child’s development. Best practice approaches have consistently demonstrated that individual therapy should not be the sole focus of planning and that what drives development is meaningful participation in everyday activities and social and community-based environments²¹.

“The lack of integration between the NDIS and education/care services with young children acts to segregate children. Despite the NDIS aiming to increase participation, it acts to increase exclusion, by being segregated from education and other community based services, and by using a “therapy” medical model.”

Early Childhood Intervention Australia

“Families are denied support and services considered “parental responsibilities”, as there is a push to medicalise the supports in the plan rather than consider the natural environments and supports in the community which promote the wellbeing and development of children and young people.”

Children and Young People with Disability Australia

- 6.47. For these reasons, the Supports for Participants Rules should be amended to reinforce that the NDIS will provide for supports intended to build the capacity and capability of families and carers, recognising that they play a critical role in maximising the benefits of early intervention. The Supports for Participants Rules should also provide explicit reference to ‘reasonable and necessary’ support providing families and carers with access to supports in the home and other forms of respite as required to assist them in maintaining their caregiving roles.

Recommendation 12: The NDIS Rules are amended to reinforce that the determination of reasonable and necessary supports for children with disability will:

- a. recognise the additional informal supports provided by their families and carers, when compared to children without disability;
- b. provide families and carers with access to supports in the home and other forms of respite; and
- c. build the capacity of families and carers to support children with disability in natural settings such as the home and community.

²¹ Moore, T. (2010). *Early Childhood Intervention Reform Project: Revised Literature Review*.

Maximising the benefits of early intervention for children

- 6.48. Early intervention aims to improve a child's functional capacity by providing support at the earliest possible stage. Evidence-based research generally accepts that the earlier supports are delivered the less likelihood there will be for the child to require long-term support. Early identification and intervention are critical in the context of the insurance approach underpinning the NDIS.
- 6.49. Evidence-based early childhood intervention focuses on two key areas, capacity building in the child's life including parents, carers and the family unit, and key interventions including evidence-based therapies for the child. These interventions need to be embedded into the child's every day routines and activities to provide the maximum benefit. Wherever possible this should be delivered in natural settings, so the child can grow and develop with other children and their families.
- 6.50. As at 30 September 2019, 46 per cent of NDIS participants were under the age of 18 years old, and 13 per cent of participants were under 6 years old²². For many parents of these children, the NDIS will be their first engagement with the disability support system. In many cases, and like parents of children without disability, they may be reliant on the support of family members and friends to help adjust to their new lives as parents, and will not necessarily have existing ties with disability support providers or networks.
- 6.51. Formal evidence suggests despite having a plan approved, many families of a child with disability do not know what to do with it, or know which services or types of therapies would be best for their child's development²³. Other submissions made to this review suggested the NDIS legislation (and the very design of the NDIS itself) focuses on an adult paradigm that inappropriately conceives key decisions made in relation to a very young child's early intervention needs as a simple exercise of choice in a market of service providers.
- 6.52. This feedback makes it clear more support is needed for families to provide the conditions to enable them to exercise choice and control, and importantly, to ensure this choice and control can be considered informed choice and control.

²² NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.83.

²³ Arefadib, N. and Moore, T. (2019) *Realising the Potential: Early Childhood Intervention under the NDIS*; and Purcal, C., Hill, T., Meltzer, A., Boden, N. and Fisher, K. (2018). *Implementation of the NDIS in the early childhood intervention sector in NSW – Final report*.

“The NDIS has a responsibility, as does early childhood intervention, to support families as whole entities, as this provides the best opportunity to support children’s learning and development. The planning and assessment process needs to reflect this responsibility.”

Early Childhood Intervention Australia

- 6.53. The NDIS should support the best outcomes for children with disability through quality planning, information, referral and advice. This involves working with families at the pace they feel comfortable and ensuring parents and carers are engaged and well supported. Early childhood intervention best practice evidence shows using strengths-based family centred approaches is a very strong driver for successful outcomes. Building trust and collaboration takes time and requires trial and testing to ensure the child and their family circumstances are well understood²⁴.
- 6.54. There are many factors that impact on a family or carer’s capacity to support a child and it is critical they understand they make the biggest difference to their child’s development. Other factors such as the family’s ability to implement strategies and support the child can in many cases, take some time to build. It is also important to understand families all have varied resources and capacity to bring to this process.
- 6.55. Further attention should be given to developing a model of planning for children that is more streamlined and provides more structured support for families early in their experience with the NDIS, in a way that prepares them for taking full control later in their NDIS journey. While the long-term aims of the NDIS are clear, more efforts need to be made to support parents and children on the journey from initial inexperience, stress and disempowerment to being able to exercise informed choice and control.
- 6.56. As discussed in Chapters 5 and 10, the Participant Service Guarantee should prescribe a set timeframe for a plan to be developed following an access decision. However, the development of an early intervention plan for a child with developmental delay or disability is multifaceted and on many occasions requires a team approach. As such, the setting of a system-imposed timeframe under the Participant Service Guarantee may, if not set appropriately, inadvertently drive perverse outcomes for children. Rather, quality plans for children need to be informed by a range of support networks and sources including other early childhood professionals, health professionals, specialists and other family members, and as a result, may take longer to develop.

²⁴ Early Childhood Intervention Australia. (2017). *Protecting Best Practice: An evaluation of the transition to the ECEI Approach under the National Disability Insurance Scheme in NSW*.

- 6.57. On this basis, the Participant Service Guarantee should provide more flexibility in the timeframes for plans to be approved for children with developmental delay or disability. To rush the first plan process for a family with a child could work against the benefits the NDIS could provide in both the short and long term.
- 6.58. However, the sooner the child and family has access to quality information and best practice interventions, the better their long-term outcomes. Therefore, another model is needed to ensure early intervention supports flow as soon as practical even where the family is not ready, or confident, to start planning and exercise informed choice and control.
- 6.59. The Australian Government recently announced the introduction of interim plans for children who were unlikely to have a plan in place within 50 days, in order to address the backlog of children who had been deemed eligible but were waiting for a plan. This response was necessary in light of the circumstances, and is an effective short-term solution to ensure early intervention supports commence within a reasonable timeframe, noting the NDIS Act currently requires a plan to be in place in order for the participant to access funded supports.
- 6.60. This review understands that a key focus of the NDIA is reducing the time children are waiting for support. Over the September 2019 quarter, the number of children waiting more than 50 days to receive their first plan had reduced from 3,314 to 1,686 and the average wait times for children with a first plan in progress reduced from 104 to 54 days²⁵. While this review notes that wait times and delays in decision-making have significantly improved and continue to be a key focus of the NDIA, interim plans may not directly address the need to help families build their capacity, and therefore may not be a sustainable long-term solution.
- 6.61. Therefore, the approach should be taken further, with the NDIS Act amended to give the NDIA discretionary powers to provide individualised funds to a family once a positive access decision is made for their child.
- 6.62. This funding would not be considered as part of, or attached to a plan, in order to ensure the integrity of an individualised planning process is maintained. Rather, by working closely with ECEI partners and the families chosen quality early intervention provider, it would allow the family to start accessing approved early intervention supports while building their readiness to go through the planning process.

²⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.18.

- 6.63. It would also provide families time to develop their capacity to make informed choices about their child's support needs and goals and aspirations, in line with best practice approaches. This would help avoid traditional therapy based medicalised approaches that have inadvertently characterised the early stages of the ECEI approach and drawn criticism from early childhood experts and the early childhood sector.
- 6.64. This funding would also support the ECEI Partners existing efforts in building family capacity, rather than only delivering light touch ECEI supports to a family during the plan development process. This would have the effect of reducing the amount of red tape a family needs to go through to start receiving funding, and in turn improve the overall participant experience.
- 6.65. In exercising this discretion, the Participant Service Guarantee should reflect the need for capacity building, and make provision to extend the timeframe for approving a participants plan, from the proposed eight weeks, to a maximum of three months (90 days).
- 6.66. Further consideration will need to be given to the types of supports and services that could be accessed with this funding, noting services for young children with developmental delay or disability should be managed in a context that values capacity building, family-centred practice and specialisation in early childhood, and can deliver best practice and evidence-informed service response.
- 6.67. Importantly, this proposal is not intended to reinvent the way early childhood intervention supports are currently delivered under the NDIS or the role of ECEI Partners. Rather, the provision of this funding is intended to support ECEI Partners in their efforts to support families to access best practice strengths-based, family-centred supports as early as possible.
- 6.68. Accordingly, providing this funding will support the insurance principles of the NDIS by providing children and families with the opportunity to access timely, comprehensive and well-integrated early intervention support to improve their child's developmental trajectory and overall quality of life.

Recommendation 13: The NDIS Act is amended to provide more flexibility for the NDIA to fund early intervention support for children under the age of seven years outside a NDIS plan, in order to develop family capacity and ability to exercise informed choice and control.

Supported Independent Living

- 6.69. Supported Independent Living (SIL) provides funded assistance for and/or supervision of daily tasks with the aim of developing a participant's capacity to live as independently as possible. In most instances, SIL funding is used to provide supports in shared or individual living arrangements, but does not cover the cost of the accommodation itself, such as the cost of the capital asset, rent, board or other daily living expenses. SIL does not cover support coordination or community participation that happens outside the accommodation.
- 6.70. As at 30 September 2019, just 21,654 participants (or 6.9 per cent of all NDIS participants) received SIL supports in their plan, however SIL funding accounts for 32 per cent of all NDIS funding²⁶.
- 6.71. The way SIL is funded in a plan differs from most other NDIS supports. It is not based completely on an individual assessment of the supports a person needs in the home environment – rather, the value provided in the plan is determined via a quotation provided by a service provider who has a suitable vacancy in a dwelling. This means that SIL is linked to the provider, not the participant, with re quoting required if the participant wishes to move to another home.
- 6.72. This review heard that the process of obtaining SIL supports in plans is disempowering participants and working against the principles of choice and control that underpin the NDIS. Specifically, submissions indicated the SIL quoting process excludes participants, their families and carers in the decision-making process. Although SIL providers must sign a declaration that says the participant has been involved in the process, the current approach means the value of the plan is determined between the NDIA and the provider, with participants potentially having little or no insight into the specific information included in the quote.

²⁶ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.384.

“I get a huge amount of SIL funding but I do not know what I am supposed to get for this.”

Family member and carer of NDIS participant, regional Queensland

“The secret SIL business needs to be transparent and participants should be able to see what they are being charged for and how much they are paying.”

Family member and carer of NDIS participant, regional Victoria

“I get \$189,000 SIL [funding] but I don’t know what my provider is supposed to give me for that amount of money. I also pay them rent. I don’t think they provide much for that amount. In the plan it should tell me what I should be getting so I know if they are doing the right thing.”

Family member and carer of NDIS participant, regional Queensland

- 6.73. While some supports can only be included in plans through a quoting process, in all cases such processes should be transparent and maximise the ability of participants to drive decisions that impact their daily lives. Importantly, and in line with the principles underpinning the NDIS Act, the process of quoting for SIL should not impede participants from having choice and control, including the choice of alternative support arrangements in their home.
- 6.74. Consultation feedback reinforced contemporary approaches to accommodation for people with disability should, as far as practicable, separate the provision of housing and the support provided in the home. This is a contested issue under the NDIS, with anecdotal evidence suggesting an emerging trend of Specialist Disability Accommodation (SDA) providers pre-selecting SIL providers to operate exclusively in the dwelling, or SIL providers developing outdated housing options that do not conform with best practice building standards.
- 6.75. These significant issues cannot be considered in isolation. Accordingly, there is merit in the NDIA undertaking a comprehensive review of its operational guidelines for the delivery of SIL under the NDIS, with a view to increasing transparency for participants, noting the current review into SIL being undertaken by the Parliamentary Joint Standing Committee on the NDIS.

Recommendation 14: The NDIA undertakes a review of its operational guidelines when funding Supported Independent Living, with an emphasis on increasing the involvement of participants, families and carers in the decision-making process and the principles of choice and control.

CHAPTER 7 – PURCHASING NDIS SUPPORTS

KEY FINDINGS

- ✓ Plan budgets are too rigid and prevent participants having flexibility, choice and control over the implementation of their disability supports.
- ✓ Understanding, managing and implementing a plan can be complex and confusing, particularly for new participants who have not previously accessed disability supports. Participants need more help, particularly in the early years of a plan, to maximise the benefits of their NDIS funding.
- ✓ More clarity should be provided on the matters that are considered when funding support connection and coordination in participants plan.
- ✓ The NDIA should have more defined powers to commission flexible service models in areas where choice and control is constrained by a lack of market supply or other regulatory restrictions.

- 7.1. Division 3 of Part 2 of the NDIS Act sets out how a participant can manage the funding for supports in their plan and how NDIS amounts are paid to a participant or to a person who is managing the funding for supports under the plan on the participant's behalf.
- 7.2. This review's analysis of Division 3 centred on three key issues:
- a. how participants can use their plan budget to help them achieve their goals and aspirations;
 - b. what additional supports could be provided to help participants get the best outcomes out of their NDIS funding; and
 - c. safeguards to ensure participants are protected when accessing funded supports from the market.
- 7.3. This review also considered the requirements set out in the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules) to the extent they could be amended to provide greater clarity on how the NDIA can support participants to access the services they need, when, how and in the way they need them.

Background to plan implementation

- 7.4. A participant's plan sets out, among other things, the reasonable and necessary supports that will be funded by the NDIA and identifies how the participant wishes to manage their plan. A participant has three options for managing the supports in their plan (see Box 4).

Box 4: Options for managing the supports in a participant's plan

Self-management:

- The NDIA provides the participant with funding so they can buy supports that will best help them meet their plan goals.
- The participant's support providers may or may not be registered with the NDIS.
- The participant can negotiate the price they pay for a support.
- The participant does not need a service booking for their self-managed supports as they pay their providers directly.

Plan-management:

- The NDIA pays the participant's plan manager, who will pay their providers on the participant's behalf.
- The participant's plan manager must be registered with the NDIS.
- The participant's support providers may or may not be registered with the NDIS.
- The plan manager cannot pay more than the NDIA set price limit for specific supports.

NDIA-managed funding:

- The NDIA pays the participant's providers on the participant's behalf.
- The NDIA can only pay providers that are registered with the NDIS and cannot pay more than the NDIA set price limits.

Note: Chapter 2, Part 2, Division 3 of the NDIS Act and Plan Management Rules provide for matters and risks to be assessed in deciding whether a participant may self-manage. These considerations go to whether self-managing their plan would present an unreasonable risk to the participant.

- 7.5. Over time, there has been a clear trend towards more participants using plan-management and self-management options. Between 30 September 2018 and 30 September 2019, the number of participants choosing to:
- fully self-manage their supports increased from 13 to 17 per cent;
 - partly self-manage increased from 10 to 12 per cent;
 - use the support of a plan manager increased from 21 to 32 per cent; and
 - have the NDIA manage the funding in their plan decreased from 56 per cent to 39 per cent²⁷.
- 7.6. The NDIA currently assigns the funding for participants reasonable and necessary supports into one of three budgets:
- Core budget - funded supports that help the participant with everyday activities;
 - Capacity building budget - funded supports that help the participant to build their independence and skills to reach their long term goals; and
 - Capital budget - funded supports for higher cost pieces of Assistive Technology (aids, equipment and vehicle modifications) and Home Modifications.
- 7.7. Within these three separate budgets, a participant's funding is further broken down into a number of sub-categories (see Box 5). While participants have flexibility to spend their funds freely across each sub-category within the same budget, participants currently have limited flexibility to move funds across the budget categories.
- the core supports budget is the most flexible and participants can use their funding across all the sub-categories, other than the transport subcategory.
 - funding in the capacity building support budget can only be spent for services and supports within the sub-categories in which the funding is allocated.
 - funding in the capital supports budget cannot be used to pay for any other supports or services as it is allocated for a specific purpose.
- 7.8. Importantly, the current practice of segregating plan funding into core, capital and capacity building budgets is overlaid through NDIA policy and the business systems. There is no documented legislative rationale for the three budget categories, or that they necessarily translate to restrictions in purchasing NDIS supports.

²⁷ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.78; NDIA Quarterly Report to DRC for the period ending 30 September 2018, p.52.

Box 5: Current budget construction of participant plans

Core Supports	Capacity Building Supports	Capital Supports
<ol style="list-style-type: none"> 1. Assistance with Daily Life 2. Consumables 3. Assistance with Social and Community Participation 4. Transport 	<ol style="list-style-type: none"> 1. Support Coordination 2. Improved Living Arrangements 3. Increased Social and Community Participation 4. Finding and Keeping a Job 5. Improved Relationships 6. Improved Health and Wellbeing 7. Improved Learning 8. Improved Life Choices 9. Improved Daily Living 	<ol style="list-style-type: none"> 1. Assistive Technology 2. Home Modifications

- 7.9. Depending on the participant's situation, there is a range of people who can help them implement their plan and assist them to start receiving supports. For example, the participant can start by themselves if they are self-managing or already have a good idea about the supports they need and which service providers they would like to use. Alternatively, the participant can receive funded support coordination in their plan or receive support from their local LAC or ECEI Partner who will assist them to:
- a. understand their plan and the supports and services that can be purchased with their NDIS funding;
 - b. find service providers and enter into service agreements and create service bookings with their chosen providers;
 - c. connect with other informal, community and funded supports in their community; and
 - d. answer any questions if participants have any challenges in using the funded supports in their plan.
- 7.10. The NDIA has published a number of documents to help participants understand and implement their plans, including how they can manage the funding in their plan across the three budget categories. This includes guides to using the portal to create service bookings, understanding how prices for supports in the plan are set, and understanding a participant's responsibilities if they self-manage all or some of their NDIS funded supports.
- 7.11. A number of other fact sheets and tools are also published on the NDIS website to provide guidance on how to ask for help in accessing funded supports, choosing service providers and identifying opportunities to connect with mainstream and community-based services.

Plan support flexibility

- 7.12. Consultation feedback suggests that the way a participant's plan is constructed is restricting participant choice and control and takes away from an emphasis on participant goals and outcomes. Whether there are specific pain points relating to particular budget categories is less clear, but the need for more flexibility, especially being able to move funds between budget categories, was a prominent theme.

"The siloing of funds into categories is maddening. A participant (or their carer/delegate) knows what supports are most optimal."

Carer of NDIS participant, regional South Australia

"The fundamental principle of choice and control is being undermined by poor policies and processes, and inflexible rules that just don't make sense to people. There are too many stories of people running out of funds in one area, having funds remaining in another area, and no capacity to move things around."

Every Australian Counts

"The principles of choice and control are fundamental to the scheme. They are supported to be central pillars, inherent in the very DNA of the scheme. And yet the way participant plans are currently constructed undermines these two core principles."

National Disability and Carer Alliance

- 7.13. The NDIA recently announced a program of work to simplify plan budget arrangements to give participants more flexibility in using their NDIS funding. This will involve collapsing the existing budget categories of core and capacity building into one category from 1 July 2020. The NDIA is also seeking to describe more supports generally, so participants have a greater degree of flexibility over their implementation, and to be clearer in its communication with participants to provide greater transparency around how plan budgets are developed.

- 7.14. The NDIA's work to reform how plan budgets are constructed is welcomed to the extent the participant knows which supports are intended to be funded and the outcomes those supports are intended to achieve. However, consultation feedback suggests many participants already do not know what supports have been funded in their plan or how they can use their funding. Therefore, any move to collapse budget categories, while giving participants more flexibility in implementing their plan, may still create confusion for participants. It may also weaken the NDIA's ability to ensure the funds are spent on the specific purpose they were provided for.
- 7.15. Therefore, in order to ensure participants have a clearer understanding of how their plan budget was constructed, and how their funding should be used, Part 6 of the Plan Management Rules should be amended. This Part currently sets out that some supports in the participant's plan may be described generally, whether by reference to a specified purpose or otherwise, or a support may be specifically identified. For generally described supports, the Plan Management Rules set out that the participant will have a high degree of flexibility over their implementation. For specifically identified supports, the Plan Management Rules set out that those supports must only be purchased or provided in the way described in the participant's plan.
- 7.16. The amendment to the Plan Management Rules would reinforce that, as a first principle, a participant's reasonable and necessary supports should always be described generally, but with sufficient detail included in the plan so a participant understands what outcome was intended to be achieved with that funding. Importantly, a participant's plan should not provide for a lump sum amount with no clarity on what support were funded (or not funded) and why. Such clarity is needed to ensure the participant understands what the NDIS funding was provided for, irrespective of having greater flexibility in how it can be used.
- 7.17. The Plan Management Rules should also prescribe that certain supports (in particular circumstances) will always be described specifically and to provide reasons for this. It would be expected that higher cost capital items, such as assistive technology, home modifications and specialist disability accommodation would always be described specifically.

Recommendation 15: The NDIS Rules are amended to clarify that supports in a participant's plan should be used flexibly, except in limited circumstances, such as capital supports.

Accessing funded supports

- 7.18. Consultation feedback indicates some participants were not provided with information and guidance on how to implement their plan, including how to find service providers in their community and what ‘quality indicators’ they should be looking for in a provider’s service offering. As stated earlier, this experience may be linked to the rapid scale up of participants entering the scheme, with planners seeking to push through plan approvals in response to pressure to meet the transition intake targets (see Chapter 3).

“In the whole eight plans we have never had an implementation meeting or support to implement the plan, no clarification on what the responsibilities of self-management are, what we can spend our money on and what we can’t.”

Family member and carer of NDIS participant, metropolitan South Australia

“At the 12 month mark I had no idea how to use my plan properly and the review was easy compared to my initial planning meeting.”

NDIS participant, metropolitan Queensland

“There is confusion about how the participant can or should implement their approved NDIS plan and access supports, particularly regarding their first plan, or where there is a need for urgent equipment or accommodation. Once an NDIS plan has been approved, the participant often needs assistance to ‘get started’.”

Unpublished submission

“Families reported that once a plan is approved they don’t know what the next step is, how to use the funds or how to find and compare providers, which resulted in underspending and under-utilisation of plans.”

Children and Young People with Disability Australia

- 7.19. Stakeholders also reported that despite the volume of information and guidance available on the NDIS website, their planner did not tell them it was there, they could not find what they needed, or what they could find was not available in a format that was accessible. This is supported by strong survey feedback that suggests participants do not know how to implement their plan, find providers, or create service bookings and agreements (see Figure 6).

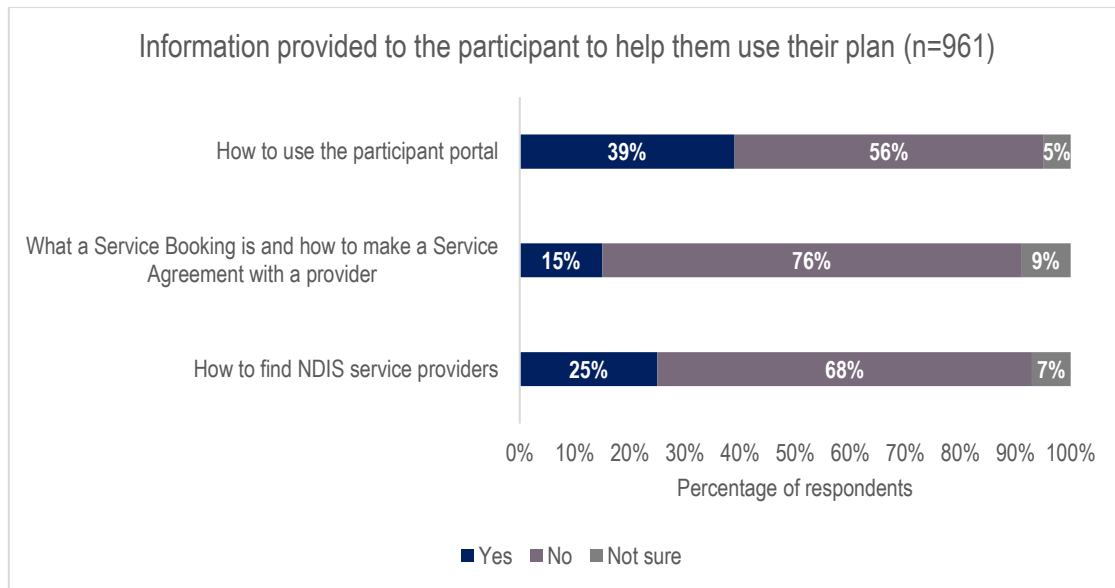


Figure 6: Access to plan implementation information (long-form survey)

- 7.20. If participants are not provided with accessible information to assist them to understand and implement their plan, this result will be underutilisation of their funded supports. Utilisation is the proportion of expenditure (both planned and used) against the total plan budget.
- 7.21. At 30 September 2019, utilisation across all participant plans was 69 per cent. However, when looking over the lifecycle of a participant's NDIS journey, it is evident that utilisation increases the longer the participant stays in the scheme. This suggests that utilisation improves as participants build their confidence in exercising choice and control (see Figure 7).

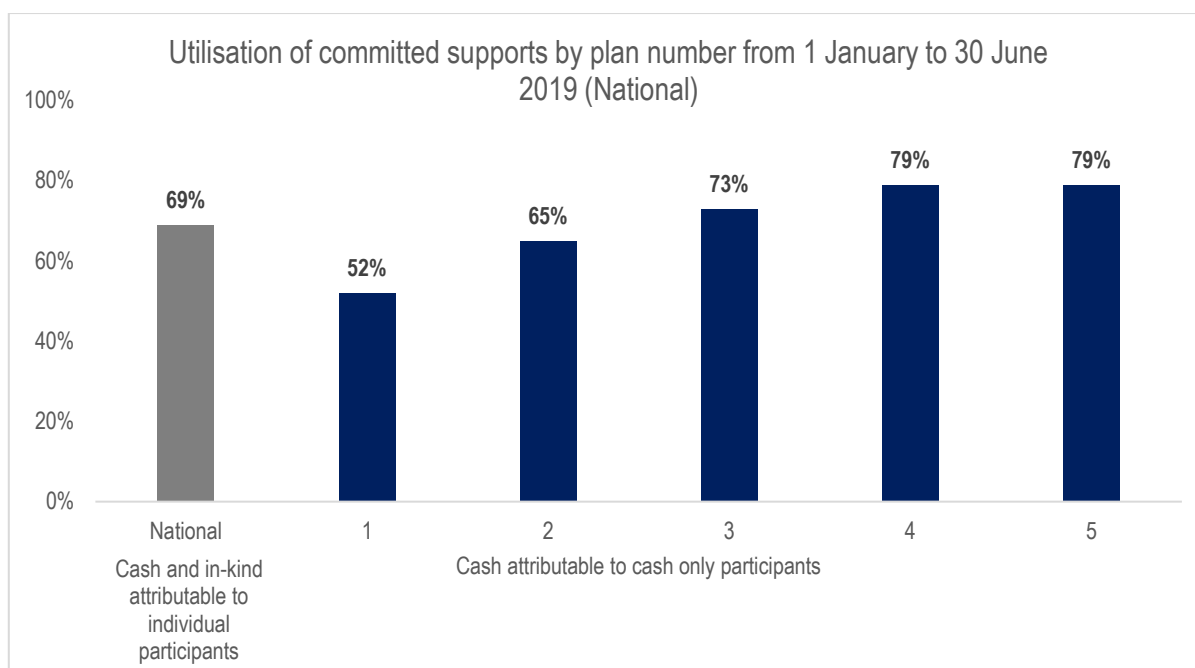


Figure 7: Utilisation of committed supports²⁸

- 7.22. While this data shows that participants become more experienced and confident in understanding, managing and using their plan over time, there remains a need for the NDIA to better support participants to implement their plan and optimise the benefits of their funded supports. This is particularly important when the participant and their family is new to the scheme and disability. Participants should not be disadvantaged in the early years of a plan because they are not properly informed.
- 7.23. However, low utilisation is not necessarily solely indicative of the participant not being provided with information on how they can use the funding in their plan. Other reasons for underutilisation can include the inability to connect with providers, the late activation of plans, thin markets or family, friends and the community providing more informal support than what was expected.
- 7.24. In survey feedback, participants reported the top five reasons they were not likely to spend all the money in their plan were:
- they are still looking for a provider in their area;
 - they want to, but right now it's too hard;
 - their preferred service provider being too busy;
 - the providers in their area don't deliver the supports or services they need; and
 - they need more help from their LAC or Support Coordinator.

²⁸ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.113.

“Thin markets, inflexible supports in NDIS plans, crisis situations or transiency have also contributed to difficulties in accessing supports.”

Unpublished submission

“Sometimes people can’t find services because there just aren’t services to find. Or when they finally do find a service, they are confronted with closed books and long wait lists. People with disability and their families report lack of services in all areas, but particular in rural and remote areas. This scarcity of support is also true for particular population groups in metropolitan areas. Families with a son or daughter with complex needs, for example, frequently report that there are limited services available equipped to deal with the complexity of the participant’s life.”

Every Australian Counts

“Low utilisation may be due to participants and their families having difficulty identifying and negotiating with providers, and providers being unavailable in some geographic areas or for some types of supports.”

Queensland Government

- 7.25. Following the approval of a plan, the NDIS Act does not require the NDIA to assist the participant with implementation. There is merit in requiring planners to offer a plan implementation meeting following the approval of a participant’s plan and this being included as a requirement under the Participant Service Guarantee (see Chapter 10 and Recommendation 25).
- 7.26. This meeting would provide new NDIS participants with a detailed overview on how to use their plan, including how they can spend the funded supports in their plan, how to find NDIS service providers, make service agreements with providers and how to use the participant portal.
- 7.27. Plan implementation meetings could also be offered to existing participants to provide further information on how they can maximise the supports within their plan budget and consider alternative service delivery arrangements if they are not satisfied with the outcomes they are currently getting.

- 7.28. The offer of a plan implementation meeting would align with feedback that participants are finding it overwhelming when they receive their NDIS plan, and they do not understand what their plan means or how they can use it. Despite there being a lot of information on the NDIS website to help people understand and implement their needs, this review considers that sometimes a participant would prefer to talk with someone face-to-face about their individual situation rather than read general information.
- 7.29. Such an approach would build on the NDIA's current plan to roll out joint planning approaches nationally, which includes a follow-up meeting with the participant and their planner that takes place no later than three weeks after the planning meeting (see Chapter 3). It would also support current operational arrangements, where LACs and ECEI Partners are contracted to provide ten hours per participant annually for this purpose.

Support coordination

- 7.30. As at 30 September 2019, 39 per cent of all NDIS participants have funded support coordination in their plans²⁹. This is a capacity building support intended to assist the participant to build the skills they need to understand, implement and use their plan. A support coordinator is responsible for working with the participant to connect with informal, community and funded supports, and increase their capacity to maintain relationships, manage service delivery tasks, live more independently and be included in their community.
- 7.31. Consultation feedback has demonstrated the importance of support coordination as part of the NDIS. Participants without funded support coordination reported they needed more support to understand and implement their plan, including identifying and connecting with providers in their community. In particular, feedback suggests funded support coordination reduces the level of administrative effort required to manage a plan, a task that often places significant burden on participants, their families or their informal networks.

²⁹ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.103.

“We need more support to utilise the plan. We can only do so much organising and vetting organisations. It’s an emotionally draining process and we really do not have the right skills. We feel overburdened and pressured to ensure dad’s plan is utilised fully. We asked for support coordination, but the LAC said we wouldn’t get it.”

Family member and carer of NDIS participant, regional Queensland.

“Support coordination is the only way to help me understand what NDIA means for me and my family.”

Family member and carer of NDIS participant, regional Victoria.

“As a support worker, I believe support coordination and plan management should already be arranged by the NDIA as a requisite service and be in place once access is approved. Clients, support workers, NGOs and government mental health services don’t have the ability, or time, to understand how to coordinate or manage all this.”

Carer of NDIS participant, metropolitan Victoria

- 7.32. The NDIA has advised that participants who have higher and more complex needs are provided with funded support coordination, particularly those who face immediate and significant barriers to plan implementation, such as people with:
- a. severe and multifaceted disabilities requiring multiple supports;
 - b. conditions of a degenerative nature and those with supports requiring active management and ongoing adjustment due to changing needs;
 - c. psychosocial disability;
 - d. the involvement of multiple service systems, such as health, justice, or child protection; and
 - e. those with a history of changing and challenging service provision.
- 7.33. The NDIA has also advised that funded support coordination is not intended to be the principal method to support participants to navigate the market and implement their plan. Rather, this is one of the principal functions of LAC and ECEI Partners.
- 7.34. However, as discussed in Chapter 3, the additional burden on Partners in undertaking planning functions is having a distorting effect, and potentially driving up the demand for funded support coordination. This burden may be addressed, at least in part, through the proposed increased use of functional assessments and its resulting simplification of the planning process (see Chapters 4 and 6).

- 7.35. Nevertheless, the considerations behind funding support coordination as a reasonable and necessary support, warrants more scrutiny and oversight by all governments by amending the NDIS Rules to include principles for NDIS delegates to consider in determining when funded support coordination is reasonable and necessary.
- 7.36. This would not mean that some level of funded support coordination must be included in all participant plans. Rather, it would formalise the factors to be considered when determining what is reasonable and necessary in this context. Further consideration would be required as to what the principles could be, but some potential examples are:
- a. whether the participant is a new entrant to the scheme or has a newly acquired disability;
 - b. the level of complexity of the participant's disability or disabilities and what this means for the range of supports to be managed;
 - c. whether the participant's circumstances mean there are one or more intersections with other service systems to manage (e.g. justice, health, child protection, voluntary out of home care or housing);
 - d. the stability of the participant's living arrangements;
 - e. the participant's location, and any cultural considerations;
 - f. the extent, stability and capacity of a participant's informal support network; and
 - g. the extent of the participant's social and economic participation and engagement.
- 7.37. However, the market for support coordination is not well established (see Chapter 3). Therefore, in funding support coordination, the NDIA should continue to build the depth and capacity of the provider market and implement strategies to ensure that participants' choice and control is not restricted. This is especially important in thin markets or where the support coordinator's organisation offers other NDIS services, which could pose a conflict of interest.
- 7.38. Anecdotal evidence suggests that particular conflicts of interests have arisen when a participant is receiving SIL and support coordination from the same provider. In at least some cases, it appears that support coordinators have only directed participants towards supports provided by their own organisation, meaning they have been held 'captive' and prevented from exercising free choice and control over their other funded supports.

- 7.39. Like any other support, participants receiving support coordination should not be limited to accessing supports offered by their support coordination provider. In all cases, participants should not be forced to choose from a limited service offering. In one case, this review heard that a participant was evicted from their home on the basis that they did not want to have that organisation provide all their other NDIS supports.
- 7.40. In order to maximise participant choice and control and prevent conflicts of interests arising, there may be a case in requiring support coordination to be independent from other service provision. However, this would not be appropriate in all cases, such as circumstances where there is only one provider in a community, or where the participant has specific cultural safety needs.
- 7.41. Importantly, support coordination should not be provided independently of other service provision if it is against the wishes of the participant or if that separation would mean the participant could no longer live in their community. Nevertheless, first principles would suggest that it is reasonable to expect that in most cases the provider of support coordination is not the provider of any other funded supports in a participant's plan.
- 7.42. It should also be noted that support coordination, like any other NDIS support, is subject to the provider registration and practice standards rules enforced by the NDIS Quality and Safeguards Commission, unless the participant is self-managing and using an unregistered support coordination provider. The NDIS Quality and Safeguards Commission's requirements include ensuring participants receive transparent and factual advice about the support options available in their community and that providers have respect for the participant's rights to freedom of expression, self-determination and decision-making.
- 7.43. Legislative amendments should not restrict, in any way, participants from having choice and control over their NDIS supports. On this basis, the legislation should not require support coordination to be independent from other service provision, but rather mitigate the risk of participants being exposed to inappropriate conflicts of interests. This could be achieved by requiring the NDIA to actively assess the risk to participants when supporting them through plan implementation. This would not be limited to participants receiving SIL, but would be of particular importance for this cohort.

- 7.44. In addition, this review notes that the NDIA is currently undertaking a program of work to signal the importance of support coordinators being independent of other service provision. This work is encouraged to the extent it builds market capacity so inappropriate practices can be minimised.
- 7.45. Furthermore, the conflicts of interest associated with providers of SIL also providing support coordination requires stronger mitigation strategies lest the risks undermine the intention of the scheme.

Recommendation 16: The NDIS Rules are amended to:

- a. set out the factors the NDIA will consider in funding support coordination in a participant's plan; and
- b. outline circumstances in which it is not appropriate for the providers of support coordination to be the provider of any other funded supports in a participant's plan, to protect participants from provider's conflicts of interest.

Alternative commissioning

- 7.46. The intent of the NDIS is that participants will be assisted to purchase the supports they need from an open market. For this to work effectively, there is an assumption that the provider market will increase supply of high-demand services and respond to participant demands for high quality services that meet their needs. When these adjustments cannot or do not occur, or occur too slowly, the market is not able to respond in a timely manner to participant needs.
- 7.47. Participants' ability to exercise full choice and control over their NDIS supports, including who they receive their supports from, is a key tenet of the NDIS. However, some participants are not able to purchase the supports they need through individually approaching the market. This occurs for a range of reasons, including:
- a. gaps between the supply and demand of services or 'thin markets';
 - b. difficulties in serving a participant's complex needs;
 - c. location factors (e.g. lack of providers in rural and remote communities);
 - d. regulatory constraints of certain settings; and
 - e. where the scale and efficiencies of existing service delivery arrangements, as administered by governments, may not be able to be replicated on an individualised funding basis under the NDIS.

“The key issues with the NDIS in my experience is that regional areas are poorly serviced by a market-based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service.”

NDIS participant, regional New South Wales

“The NDIA needs to ensure that officers and planners are available for participants in remote areas or with accessibility needs.”

Unpublished submission

“Participants have stated that one of the biggest challenges with utilising the supports in their plan, depending on where they are located, is finding a service provider in their local area.”

Stroke Foundation

- 7.48. This review understands that the Australian Government is taking action to remedy thin (under-supplied) market issues that are preventing participants from exercising full choice and control over their NDIS supports. The Department of Social Services and the NDIA have jointly commissioned the NDIS Thin Markets Project to develop strategies to address market supply gaps, with extensive national consultation for the project concluding in August 2019.
- 7.49. This review understands the outputs of the Thin Markets Project will include a framework for addressing thin market challenges, including for rural and remote areas, and a roadmap for developing and delivering practical applications of the framework, to be developed in collaboration with DRC in 2020.
- 7.50. However, it may be a while before the benefits of this work can be realised. In addition, rigid adherence to individualisation can have a negative effect, particularly when it is clear that some participants cannot access the supports they need, even when a robust market has been established. To this end, the NDIA does not have a clear legislated power to intervene to ensure that a participant does not go without vital supports.
- 7.51. The Plan Management Rules already provide some limited powers for the NDIA to respond flexibly in cases where a participant cannot access the supports by approaching the market on an individualised basis. This includes enabling the NDIA to enter into funding arrangements with particular providers or entities to deliver the supports in a participant’s plan, if the NDIA is satisfied that the support would be more efficiently and effectively provided by that provider.

- 7.52. However, it appears that exercising this provision relies on the NDIA being satisfied the alternative arrangement represents value-for-money. The NDIS Act and Supports for Participants Rules also do not provide guidance on when it would be appropriate to exercise that power, without diminishing the participant's right to choose who they will receive their supports from.
- 7.53. On this basis, the legislation should be amended to enable the NDIA, in limited circumstances, to enter into alternative funding arrangements in cases where it is clear that the participant cannot access the services identified in their plan.
- 7.54. This is particularly important in regional and remote communities where market supply may be absent or thin and where it is evident that community-led service delivery responses would yield greater social and economic outcomes for the NDIS participant. In these instances, alternative commissioning arrangements could work hand-in-hand with community-based outreach programs to mitigate the risk of market capture by larger providers.
- 7.55. Market intervention could also extend to include for the delivery of NDIS supports in settings where regulatory or other controls prevent the delivery of a free market, for instance within schools.
- 7.56. Providing a defined power for market intervention is intended to enable the NDIA to act quickly to fill service gaps and encourage positive market behavior. Importantly, it is not intended to diminish participant's ability to exercise choice and control over who provides their NDIS supports.

Recommendation 17: The NDIS rules are amended to give the NDIA more defined powers to undertake market intervention on behalf of participants.

Informed choice and control and best practice service provision

- 7.57. Choice and control is a fundamental design principle of the scheme. However, the effective use of NDIS funding can be dependent on information/marketing and the particular service chosen. Notwithstanding the role of support coordination, participants may not know how to determine the quality of a service or be aware of what are evidence-based practice approaches. This can lead participants to feel uncertain when navigating the marketplace and exercising choice and control. In some cases, this review has heard that, upon approving a plan, participants are simply given a list of available providers in particular categories of support.

“Many families don’t know what they can apply for and what resources will assist their child/young person.”

Support worker and carer of NDIS participants, metropolitan Victoria

“I get yes and no answers about what supports we can purchase all day long!”

Family member and carer of NDIS participant, regional New South Wales

“Most clients indicated they felt they did not adequately understand what funded supports were possible under the NDIS, and reported that they had received inadequate, inconsistent or incorrect information from NDIA representatives in this regard.”

Advocacy Tasmania

- 7.58. Under section 118(1)(a)(iv) of the NDIS Act, one of the NDIA’s functions is to promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and inclusion in the community.
- 7.59. In addition, under section 118(1)(c) of the NDIS Act, it is also a function of the NDIA to develop and enhance the disability sector, including by facilitating innovation, research and contemporary best practice in the sector.
- 7.60. As an insurance scheme, the NDIS should seek to promote services that aim to maximise the benefits for each participant and are based on a robust research and evidence. This can be achieved through appropriate education on the kinds of supports that can be most effective and beneficial to achieve goals and aspirations, such that participants can exercise informed choice and control. This issue is also discussed in this report in relation to the benefits of early intervention (see Chapter 6).
- 7.61. This kind of education enhances the participant experience and provides appropriate protections against providers seeking to deliver supports with questionable benefits or which may expose a participant to harm, notwithstanding the provider may have met the quality assurance process and registration requirements of the NDIS Quality and Safeguards Commission.
- 7.62. The NDIA should take a more active role in supporting positive participant experiences by working with researchers and experts in the provision of disability support to develop a repository that contains accessible information and advice on the kinds of supports that are supported by evidence to achieve positive outcomes for participants.

- 7.63. This repository, while not necessarily needing to be hosted by the NDIA, would work to direct the participant to these kinds of evidence-based supports. It should not, however, be designed to limit the development of new kinds of supports. Therefore, it must be dynamic and responsive to the evolution of research and development and should not stifle innovation.
- 7.64. Building market capacity is critical for participants to draw the benefits from their NDIS funding. The ability to exercise informed choice first relies on there being a sufficiently robust market offering that is responsive to participant needs and preferences. To this extent, this review acknowledges the work currently underway by governments to strengthen and build market responsiveness, including through initiatives such as the Commonwealth Boosting the Local Care Workforce Program and new work in developing an NDIS Capability Framework that sets out the behaviors and core capabilities to be demonstrated by providers and workers when delivering services.
- 7.65. This review also acknowledges work currently being undertaken to develop a new e-Marketplace to help link participants with providers and offering the market/sector information about unmet demand, which will help encourage a greater diversity of services. Momentum on these initiatives should be continued as they are vital to ensuring that participants receive the benefits of what the NDIS can offer.

Recommendation 18: The NDIA works with governments, researchers and experts in the provision of disability support to establish an accessible source of publicly available information about evidence-based best practice approaches, to assist participants in exercising informed choice and control.

Choice of plan management

- 7.66. All NDIS participants are able to choose their providers of supports. Some participants may ask someone else to do it for them (a plan nominee), decide to manage the supports in their plan themselves (self-manage), or use a registered plan manager. In other cases, the NDIA and the participant may agree that the NDIA will be responsible for purchasing and managing the supports in their plan.

- 7.67. Participants who choose to have the NDIA manage their plan for them have the protection of only being able to use registered service providers. The registration process administered by the NDIS Quality and Safeguards Commission includes an assessment of the suitability of a provider and its key personnel to provide NDIS services. It also involves the use of third party auditors in some cases to independently assess the claims made by providers about their capacity to deliver quality NDIS supports and services. Registered NDIS providers are required to ensure that workers with more than incidental contact with a person with disability undergo worker screening.
- 7.68. Registered NDIS providers are subject to mandatory incident reporting requirements and must implement additional policies, procedures and practices that assist in identifying and minimising risk of harm to people with disability. This includes promoting positive organisational cultures that do not tolerate abuse, neglect or exploitation; ensuring quality recruitment, selection and screening; and maintaining a focus on education and training.
- 7.69. On the other hand, self-managing participants or those who use a plan manager can choose to receive their supports from anyone they wish, whether or not they are a registered. The only exception is supports which are subject to mandatory registration under section 73B of the NDIS Act – that is specialised disability accommodation, specialist behaviour support services and supports involving the use of a regulated restrictive practice.
- 7.70. The NDIS Act and Plan Management Rules provides that a risk assessment must be undertaken in deciding whether a participant may self-manage. However, the legislation does not apply any such limitations or risk assessment for plan-management. The rationale for this may in part be that under section 42 of the NDIS Act plan managers must be registered NDIS providers and meet the quality and standards set by the NDIS Quality and Safeguards Commission.
- 7.71. The review has heard feedback that there are potential risks for participants engaging unregistered providers through plan management without the same risk assessment that is currently required for self-managing participants. These concerns were raised on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers.

- 7.72. There are a number of key benefits to plan management in improving participant outcomes. This includes plan management services enabling choice and control, capacity building, self-direction and quality outcomes. For example, plan management services assist participants and the NDIS by:
- a. offering the participant increased control over plan implementation and utilisation through additional financial guidance;
 - b. managing and monitoring funded support budgets over a participant's plan duration, including prompt notification to relevant parties about over-utilisation, underutilisation or potential misuse of funds;
 - c. managing payment requests to the NDIA and dispersing payments to providers for delivered services;
 - d. maintaining records and producing regular statements showing the balance of plan managed supports in the plan to assist participants in planning for ongoing or future supports and to prevent the over-utilisation or misuse of NDIS funds;
 - e. enabling access to a wider range of service providers, including non-registered providers while ensuring payments remain in line with the limits in the price guide;
 - f. providing advice on processes for engaging non-registered providers; and
 - g. maximising plan utilisation in working towards achieving the participant's goals and outcomes.
- 7.73. Plan management offers the same level of choice and access to unregistered providers as self-management and it is the role of support coordinators and not plan managers to assist participants in choosing and connecting with providers. For these reasons, it is unclear why plan management is an option in its own right rather than a variation of self-management.
- 7.74. The NDIA has a responsibility to protect participants who are using plan management options, particularly those with limited decision-making capacity, from procuring unregulated/risky supports and to ensure they have the capacity to make informed decisions about the supports or services that would most appropriately meet their needs.
- 7.75. On this basis, plan management should be abridged as a form of self-management. This would require a request for plan management to be subject to the same safeguards and risk assessment as self-managing participants, as set out in section 44 of the NDIS Act. It would also have the potential to simplify and provide clarity to providers and the market that any agreement/commercial arrangement is with the participant and not the plan manager.

- 7.76. However, while additional protections are required, this should not result in an overall reduction in the proportion of participants being able to self-manage their plans. Therefore, the NDIA should undertake additional actions to support participants to choose self-management as their preferred plan management option.

Recommendation 19: The NDIS Act is amended so a participant who requests to 'plan-manage' their NDIS funding be subject to the same considerations that apply when a participant seeks to 'self-manage'.

CHAPTER 8 – REVIEWING AND AMENDING A PLAN

KEY FINDINGS

- ✓ A robust, transparent and accountable review mechanism provides an essential safety net for participants. There are a number of areas where the NDIA should improve its administration of reviews to deliver a better experience for participants.
- ✓ The legislative requirements for varying and reviewing plans are overly prescriptive, creating additional complexity and stress and anxiety for participants. This has the flow on effect of preventing providers from responding swiftly when a participant's circumstances change.
- ✓ Additional guidance should be provided outlining the factors that will be considered by the NDIA when undertaking or initiating unscheduled reviews of a participant's plan.
- ✓ Plans should be able to be amended without requiring a full plan review in certain appropriate circumstances, where it is clear that the support to be added or the change to be made is reasonable and necessary. This ability would be particularly relevant for participants who require Assistive Technology or Home Modifications.

- 8.1. Division 4 of Chapter 3 of the NDIS Act sets out that a participant's plan cannot be varied or amended once it has been approved by the NDIA. It can only be changed or replaced in two circumstances:
- a. when the participant changes their statement of goals and aspirations – in this instance, a new plan is created comprising the new statement of goals and aspirations and the statement of participant supports in the existing plan; or
 - b. when it is replaced by a new plan, resulting from:
 - i. the participant requesting an unscheduled plan review (under section 48(2));
 - ii. the NDIA initiating an unscheduled plan review (under section 48(4));
or
 - iii. as part of a scheduled plan review – in which the NDIA must conduct a review of the plan by the date and under the circumstances specified in the plan (under section 48(5)).

- 8.2. As the NDIS continues to mature, a greater proportion of the NDIA's workload will move towards supporting participants to review their plan, ensuring their funded supports are working and helping them to work towards and achieve their goals and aspirations.
- 8.3. This review centred its analysis of Division 4 on options to streamline the barriers currently in the NDIS Act that are contributing to participants requesting unscheduled reviews of their plans. This review also considered opportunities to streamline the process for making changes to plans without requiring a full review of the participant's plan, such as adding new supports following the receipt of a quote, and the efforts required to improve the timeliness of the NDIA's approach and its communication with participants. Without significant efforts in these areas, there remains a risk that participants' right to review will be undermined and the review process will continue to be a driver of substantial numbers of complaints.

Unscheduled and scheduled reviews

- 8.4. The NDIA's handling of plan reviews has been a consistent theme in consultation feedback. It is evident that rushed planning decisions, or where the planner has not provided reasons for why certain supports have or have not been included in plans, has led many participants to request unscheduled reviews of their plan.

"I requested full self-management and they incorrectly made core funding agency managed. I had to submit a review request which was never addressed or rectified."

Carer of NDIS participant, metropolitan Victoria

"At the planning meeting for my first plan, it was agreed that support coordination would be included in my plan - but when the plan was issued later that day, no support coordination was included. I spent the next 7 months trying to get a review to have support coordination included."

NDIS participant, metropolitan Western Australia

"A mistake was made at planning where paperwork was lost by the planner so the plan was approved without funding for transport and home modifications for a participant with cerebral palsy. The participant is still waiting for a review 10 months later."

Carer of NDIS participant, regional New South Wales

- 8.5. Consultation feedback indicates participants have three major concerns with the NDIA's administration of plan reviews:
 - a. the NDIA did not acknowledge their requests for an unscheduled review;
 - b. they were not kept informed about the status or progress of the review; and
 - c. the review process took too long, delaying access to much needed supports.
- 8.6. The NDIA has acknowledged the bilateral targets for access requests, plan approvals and scheduled plan reviews were often prioritised over unscheduled planned reviews, and the demand for these exceeded what had been anticipated.
- 8.7. Following the Commonwealth Ombudsman's 2018 review into the NDIA's administration of reviews, the NDIA has implemented a number of initiatives to assist in improving the handling of reviews. This included establishing a dedicated National Review Team in March 2019 to capture and manage all unscheduled plan review requests.
- 8.8. The NDIA has provided data indicating that from 4 March 2019 to date, the National Review Team has received more than 40,000 plan review requests and addressed 90 per cent of these requests. This review understands the team is on track to manage outstanding pre-April 2019 review requests by the end of December 2019.
- 8.9. This review also understands the National Review Team is receiving, on average, 1,000 participant initiated unscheduled plan review requests per week, and has allocated increased resourcing to ensure participants requests are responded to in a timely manner and that all requests are managed efficiently.
- 8.10. As a result of some of these initiatives, the rate of unscheduled reviews as a proportion of participants is steadily decreasing, from 24.3 per cent at 30 September 2017 to 16.1 per cent at 30 September 2019³⁰. As the number of participants entering the scheme increases, the ability to amend a plan and providing more clarity around when an unscheduled review should be conducted may go some way to decreasing the rate of unscheduled reviews being lodged.
- 8.11. Furthermore, providing more transparency around planning decisions, giving participants more support to implement their plans and providing more flexibility over their plan budget will help build on the NDIA's current initiatives to improve the administration of reviews (see Chapters 3 and 7).

³⁰ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.36.

Timeframes for decision-making

- 8.12. Under section 48(3) of the NDIS Act, if the NDIA agrees to a participant's request to conduct an unscheduled review of their plan, the NDIA must commence facilitating the review within 14 days after so deciding, and must complete the review 'as soon as reasonably practicable'. Regarding scheduled plan reviews, section 48(5) of the NDIS Act states out it must be conducted before the date specified in the plan; it does not impose a timeframe for when the review should commence or when it should be completed.
- 8.13. Consultation feedback indicates both scheduled and unscheduled plan reviews are not being completed in a timely manner. Over 40 per cent of participants responding to this question in the long form survey indicated it took more than three months for the NDIA to complete the unscheduled plan review. When asked what timeframe would be appropriate, if a timeframe for this were to be included in the Participant Service Guarantee, 88 per cent indicated it should within one month following a positive access decision (see Figure 8).

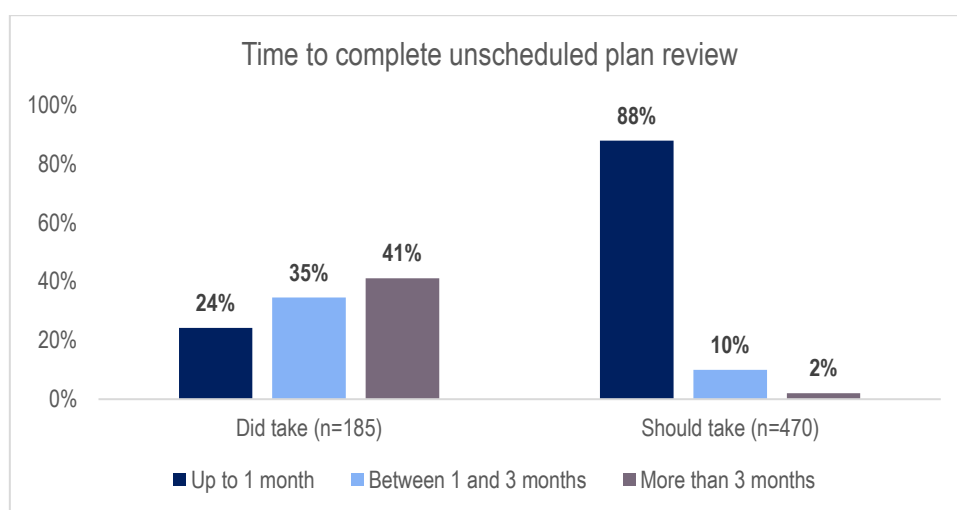


Figure 8: Timeframes for unscheduled reviews (long-form survey)

- 8.14. In some cases, participants reported that the delay in completing the review resulted in material impacts on their health and wellbeing and the impact of their disability worsened as a result of a significant change in circumstances. It is evident that the NDIA's review process has not always been able to respond within appropriate timeframes.

“I had to apply for a review because the intensive capacity funding application was “overlooked” by someone at the NDIA. Whenever I called, no one could tell me what was happening with the application and why it was overlooked. I had to go through the whole review application process and had to pay for more reports. Sadly, she has now regressed as we await the decision.”

Carer of NDIS participant, regional Victoria

“The whole plan was done incorrectly and not suitable for my daughter’s needs. Wasted a whole year complaining and waiting for a review. While my daughter received no transport funding and no support.”

Carer of NDIS participant, metropolitan Victoria

“An existing participant who suddenly found themselves homeless was supported to lodge a change of circumstances review with a request for a new NDIS plan based on completely new goals; but was kept waiting for five months before a planning meeting was scheduled.”

Disability Justice Australia

- 8.15. In keeping with the right of participants to exercise their rights to seek an unscheduled review of their plan, the Participant Service Guarantee should provide assurance that an unscheduled plan review will be completed in a timely manner following the NDIA agreeing to conduct it (see Chapter 10 and Recommendation 25).
- 8.16. As the NDIS Act does not currently prescribe a timeframe for the commencement and completion of scheduled plan reviews, the Participant Service Guarantee should also provide participants with more certainty around when a scheduled plan review will commence and how long it will take to complete.

“The NDIS planner needs to consider all reports/information given to them. I believe that very important and relevant information was overlooked when they did my son’s plan review a few months ago. Then they approved the new plan within a couple of weeks, even though his previous plan was not due to expire for a couple of months! This NDIS plan was obviously just ‘rushed through’.”

Family member and carer of NDIS participant, regional Queensland

“The plan review meetings were much quicker than the initial planning meeting. In the plan reviews, the planners seemed to rush the plans through and approve it in a couple of weeks. They did not consider all the relevant information provided, including some very important verbal information and documents/reports.”

Family member and carer of NDIS participant, regional Queensland

“Review one was very rushed and not at a time when my son’s father could attend. Review two was chaotic.”

Family member and carer of NDIS participant, metropolitan New South Wales

Guidance for decision makers – unscheduled reviews

- 8.17. Consultation feedback indicates that people with disability do not understand how section 48(2) of the NDIS Act operates, including the circumstances in which they should request an unscheduled review of their plan and the things the NDIA will consider when deciding whether to conduct it. The same confusion applies to knowing when the NDIA might decide to initiate a review of their plan under section 48(5).

“There is limited information about what constitutes a change of circumstance for the purposes of an NDIS plan review, the process of this review, the time it will take, the communication during the review, and the evidence required.”

Unpublished submission

“Applicants may experience challenges in the internal review process due to the limited knowledge and understanding of the review procedure and their legal rights. There is also often a lack of understanding regarding the reasons for the original decision and the corresponding gaps in support evidence.”

Advocacy for Inclusion

“Participants sometimes experience reviews with little to no knowledge of the process that is occurring. People with psychosocial disability, or from Aboriginal and/or Torres Strait Islander communities, from CALD communities, or those with poor literacy skills are particularly vulnerable. They can be ill-prepared to participate.”

Carers Victoria

- 8.18. The factors the NDIA will consider in determining whether or not to conduct or initiate an unscheduled plan review should be set out in the legislation. The NDIA’s Operational Guidelines already outlines some factors that could be elevated into a NDIS Rule for this purpose.
- 8.19. The factors to be considered by the NDIA when determining to conduct a review would include whether the participant:
- a. changed their statement of goals and aspirations;
 - b. had a significant change in circumstances;
 - c. experienced deterioration or improvement in functional capacity;
 - d. has a degenerative condition and experienced any change to their condition;
- or
- e. has had a period of early intervention supports.
- 8.20. The inclusion of these considerations in the legislation would provide participants and NDIA delegates with greater clarity on the circumstances in which the NDIA would ordinarily agree to conduct or initiate a plan review, enabling planners and delegates to make faster decisions.

- 8.21. It would also assist in driving down the number of unscheduled reviews when considered alongside proposed new powers to amend a plan in certain (limited) circumstances (see paragraphs 8.26 to 8.36 and Recommendation 21) to and providing participants with more flexibility in how they spend their NDIS funding (see Chapter 7 and Recommendation 15).

Recommendation 20: The NDIS Act is amended to introduce a new Category D rule-making power that sets out the matters the NDIA must consider when deciding whether to undertake an unscheduled plan review.

Deemed decision-making

- 8.22. Under section 48(2) of the NDIS Act, if a participant requests an unscheduled review of their plan, the NDIA must decide within 14 days of the request whether or not to conduct it. If the NDIA does not make the decision within 14 days, the NDIA is taken to have decided not to conduct the review and the matter automatically progresses to an internal (merits) review process. The merits review process is further discussed in Chapter 9.
- 8.23. Consultation feedback indicates this deeming provision disadvantages the participant and does not incentivise the right behaviour of NDIA planners and delegates. This review heard that many participants have been forced to undergo an internal (merits) review of the deemed decision, instead of focusing on the material issue in question: that is, whether or not the NDIA should have decided to review the plan and the appropriateness of the supports in it.

“Both the NDIA and Community Partners have an internal policy to escalate s48 review [unscheduled review] to a s100 review [internal review] where a decision has not been made on the initial review for a three week period. This action denies the participant a step in the review process and fast forwarding their application to the last ‘port of call’ before an Administrative Appeals Tribunal application.”

Darwin Community Legal Service

- 8.24. First principles would suggest a participant should not be penalised for the NDIA failing to decide within the prescribed timeframe whether or not to do something. The participant has no control over the action or inaction of the NDIA delegate making the decision.

- 8.25. In keeping with the participant-centred approach of the Participant Service Guarantee and to improve the participant experience of the administration of plan reviews, the deeming provision should be inverted. As a result, if the NDIA does not make the decision to conduct the unscheduled review within the stated period, this review recommends it is deemed they have decided to conduct it (see Chapter 10).

Amending a plan

- 8.26. As set out earlier, a participant's plan cannot be varied unless a new plan is created under Division 4 of the NDIS Act. In short, this means to make any change to the plan – including making the most minor administrative change to a plan (such as fixing a typographical error or updating the participant's contact details) – requires the participant to undergo a full plan review. Understandably, this has caused significant frustrations for participants.

“We had to go through the plan review process because of errors made by the NDIS in relation to the miscalculation of money amounts. NDIS basic mistakes should be easy to correct instead of my daughter being dragged through the plan review process.”

Carer of NDIS Participant, Regional Victoria

“The second time [requested a plan review] was due to many errors in my plan, including incorrect goals, incorrect information and insufficient funding for transport.”

Carer of NDIS participant, remote Victoria

“Even minor amendments [to a plan] currently trigger the development of a whole new plan and can leave people without essential supports or having changes made to a plan that worsen their situation.”

Physical Disability Council of NSW

- 8.27. Consultation feedback indicates that participants feel this process might mean that all their plan supports could be reassessed and reduced, rather than the review being limited to the matter in contention. For this reason, a significant number of participants indicated that they, despite needing additional or new supports, are choosing not to request unscheduled reviews of their plan. Although, it should be noted the legislation currently requires the NDIA to be satisfied all supports in the plan are reasonable and necessary, regardless of the reason the review was initiated or the type of change the participant asked for.

“I have heard early reviews can take ages and there’s no point as you can lose funding and it will take 12 months to happen. This is why I haven’t done one. Also the stress of it all is too much.”

Carer of NDIS participant, metropolitan South Australia

“We were told that we couldn’t ask for a review as the plan had only just been given. We had to cut our therapy by 30 per cent. I again asked for a review and we were threatened that money could be removed from the plan and not to proceed.”

Carer of NDIS participant, metropolitan Western Australia

“The review process takes so long that it seems not worthwhile and the fact that when participants have sought a review the entire plan gets reviewed and not just the issues of concern. [The review] has been used to reduce money in other sections of the plan and in some cases people have been kicked off the scheme.”

NDIS Participant, Metropolitan South Australia

- 8.28. The NDIA has acknowledged this issue and been implementing a ‘light touch’ plan review process in circumstances where only minor amendments need to be made to the participant’s plan. This has been used in circumstances such as:
- to implement the result of an internal (merits) review decision;
 - where the participant requested to change their plan management type;
 - to make administrative changes to a plan or correct data entry errors; and
 - to add new supports following receipt of a quote.
- 8.29. The light touch process involves the planner and the delegate having a conversation with the participant, their plan nominee or child’s representative, to inform them of the light touch plan review process, ensuring they agree to undertake this kind of plan review and they understand the changes that will be made to their plan.
- 8.30. The NDIA has not been implementing a light touch process where there is evidence of a significant change in the participants circumstances, or where:
- the participant is seeking additional funding to support a new goal;
 - there are insufficient funds in the plan that can be used flexibly; or
 - there is insufficient supporting evidence.
- In these instances, a full plan review is conducted.

- 8.31. While the light touch process has enabled the NDIA to reduce the time that some participants are waiting to have certain changes made to their plan, the process is still burdensome for the participant and the NDIA. This is because the decision to approve the plan requires a formal delegate decision of the whole plan and, as a new plan is created as a result, the participant needs to re-establish service bookings with their providers.
- 8.32. Current plan review arrangements are also particularly burdensome for participants requiring Assistive Technology and Home Modifications, where simply adding funding to the plan for the capital item after the receipt of a quote is forcing a full plan review. In some cases, consultation feedback suggested that a participant may wait up to 18 months to receive their Assistive Technology supports, considering the time it takes for the initial planning conversation, obtaining the quote, making the request for the plan review, having it accepted, and then having the plan review completed and the funding added to the plan.

“A participant has been waiting for approval for an AFO prosthesis for 18 months during which time they could not independently access their local pool to complete their funded hydrotherapy program.”

Disability Justice Australia

“The process for approving equipment and home modifications is complex and confusing, and very often lengthy. People are waiting months, even years, for vital equipment and even longer for home modifications. Often the process takes so long that quotes ‘expire’ and the process must start again.”

National Disability and Carer Alliance

- 8.33. Access to supports already determined as reasonable and necessary should not be delayed unnecessarily. On this basis, a plan should be able to be amended, without requiring a plan review or automatically creating a new plan, in certain limited circumstances. A plan amendment would be suitable in cases where the NDIA is satisfied that the change to be made, or the new support to be added, could be considered in isolation from the other supports in the plan. These circumstances would be:
- a. if a participant changes their statement of goals and aspirations;
 - b. if a participant requires crisis/emergency funding as a result of a significant change to their support needs and the CEO is satisfied that the support is reasonable and necessary;
 - c. if a participant has obtained information, such as assessments and quotes, requested by the NDIA to make a decision on a particular support, and upon receipt of the information the NDIA is satisfied that the funding of the support is reasonable and necessary (for example, for Assistive Technology and Home Modifications);
 - d. if the plan contains a drafting error (e.g. a typographical error);
 - e. if, after the completion of appropriate risk assessments, plan management type is changed;
 - f. for the purposes of applying or adjusting a compensation reduction amount;
 - g. to add reasonable and necessary supports if the relevant statement of participant supports is under review by the AAT;
 - h. upon reconciliation of an appeal made to the AAT; and
 - i. to implement an AAT decision that was not appealed by the parties.
- 8.34. Importantly, giving the NDIA the ability to amend a plan would allow quick adjustments to be made to plans, reserving the formal review process for participants who have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal.
- 8.35. Plan amendment powers would provide participants with timely access to supports, providers with faster access to funding and reduce administrative burden on the NDIA, allowing more resources to be dedicated to supporting quality planning and plan implementation processes. It would also mean service bookings did not need to be recreated, given current IT solutions.

- 8.36. The action to amend a plan should not be considered a reviewable decision. Rather, the reviewable decision would be the matter for which the plan was amended – that is, the plan will be ‘taken to be amended’ following the original decision. This review notes, however, that not all matters listed above are currently reviewable decisions, and therefore amendment to the NDIS Act will be required to ensure all matters a plan can be amended for are reviewable decisions under section 99 of the NDIS Act and for the purposes of section 100 of the NDIS Act.

Recommendation 21: The NDIS Act is amended to introduce a new Category D rule-making power giving the NDIA the ability to amend a plan in appropriate circumstances.

Plan review gaps and service bookings

- 8.37. Once a participant has an approved plan, they can create service bookings in the NDIS portal. Service bookings are used to set aside funding for an NDIS registered provider for a support or service they will deliver in accordance with the participant’s plan. Generally, a service booking will show the type of support to be provided, when it will be provided and the length of time for which it is needed.
- 8.38. Many participants create their service bookings in advance and both participants and providers expressed frustration that when a new plan is approved, all the participant’s current service bookings end and new service bookings must be put in place.

“Every time a change is made means a whole new plan with service agreements. I realise that families and carers are affected too. We are busy people trying to care for someone and don’t have time to go chasing reports and attending multiple appointments.”

Carer of NDIS participant, regional Victoria

- 8.39. Consultation feedback also suggests that a participant’s access to their NDIS supports stops if the review of their plan was not completed and a new plan created by the date specified in their plan.

“Guardians have reported on numerous occasions that there have been instances where plans reviews have been undertaken due to a change in circumstances, however the NDIA has not approved the plan in a timely way, and the plan has run out and the support services ceased.”

Unpublished submission

“There are often delays between old plans expiring, the scheduling of a review, and new plans being approved. As a result, service providers may go into debt if they continue providing the NDIS participant with the supports they need. Others will cease providing services, leaving vulnerable NDIS participants without the required supports, which in some cases has led to homelessness.”

ACT Human Rights Commission

“Applicants have reported that the delays in the internal review process can cause the review process to extend past the expiration date of their NDIS plan. This can leave the applicant without an ability to pay for their supports, and ultimately lead to their support services being temporarily suspended. This ultimately goes against the proposed principles of ‘timely’, ‘connected’ and, at best, ‘valued’.”

Advocacy for Inclusion

- 8.40. Both of these issues arise from the way the ICT system is built. There is no legislative reason for why participants should have their access to NDIS supports stalled because of plan review delays, or for providers to need to recreate service bookings once they have been given a new plan.
- 8.41. The NDIA is currently identifying ICT solutions to both issues. In September 2019, the NDIA launched a new process that identifies participants with plan review dates within seven days, and, in certain circumstances, automatically extends the end date of their plan. This will mean that participants will be able to receive supports regardless of a delay in their new plan being approved. It also means providers will continue to be able to claim for supports delivered in accordance with the plan until the new plan is approved.
- 8.42. While this work is helpful and significant, the NDIA should continue to explore more permanent solutions, including the ability for service bookings to carry across subsequent plans.

CHAPTER 9 – REVIEWABLE DECISIONS AND AAT APPEALS

KEY FINDINGS

- ✓ Internal review processes are not working as intended. The lack of clear guidance around when an internal review decision will be made prevents prospective participants and participants from exercising their right of appeal.
- ✓ Clearer and more streamlined pathways are needed to enable prospective participants and participants to resolve concerns about NDIA decision-making and reduce administrative red tape.
- ✓ Clarity needs to be provided as to the matter before the AAT in circumstances where a prospective participant or participant has lodged an appeal, including the nature of the decision in question and all of the surrounding circumstances.

- 9.1. Part 6 of Chapter 4 of the NDIS Act outlines what decisions made by the NDIA are reviewable decisions, and the process of administrative review, including both internal review by the NDIA and external review by the AAT.
- 9.2. While there are many types of decisions subject to internal review, this review centered its analysis on those which involve decisions relating to access and the approval, development or review of a participant's plan. This review also considered the jurisdiction of the AAT in reviewing NDIA decisions, including opportunities to provide clarity on what decision (or what version of the plan) is before the AAT and what should happen to a plan when the scheduled review date occurs during the AAT process.

Triple use of the word 'review'

- 9.3. As outlined earlier, participants can seek two types of review under the NDIS Act: a review of their plan (in accordance with section 48) and an internal review of a reviewable decision (in accordance with section 100). A third type of review is created when the participant appeals an internal review decision to the AAT.

- 9.4. Concerns over the multiple meanings of the word 'review' has been raised by participants, the AAT, NDIA and disability peak organisations on numerous occasions, dating back as far as 2015 when the first review of the NDIS Act was conducted. To date, no amendment has been made to address this source of confusion.
- 9.5. Some stakeholders maintained the twin, if not triple use of the word 'review' is confusing participants, and, in turn, potentially hindering their rights to exercise their right of appeal of an NDIA decision. The NDIS Act should be amended so the word 'review' has only one meaning.

"There have been occasions where a participant has sought an Internal Review (explicitly stated as such) and the Agency has instead commenced a change of circumstances review."

Unpublished submission

"People consistently report they find the review process complicated and confusing. There are too many concepts and processes that sound like each other but actually mean completely different things."

Every Australian Counts

"The confusion resulting from calling all processes a 'review' often results in participants who want an internal review of their statement of supports going through an unscheduled reassessment process."

National Legal Aid

Recommendation 22: The NDIS Act is amended to remove the duplicate use of the word 'review'.

Internal reviews

- 9.6. Section 100(2) of the NDIS Act states that a person may request the NDIA to review a reviewable decision. If the participant chooses to do this, they must make the request within three months after receiving the notice of the reviewable decision. Section 99 of the NDIS Act specifies the reviewable decisions related to access and planning are:
- a. a decision a person does not meet the access criteria (sections 20(a), 21(3) and 26(2)(c));
 - b. a decision to revoke a participant's status as a participant (section 30);
 - c. a decision to approve the statement of participant supports in a participants plan (section 33(2)); and
 - d. a decision not to undertake an unscheduled plan review (section 48(2)).
- 9.7. Under s.100(6) of the NDIS Act, should a person request an internal review of a NDIA decision, the reviewer must *'as soon as practicable'*, make a decision to:
- a. confirm the decision;
 - b. vary the decision; or
 - c. set it aside and replace it with a new one.
- 9.8. Consultation feedback suggests some participants who have asked for this kind of review experienced stress and anxiety during the process, the process was unclear, their concerns were not listened to and they were unhappy with the outcome.

"The review process is a legal maze for people with disability and their families to navigate."

Autism Family Support Association Inc.

"The conduct of scheduled plan reassessments is a cause of stress and anxiety for many of our clients, where NDIS plans can be reduced following a scheduled plan reassessment for a range of reasons outside the participants' control."

National Legal Aid

"The current processes trigger trauma and deepen the divide for people experiencing disadvantage, with participants who are the least resourced being the most likely to fall through the cracks."

Victorian Council of Social Services

- 9.9. Consultation feedback also indicated that people with disability and their carers are concerned about how long internal review processes take and that they did not have visibility of the process.

“The review of a reviewable decision was never looked at for a whole year. Despite numerous phone calls and time wasted was finally contacted by someone and told that it would be closed as [my plan was] now due for scheduled annual review. Also repair quote sent to AT, despite numerous phone calls and escalations never received a reply in 12 months.”

Carer of NDIS participant, metropolitan Victoria

“I am still waiting on a response to my internal review request after nine months and numerous phone calls.”

Carer of NDIS participant, regional New South Wales

“Participants often wait from six to 12 months for a decision regarding an internal review, and in the interim, participants are left in the dark about the status of their request.”

Victorian Council of Social Services

- 9.10. This review understands the NDIA has a range of strategies in place to improve the timeliness of internal reviews, including establishing an Early Resolution Team in August 2019 to expedite requests that can be resolved quickly. This review understands the team is committed to acknowledging requests within 14 days, completing decisions within 90 days and providing the person with disability with a consistent contact person throughout the review.
- 9.11. Data provided by the NDIA indicates the team has been able to settle 16 per cent of internal reviews through a streamlined process, including where the matter is low risk and can be resolved without the need for further information. On average, 35 per cent of requests are currently being completed within 90 days. The NDIA has also indicated that the Early Resolution Team is continuing to build resources and staff capability and is capturing data on the drivers of internal reviews to feedback to the original decision makers so that practices across the NDIA can be improved. The intent of this work is to improve the quality of decision-making and ensure that people with disability understand why and how the decision was originally made.

Timeframes for decision-making

- 9.12. Notwithstanding the NDIA's work to improve the timeliness of internal review decisions, there is currently no way for a person with disability to be certain a decision maker has not made the internal review decision '*as soon as reasonably practicable*', other than to appeal the matter to the AAT.
- 9.13. In order to give participants certainty about when decisions will be made, the Participant Service Guarantee should provide for an internal review to be completed in a set timeframe, with an explicit provision that failure to make the decision in the stated time would give rise to a deemed decision. Participants should have a clear avenue for meaningful review of NDIA decision-making and should not need to appeal a matter to the AAT in order to compel a decision.
- 9.14. This review sought feedback from participants about what would be a reasonable period for the NDIA to finalise an internal review decision. Of those who answered this question in the long-form survey, over 40 per cent of respondents who had a review (n=515) stated between two to four weeks would be a reasonable period. Anecdotal feedback suggested would be appropriate on the basis the NDIA was not considering the substance of the plan or their request, but merely affirming that a previous decision it made was correct based on the facts of the circumstances.
- 9.15. However, the internal review process, as provided by the legislation, is manually intensive and is broader than a simple desktop audit of a decision. Affirming, varying or setting aside the decision requires due consideration of the facts and evidence of the matter. This includes researching information and fresh consideration of the facts, legislation and policy aspects of the original decision.
- 9.16. In practice, the Early Resolution Team is also responsible for speaking to the person who requested the review, other stakeholders as required, and relevant internal teams within the NDIA if the issue(s) requires detailed or technical input before the decision can be made. As such, the Participant Service Guarantee should provide a realistic timeframe for this work to be completed, without rushing the decision and potentially compromising quality participant outcomes.
- 9.17. Prescribing a timeframe for the making of the decision also overcomes issues around AAT jurisdiction. This review acknowledges that the AAT has previously concluded the words '*as soon as reasonably practicable*' constituted a deemed decision under s.25(5) of the *Administrative Appeals Act 1975*. Therefore, if the AAT found that a decision under s.100(6) of the NDIS Act was not made as soon as was reasonably practicable, it would be deemed that the decision had been made.

9.18. The NDIA is seeking to avoid the issue of jurisdiction and deliver timely participant outcomes by making expedited internal review decisions. However without further clarity around what *'as soon as reasonably practicable'* might be, the NDIA and participant will continue to lose the opportunity to address and resolve the substantive issues. Accordingly, the Participant Service Guarantee should provide a clear definition of what this timeframe should be (see Chapter 10 and Recommendation 25).

AAT review

9.19. Under section 103 of the NDIS Act, a participant may make an application for the AAT to review an internal review decision made under section 100(6). The AAT does not have jurisdiction to review a decision that has not been internally reviewed by the NDIA, nor can it review every decision the NDIA makes.

9.20. AAT cases as a proportion of total participants has remained low throughout trial and transition. While the raw number of AAT lodgements has increased, this rate of growth is in large part expected and consistent with the rate of participant transition as the NDIS has rolled out across Australia. It is also relatively low as a percentage of the number of participants in the scheme (see Figure 9³¹).

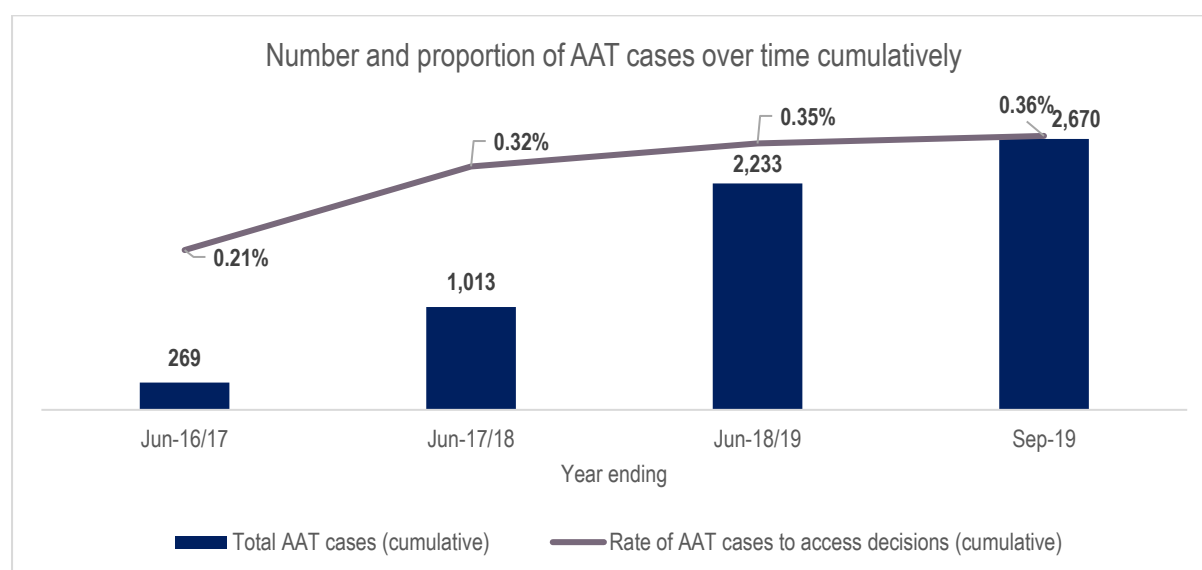


Figure 9: AAT decisions as a proportion of access requests

³¹ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.102.

- 9.21. This review understands that the NDIA takes a conciliatory approach to AAT matters, with the focus on resolving matters at the earliest opportunity or to proceed as quickly as possible to AAT hearing for issues that cannot be resolved. Consistent with this approach over 95 per cent of all matters are resolved without a substantive hearing.
- 9.22. This review also understands that, wherever appropriate, the NDIA offers to enter into partial terms of settlement on matters that have been agreed upon, to ensure the participant can access those supports while the other matters are dealt with in the AAT.
- 9.23. Evidence suggests that a number of issues are being taken to the AAT, in part, because there is some confusion by the participant, and at times the NDIA, as to whether the applicant is seeking a review of the decision to approve their statement of participant supports under section 33(2) or the decision (deemed or otherwise) to not review a participant's plan under section 48(2). As both processes are called 'reviews' and the considerations are largely the same, there can be confusion by all parties as to what is actually being sought.
- 9.24. The AAT has previously commented on the confusion involved in determining these matters (emphasis added):

*In this case, I have set out the steps that the NDIA has taken to illustrate the confusion that would seem to permeate the process of review. To a large extent, **the confusion would seem to arise from the structure of the NDIS Act... To distinguish between decisions regarding the plan and its reassessment and decisions regarding the substance of what it is to which a participant is entitled and which is set out in a statement of participant supports in his or her plan, seems an unnecessary distinction. It is a distinction that leads to cases such as this in which time must be spent to work out what has been decided rather than to work out what it is to which a participant is entitled.***

(LQTF and NDIA [2019] AATA 631)

- 9.25. This review acknowledges that participants simply want a decision about their support needs, not a decision about another decision. The internal review process could be improved through training, clearer forms and a change in terminology – for example, the same form is used to request a section 33(2) review, an unscheduled review under section 48(2) and an internal review of a reviewable decision under section 100 of the NDIS Act. These could be split into separate forms.

- 9.26. To distinguish it from a request for an unscheduled review under section 48(2) of the NDIS Act, consideration could also be given to operational guidelines confirming, in most cases, a request lodged within three months of a plan being approved is a request for a review of a reviewable decision under section 33(2) of the NDIS Act.

Confirming the matter before the AAT

- 9.27. The AAT only has jurisdiction to consider the reviewable decision made at the time of lodgement of the application for appeal. The AAT does not have jurisdiction to consider any subsequent decision that the NDIA may have made in relation to the person with disability, including changes to their plan or requests that may have been made by the person with disability. As a consequence, the AAT's decision can quickly become obsolete if the hearing takes longer than expected.
- 9.28. For example, while the participant is waiting for the AAT decision, they may have a scheduled plan review, which creates a new plan. Alternatively, an internal review decision may be made after the lodgement of the application for appeal. Under these circumstances, the AAT's decision will only take into account the plan at the time the appeal was lodged with the AAT and not any subsequent plan or decision. Understandably, this is creating administrative red tape and frustrations for both participants and the NDIA.
- 9.29. Section 26(1)(b) of the AAT Act allows the AAT, with the trilateral agreement of the participant, the NDIA and the AAT, to alter the application before the AAT. However, exercising this provision relies on the NDIA having the power to alter or vary the decision. This power does not currently exist outside the construct of section 100(6) of the NDIS Act. Furthermore, the NDIA is prevented from varying a plan under section 37(2) of the NDIS Act. As previously discussed, this review proposes removing this provision to allow a plan to be amended under certain limited circumstances (see Chapter 8).
- 9.30. In circumstances where a statement is before the AAT and the scheduled plan review date is imminent, there is merit in allowing the NDIA (where the parties agree, pursuant to s 26(1)(b) of the AAT Act) to vary the plan review date (i.e. by pushing it back until after the AAT has handed down its judgement).
- 9.31. Further, amending a plan with the trilateral agreement of the parties could also be utilised where, for example, the majority of the supports in contention have been agreed or settled between the participant and the NDIA and can be placed into the participant's plan and utilised, while the AAT deals with the remaining supports.

- 9.32. These steps are primarily procedural or jurisdictional but would be expected to reduce the number of unnecessary appeals and ensure that review processes are focused on the participant and facilitated in a way that reduces administrative red tape and frustrations for participants, the NDIA and AAT.

Recommendation 23: The NDIS Act is amended to clarify the AAT's jurisdiction, including the power for a plan to be amended while a matter is before the AAT.

Timeframes for implementing the AAT decision

- 9.33. The timely implementation of an AAT decision is critical for participants as the decision in question may specifically relate to the reasonable and necessary supports in their plan. However, there is no ordinary or legislated timeframe for AAT decisions to be handed down. The time it takes for the AAT to deliver a decision is generally dependent on the complexity of the matter before it. In addition, there is no legislated timeframe for the NDIA to implement the AAT's decision.
- 9.34. The NDIA is deploying significant operational resources to improve the experiences of participants undergoing AAT appeal, including the timely implementation of AAT decisions. NDIA data indicates most AAT decisions are implemented in a participant's plan within one to two weeks of settlement or an AAT decision, unless further information such as a quote is required (e.g. for Assistive Technology).
- 9.35. However, some stakeholders reported there are lengthy and unexplained delays in implementing AAT decisions. On this basis, there is merit in the Participant Service Guarantee providing participants with certainty on a timeframe for the implementation of an AAT decision (see Chapter 10). This will give the participant assurance the NDIA will honour the AAT decision. However, this should be qualified by the fact any person (including the NDIA) who is not satisfied with the AAT decision can appeal it to the Federal Court on a question of law (refer section 44(1) of the AAT Act)³².

³² To date three NDIA cases have been appealed to the Federal Court of Australia: Mulligan v National Disability Insurance Agency [2015], McGarrigle v National Disability Insurance Agency [2017] and SSBV v National Disability Insurance Agency [2018].

Model litigation

- 9.36. A small number of submissions raised concerns that the NDIA had not acted in accordance with its obligations as a model litigant in the conduct of litigation before the AAT. I have not sought to validate these concerns as they relate to the conduct of some individual matters by the NDIA.
- 9.37. This review notes that the NDIA has taken on a significant program of work to improve its handling of litigation following the Commonwealth Ombudsman's 2018 review of the NDIA's administration of reviews under the NDIS Act. This has included establishing a division within the NDIA for the handling of AAT applications and decisions and the Early Resolution Team discussed previously.
- 9.38. The NDIA has advised that since these improvements were implemented, feedback from advocacy organisations, legal aid services and participants has been positive, with the early resolution approach receiving strong support. The NDIA has also provided data indicating the average timeframe for resolution of AAT cases has reduced from 170 days to 74 days, with evidence it is continuing to fall as the NDIA continues to invest more resources in resolution of AAT matters.

CHAPTER 10 – THE NDIS PARTICIPANT SERVICE GUARANTEE

KEY FINDINGS

- ✓ The Guarantee should be legislated through a new NDIS Rule that includes timeframes for decision-making and engagement principles.
- ✓ Commencement of, and reporting against, the timeframes in the Guarantee should be staged over two years to 2021-22 allowing sufficient time for the NDIA workforce to build its capacity and capability to provide a quality service experience for NDIS participants.
- ✓ The Commonwealth Ombudsman's powers to monitor the NDIA's performance against the Guarantee should be explicitly provided for in the NDIS Act.

- 10.1. The Terms of Reference for this review focus on the amendments that would need to be made to the NDIS Act to introduce the Guarantee, including legislating timeframes for decision-making by the NDIA.
- 10.2. In assessing NDIS implementation to date, including the underlying reasons for issues being raised by participants, their families and carers, this review considers that a Guarantee based solely around timeframes for decision-making is likely to result in perverse outcomes for participants and risks compromising the quality of the NDIS participant experience. For example, adherence to timeframes for plan development would be undermined if an approved plan is of poor quality and does not equip the participant as necessary.
- 10.3. For similar reasons, the Guarantee should not assign timeframes for every interaction a prospective participant or participant may have with the NDIA. There is a continuum in the degree of prescription in legislation, too much will take away from the performance and outcomes focus the Guarantee is seeking to achieve.
- 10.4. The Guarantee needs to strike an appropriate balance between the quality of NDIS processes and the speed of those processes. It also needs to take into account that a number of the factors causing issues with the participant experience are either a direct result of the scale and speed of the transition period, or are being addressed through operational reforms currently underway by the NDIA.

Three elements

10.5. The role of the NDIA is to:

- a. support people with disability, their families and carers to participate in the NDIS;
- b. connect people with disability with information and resources, and offer guidance as they plan for, select and use the supports, services and community activities they need in their lives; and
- c. work with people with disability and the people important to them to develop and maximise the benefits of their individual plans to help them achieve their goals and aspirations.

10.6. Accordingly, the Guarantee and the way it is structured and articulated should:

- a. enhance and strengthen the participant-centred focus of the NDIS, and reinforce fundamental design principles such as statements of goals and choice and control;
- b. enable participants to have a clear understanding of what they can expect at various stages of their engagement with the NDIA or its Partner agencies;
- c. support participants to have a clear understanding of what they need to provide to the NDIA and Partner agencies, and give participants appropriate time to seek evidence or provide other information required for access or planning decisions;
- d. build greater understanding of the service delivery expectations between the NDIA, its Partners, participants and the community; and
- e. support other efforts to ensure the effective operation of the NDIS, including that plans meet participant needs and that supports are well utilised.

10.7. The Guarantee should set out how the NDIA will work with people with disability in undertaking these functions. Specifically, this review considers it should have three parts:

- a. set out how the NDIA is to engage with and work alongside people with disability;
- b. the timeframes for the NDIA to make decisions or undertake administrative processes; and
- c. key performance metrics, including targets.

10.8. The Guarantee is intended to cover the full journey of a prospective participant or participant's interactions with the NDIS, including with NDIA staff and its Partner organisations. It is envisaged that the NDIA would use the metrics therein to inform its statements to Partner organisations regarding performance expectations and outcomes.

10.9. The qualitative aspects of the Guarantee focus on principles-based outcomes statements supported by underpinning service standards. This approach is consistent with the structure of the NDIS Practice Standards for registered providers, managed by the NDIS Quality and Safeguards Commission.

Part 1 – NDIA engagement

10.10. As part of consultation activities informing this review, six preliminary principles and associated service standards were described in the *“Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing red tape”* discussion paper.

10.11. Consultation feedback indicated that people with disability and the sector more broadly are supportive of a qualitative aspect to the Guarantee to ensure the NDIA remains accountable for the way in which it engages with and works alongside people with disability in delivering the NDIS.

10.12. Following consultation feedback, the proposed principles and service standards have been refined and consolidated and are set out in Table 1. Their articulation is subject to change according to the usual legislative drafting process.

Table 1: Participant Service Guarantee - Qualitative Indicators

Proposed Engagement Principle	Proposed Service Standard
Transparent	<p>Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, that is easy to understand and available in formats that meet their needs.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • ensure that all information, forms, instructions and guidelines are up to date and readily available in various languages and accessible formats and on the NDIS website; • ensure that direct communication with participants and prospective participants is in their preferred format to enable each participant to understand the information for themselves; and • provide clear, consistent, accurate and accessible guidance on the evidence required to demonstrate eligibility for access decisions, including who is qualified to provide this evidence.
Responsive	<p>Participants and prospective participants are supported and their independence is maximised by addressing their individual needs and circumstances.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • promptly acknowledge the concerns or queries of participants, their families and carers; • intervene early to support the best outcome for participants, provide supports where they have the greatest positive impact and resolve issues as they arise; • utilise planning approaches that respond flexibly to the participant's individual circumstances and needs; • examine their processes and systems regularly to ensure they are fit for purpose as the NDIS evolves and the needs of participants, their families and carers change; • provide an effective single point of contact so that participants, their families and carers only have to tell their story once and are able to build productive relationships with the NDIS. There should be a single point of contact for multiple participants in a family or other strongly connected groups of participants.

Proposed Engagement Principle	Proposed Service Standard
Respectful	<p>Participants and prospective participants are valued, listened to and respected.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • enshrine a participant-centred approach by treating participants, their families and carers with empathy, dignity and respect for their diverse experiences, values and beliefs; • ensure staff have a high level of training in disability, including psychosocial disability and other complex conditions, and understand the impact of disability on people’s lives; • ensure staff have a high level of training in diversity, including Aboriginal and Torres Strait Islander cultures, culturally and linguistically diverse values and practices, LGBTQI+ and gender considerations; • recognise participants’ expertise about their disability and use the recommendations and evidence provided by qualified professionals to assess support needs; and • demonstrate continuous improvement by inviting, considering and incorporating feedback from people with disability and the wider community.
Empowering	<p>Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • actively and appropriately reach out to prospective participants, including those from Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse backgrounds, regional/remote areas and those with psychosocial disabilities to assist them to connect with the NDIS; • assist participants to prepare for their access decisions and planning meetings, and to understand their plans and how to use them, including supporting them to request and receive their approved plan in the format that best suits their needs; • inform participants of their right to bring anyone they choose to help support them through the process;

Proposed Engagement Principle	Proposed Service Standard
	<ul style="list-style-type: none"> • provide participants and prospective participants with a statement of reasons for all NDIA decisions about them (when requested); • provide all participants with a draft plan in advance of final planning discussion; • inform participants and prospective participants about their right to appeal decisions and how to lodge an appeal; and • report on NDIS performance, as set out below in Part 3 of the Participant Service Guarantee, as varied from time to time, to ensure the NDIS remains transparent and accountable in its undertakings.
Connected	<p>The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • work constructively and collaboratively with Commonwealth and state and territory government service systems, including through data sharing arrangements, to streamline and reinforce the participant-centered approach; • adapt their approaches to connect with participants, their families and carers in different communities, especially in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities; • ensure that funding for supports is not interrupted if a new plan is not in place by the scheduled review date, providing continuity of support and reducing the overall burden of NDIS-related out-of-pocket costs for participants where possible.

10.13. This review also considers the Guarantee should include a reciprocal engagement principle for participants on the basis that building strong relationships is a two-way process, as set out in Table 2.

Table 2: Participant Service Guarantee - Reciprocal Principle

Proposed Engagement Principle	Proposed Service Standard
Participant Engagement	<p>Participants, prospective participants and their representatives help the NDIA and its Partners in the Community to deliver the best possible experience of the NDIS.</p> <p>Participants and prospective participants will:</p> <ul style="list-style-type: none"> • provide accurate and up-to-date information to support effective NDIA decision-making; • inform the NDIA and its Partners in the Community of any significant changes to their needs, circumstances or goals and aspirations; and • provide constructive feedback on their experience of the NDIS in order to support the continued improvement of the NDIS.

Part 2 – Timeframes

Explanation of decision-making

10.14. As discussed in Chapter 3, the Guarantee should empower an NDIS participant (or prospective participant) to request an explanation of an access, planning or plan review decision made by the NDIA.

10.15. Generally speaking, the explanation should:

- a. be provided in an accessible format of their choice;
- b. be set out in a clear and logical manner than is easy to read and understand”;
- c. set out material findings of fact of the matter;
- d. set out the evidence and information considered in making the decision;
- e. provide a basis for conclusions reached, and the reasoning leading to the outcome in the matter; and
- f. offer advice about any right of appeal, including the time allowed to apply for the appeal and how to apply.

10.16. This review considers that it is reasonable for this explanation to be provided within 28 days.

Table 3: Timeframes for inclusion in the Participant Service Guarantee - explanation of decisions

Decision	Current Timeframe	Timeframe from 1 July 2020
Request an explanation of a decision	Nil	28 days

Access decisions

10.17. As discussed in Chapter 5, this review does not find a compelling reason to amend the current legislated timeframes for the NDIA to make an access request decision. However, this review does consider that a prospective participant should be given more than the 28 days currently stipulated to provide additional information if requested by the NDIA. This review recommends extending this period to 90 days, with provision for the NDIA to specify a longer period if necessary. The NDIA should also be required to make all reasonable efforts to contact a prospective participant before the access request is deemed to have lapsed

Table 4: Timeframes for inclusion in the Participant Service Guarantee - access decisions

Decision	Current Timeframe	Timeframe from 1 July 2020
Initial CEO Access decision, or request for more information	21 days	21 days
Participant to provide information	28 days before access request lapses	90 days and access request only lapses after NDIA makes all reasonable efforts to contact
CEO decision after more information provided	14 days	14 days

Planning and plan review decisions

10.18. In considering timeframes for decision-making in relation to planning and plan review processes, it is important to balance NDIA capacity and capability against community expectations. Importantly, delivering and reporting on the timeframes set out in the Guarantee will require a substantial redesign of the NDIA's existing ICT and workflow management tools, and increased resourcing. A staggered implementation is appropriate as it will take at least 12 months for the NDIA to have the tools. Therefore, the timeframes for 2020-21 are longer than from 1 July 2021.

10.19. As discussed in Chapters 6 and 7, the Guarantee should include several new timeframes for the planning process, including the offer of a planning meeting after an access decision and a plan implementation meeting following approval of the statement of participant supports. At scheme maturity, a participant should have a plan put in place no more than eight weeks (56 days) after an access decision. Importantly, in adhering to the timeframes set out in the Guarantee, this review considers it is more important that the plan be approved in that eight week (56 days) timeframe, even if the planning meeting could not occur within the 21 day timeframe.

10.20. As discussed in Chapter 6, should the NDIA exercise discretion to provide funded ECEI supports to a child with disability prior to the approval of their first plan, that first plan should be put in place no more than twelve weeks (90 days) following the access decision.

10.21. As discussed in Chapter 3, the Guarantee should also empower participants to be provided with a full draft plan prior to its approval, noting the decision on the supports to be funded by the NDIS is ultimately vested with the NDIA and plans are intended to be approved within a set timeframe.

10.22. There is no compelling reason to amend the timeframes currently provided in the NDIS Act for providing a copy of a plan to a participant following the approval of a participant's plan.

Table 5: Timeframes for inclusion in the Participant Service Guarantee - planning decisions

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating the preparation of a plan	As soon as reasonably practicable	21 days following access decision.	21 days following access decision.
Approve statement of participant supports	As soon as reasonably practicable	70 days following access decision	56 days following access decision
Approve statement of participant supports, if the NDIA exercises discretion to provide ECEI supports prior to the approval of the plan	Nil	90 days following access decision	90 days following access decision
Offer and hold a plan implementation meeting ³³	Nil	28 days following the plan being approved	28 days following the plan being approved
Plan copy provided to participant following approval of statement of participant supports	7 days	7 days	7 days

10.23. As discussed in Chapter 8, the Guarantee should include several new timeframes relating to unscheduled and scheduled plan reviews, as well the new plan amendment process.

³³ Subject to the availability of the participant

- 10.24. In keeping with the proposed timeframes for facilitating a participant's first plan, this review considers that, at scheme maturity, the NDIA should commence a participant's scheduled plan review at least eight weeks (56 days) before the scheduled review date, to enable a seamless move from one plan to another, with a new plan in place by the scheduled plan review date.
- 10.25. In regard to the proposed plan amendment process, it is reasonable to expect, once information has been provided that triggers a plan amendment process, the amendment to the plan will be implemented within 28 days. The one exception is for highly complex quotes, such as home modifications, where it is reasonable to provide the NDIA with additional time to ensure the quote is properly assessed.
- 10.26. This review has proposed reserving the formal unscheduled plan review process for situations where participants have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal. On this basis, and in keeping with the intent of the plan amendment power, it is reasonable that, at scheme maturity, the NDIA should undertake and complete an unscheduled plan review within four weeks (28 days) following the decision to conduct it.
- 10.27. The current process for deeming an unscheduled plan review decision should be reversed, such that if the NDIA does not make a decision in the prescribed period, then the NDIA is taken to have agreed to undertake the unscheduled review. However, and due in-part to the operational resources required to undertake a full plan review, it is reasonable to provide the NDIA with up to 21 days to make the decision before deeming the decision had been made.
- 10.28. As discussed in Chapter 9, in undertaking an internal (merits) review the NDIA considers more than just the documentation made available to the delegate responsible for making the decision in question. As such, the merits review process is broader than a simple desktop audit of the decision, which could ordinarily be completed quickly. On this basis, it seems reasonable that, at maturity, an internal (merits) review should be completed within a period of 60 days.
- 10.29. As discussed in Chapter 9, a new timeframe should be introduced to require the NDIA to amend a plan in line with an AAT decision within 28 days. This would be in keeping with the timeframe proposed for the new plan amendment process.

Table 6: Timeframes for inclusion in the Participant Service Guarantee - plan review and amendment

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating a scheduled plan review	Nil	No later than 56 days before the scheduled review date	No later than 56 days before the scheduled review date.
Review – deciding to undertake an unscheduled review, prior to deemed decision.	14 days	21 days	21 days
Review – undertaking an unscheduled review	As soon as reasonably practicable	42 days following the decision to undertake it	28 days following the decision to undertake it
Plan amendment	Nil	28 days following the receipt of information that triggers a plan amendment process.	28 days following the receipt of information that triggers a plan amendment process.
Plan amendment (complex quote)	Nil	50 days following the receipt of information, that triggers a plan amendment process.	50 days following the receipt of information, that triggers a plan amendment process.
Plan copy provided to participant following plan amendment	Nil	7 days	7 days
Review – undertaking an internal review	As soon as reasonably practicable	90 days	60 days
Review – implementing a plan variation from an AAT decision	Nil	28 days	28 days

10.30. Notwithstanding the timeframes specified in Tables 3 to 6 above, the NDIA should not be penalised when the timeframe cannot be met because actions are required by the prospective participant or participant. For example, in order to complete an unscheduled plan review, a participant may need to provide further information of their functional capacity. In that instance, the NDIA should complete the plan review within 14 days of receiving the information that was requested from the participant, or the timeframe set in the Guarantee, whichever is later.

Other timeframes not prescribed

10.31. Although not expressly discussed in previous chapters, this review has also considered the timeframes relating to the appointment and cancellation of nominees to the extent that they impact participants' experience of NDIA decision-making.

10.32. Currently, the NDIS Act does not prescribe a timeframe for the NDIA to cancel the appointment of a participant-nominated nominee following a participant's request for this to take place. The Guarantee should provide for this and that this timeframe should match the current 14 day timeframe in the NDIS Act for the NDIA to cancel the appointment of a NDIA-nominated nominee. This would be in keeping with the expectation that the NDIA should act quickly in accordance with participant wishes.

10.33. There is no compelling reason to amend the timeframes for nominees to appeal an action by the CEO to suspend their appointment.

Table 7: Timeframes for inclusion in the Participant Service Guarantee - other

Decision	Current Timeframe	Timeframe from 1 July 2020
Cancel participant requested nominee	As soon as reasonably practicable	14 days
Cancel CEO initiated nominee	14 days	14 days
Appealing the suspension of a nominee	28 days	28 days

Participant engagement in decision-making

10.34. The timeframes prescribed in the Guarantee should only apply to ordinary NDIA administrative processes. Where a participant is gathering additional information, or is otherwise unavailable for a period (for instance they are on a holiday), the timeframes applied to the NDIA should be paused. The only exception to this requirement would be where a prospective participant was providing further information to support an access request.

10.35. If the NDIA is unable to meet the timeframe prescribed in the Guarantee for any other reason, the NDIA should be required to provide the prospective participant or participant with notice in writing explaining why. This notification should provide the prospective participant or participant with certainty about when the decision will be made. This would support a broader transparency agenda and ultimately should be factored into the design of any online tracking system (refer recommendation 5).

Part 3 – Performance metrics

- 10.36. Section 174 of the NDIS Act currently states that the NDIA Board must provide the DRC with a quarterly report on the operations and performance of the NDIA. This report must include information (including statistics) from the reporting period that relate to participants in the NDIS and the funding or provision of supports by the NDIA.
- 10.37. This reporting requirement should be expanded to include a report on the NDIA's performance in delivering against each measure set out in the Guarantee, and specifically:
- a. activities undertaken or improvements made in the quarter in relation to each qualitative service standard;
 - b. the average response or decision time against each timeframe;
 - c. the percentage of decisions made in excess of each timeframe; and
 - d. as a proportion of total participants and business as usual targets and expectations, the number of:
 - i. access decisions made;
 - ii. scheduled plan reviews initiated and completed;
 - iii. unscheduled plan reviews initiated and completed;
 - iv. plan amendments initiated and completed;
 - v. internal reviews initiated and completed;
 - vi. applications to AAT, both those settled before a substantive hearing and those progressing to tribunal; and
 - vii. average plan duration (i.e. plan approval date to scheduled review date).
- 10.38. In instances where the NDIA is unable to report on, or is not yet achieving, a particular measure, the quarterly report should also include details on the activities undertaken by the NDIA in the quarter, or that will be undertaken in future quarters, to meet it. This will provide a clear line of sight as to the NDIA's capacity and performance in delivering an improved participant experience.
- 10.39. Section 174(1)(b) of the NDIS Act currently provides that the quarterly report must be provided within four weeks after the end of the period to which the report relates. Noting the additional reporting requirements imposed by the Guarantee, it is reasonable to provide the NDIA with six weeks to provide the report. In addition, this review notes that extending the legislated timeframes related to the production of quarterly reports was agreed by COAG following the 2015 Review of the NDIS Act, but that recommendation has not yet been legislated.

Reporting of participant satisfaction

10.40. Since September 2018 the NDIA has surveyed satisfaction at each stage of the planning process to gain a more complete picture of participant satisfaction. Samples are random and the national sample sizes for the September 2019 quarter were:

- a. 1,050 for access;
- b. 364 for pre-planning;
- c. 1,157 for planning; and
- d. 955 for plan review.

10.41. At a national level, these sample sizes are sufficient to be representative of all participants entering each of the pathway points in the quarter. Importantly, the survey shows an improvement in satisfaction outcomes over a number of points in the participant's NDIS journey. The NDIA's quarterly report to the DRC for the period ending September 2019 indicates an overall participant satisfaction rate of around 90 per cent³⁴.

10.42. However, this review heard participants disagree with the way the NDIA is measuring satisfaction and that the NDIA's survey is not an accurate reflection of their experience.

10.43. In order to build confidence in the NDIA's satisfaction metrics, this review considers a new measure should be implemented by the NDIA, with reporting on this measure included in the NDIA's quarterly reports to the DRC. This should be designed independently from the NDIA, though the NDIS Independent Advisory Council could undertake this task, as part of its statutory function to bring the views of participants, carers and experts in the disability sector to the heart of the NDIS by the provision of independent advice based on the experience of its members and their networks.

10.44. It is also expected the NDIA would embed both the qualitative and quantitative aspects of the Guarantee through its own robust quality assurance practices.

Recommendation 24: The NDIS Independent Advisory Council develops a new independent participant satisfaction survey, with reporting included in the NDIA's quarterly reporting to DRC.

³⁴ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.33.

The legislated form of the Guarantee

- 10.45. While the Guarantee is anticipated to commence from 1 July 2020, the NDIS as a system will be subject to continuous evolution. As a result, the Guarantee needs to be sufficiently flexible and responsive to prevailing circumstances as they evolve.
- 10.46. Therefore, this review considers it would be appropriate to introduce the Guarantee as a new Category C Rule, which would allow the Commonwealth Minister responsible for the NDIS to update it from time-to-time with the majority agreement of the Commonwealth and states and territories.
- 10.47. A Category C Rule is proposed on the basis that the NDIS Rules currently made under the NDIS Act relating to timeframes for NDIA decision-making are Category C. In addition, reflecting on the ongoing role of states and territories in the governance of the NDIS, and as agreed through bilateral agreements between the Commonwealth and each state and territory for full scheme, it would seem appropriate that the rule-making power relating to the Guarantee would also be a Category C Rule.
- 10.48. As this will be the first legislated version of the Guarantee, it would be appropriate to review it within the first two years of its enactment to ensure it continues to be fit for purpose.
- 10.49. To avoid any doubt, relevant timeframes for decision-making currently set out in the NDIS Act should be removed and included in the new rule. This will ensure there is one consolidated location for all timeframes associated with a participant's journey through the NDIS.

Timeframes for decision-making by the NDIS Quality and Safeguards Commission

- 10.50. In considering timeframes for decision-making by the NDIA under the NDIS Act, this review noted there are several instances prescribed where the NDIS Quality and Safeguards Commissioner must decide a thing, or take an action, in either a specified or unspecified timeframe. For example: providing note of intention to revoke or suspend a provider's registration, or issue a banning order against a person from working under the NDIS and having contact with NDIS participants.
- 10.51. There may be merit in amending the NDIS Act to provide powers for a Category D NDIS Rule to be made for the purposes of timeframes for decision-making for the NDIS Quality and Safeguards Commission, should a Service Guarantee for this purpose be desirable in the future.

Recommendation 25: That the NDIS Act is amended to legislate the Participant Service Guarantee as a Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision-making moved from the NDIS Act to the new rule;
- b. new timeframes for decision-making, engagement principles and performance metrics;
- c. prospective participants and participants being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. participants being empowered to receive a full draft plan before it is approved by the NDIA; and
- e. a review within two years of being enacted.

The role of the Commonwealth Ombudsman

10.52. The Australian Government has committed \$2 million across 4 years from 2020-21 to enable the Commonwealth Ombudsman to monitor the NDIA's performance against the Guarantee and to support NDIS participants pursuing complaints about the timeframes for NDIA decision-making they have experienced.

10.53. The *Ombudsman Act 1976* (Cth) sets out the Commonwealth Ombudsman's functions, which include investigating the administrative actions of Australian Government departments/agencies, including the NDIA, and prescribed private sector organisations.

10.54. The Ombudsman Act also provides the Commonwealth Ombudsman with a range of powers which will facilitate the functions associated with the Guarantee. This includes the ability to investigate complaints, conduct own motion investigations and compel agencies, within their jurisdiction, to provide documentation or information. The Ombudsman Act also gives the Commonwealth Ombudsman jurisdiction to investigate the actions of Commonwealth service providers as if the relevant department or authority had taken those actions.

10.55. The Commonwealth Ombudsman will have capacity to investigate individual complaints about the NDIA, based on the timeframes for decision-making set out in the Guarantee. As a part of this function, the Commonwealth Ombudsman will also monitor complaints with a view to identifying systemic issues. This will be done through data analysis of the complaints received, outreach activity, engagement with other organisations and agencies (such as advocacy organisations) and a range of other activities in order to determine the nature of the issue.

- 10.56. Additionally, the Commonwealth Ombudsman will conduct ongoing monitoring and reporting of the NDIA's performance against the service standards set in the Guarantee. If systemic issues are identified, the Commonwealth Ombudsman could then decide whether to conduct an own motion investigation with the NDIA, which may include reviewing practices and procedures.
- 10.57. Notwithstanding the powers already provided for in the Ombudsman Act, there is merit in amending the NDIS Act to:
- a. clearly establish the Commonwealth Ombudsman's ongoing powers to monitor the NDIA's performance against the Guarantee; and
 - b. clarify that the Ombudsman has powers to obtain information from the NDIA relevant to their performance in delivering against the Guarantee despite any other provisions in the NDIS Act.

Recommendation 26: The NDIS Act is amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Participant Service Guarantee.

Proposed consequences

- 10.58. This review has considered what should occur if the NDIA fails to meet or work toward the matters contained in the Guarantee.
- 10.59. Firstly, the review considered whether to introduce additional deeming decisions, such that if a timeframe in the Guarantee is not met, that would result in a deemed decision in favour of the prospective participant or participant. While this would provide more certainty to people with disability around the outcome of NDIA decision-making when a timeframe is not met, this would be a substantial risk to the legislative framework, particularly if it were applied to access or reasonable and necessary decisions. This is because the outcome of a deemed decision in the positive could be out-of-scope or inconsistent with the legislative requirements.
- 10.60. This review also considered whether a financial penalty to the NDIA should apply. However, this too could create perverse incentives as it could drive the NDIA to make quick but poor quality decisions in favour of avoiding the financial impact of paying the penalty. Importantly, the consequences of not meeting the Guarantee should work to reinforce its intent, not work against it.

10.61. Therefore, transparency and public accountability are likely to be the most effective tool to drive improved participant outcomes. To this end, the Guarantee has been designed to make it clear where the NDIA is meeting, or not meeting, matters required to drive improved participant experiences, enabling governments to have clear oversight of the NDIA's performance.

CHAPTER 11 – UPDATING THE NDIS LEGISLATION

KEY FINDINGS

- ✓ Elements of the NDIS Act are designed around a scheme that is in a launch, trial or transition phase. As of 1 July 2020, when the transition to the NDIS will be complete in all states and territories, aspects of the NDIS Act will be out of date.
- ✓ The NDIS Act should be amended to ensure it is fit-for-purpose in the context of a maturing and evolving scheme that will be truly national from 1 July 2020.
- ✓ The NDIS Rules should also be amended to remove transitional provisions and reflect best practice drafting standards.

Updating the NDIS Act

- 11.1. Many provisions in the NDIS Act refer explicitly to trial and transition, or ‘the NDIS launch’. This includes references to the progressive roll out of the NDIS across Australia and the different phasing arrangements that were to apply in each state and territory (see, for example section 33A of the NDIS Act). As of 1 July 2020, these references will be out of date as the transition period will be complete.
- 11.2. Currently, the NDIS Act differentiates between a ‘host’ and a ‘participating’ jurisdiction. In short, a host jurisdiction is a state or territory in which the NDIS is available and a ‘participating’ jurisdiction is a state or territory in which the NDIS Quality and Safeguards Commission is operating.
- 11.3. As the NDIS had not commenced in each state and territory when the NDIS Act first came into force, it needed to be able to differentiate between jurisdictions in which the NDIS was operating and those in which it was not. Using the term ‘host jurisdiction’ was the way this was done.

- 11.4. Similarly, the term ‘participating jurisdiction’ was introduced to reflect that states and territories would not all come under the remit of the NDIS Quality and Safeguards Commission at the same time. The Commission commenced operations in New South Wales and South Australia on 1 July 2018 and the Northern Territory, Australian Capital Territory, Victoria, Queensland and Tasmania on 1 July 2019. The Commission will commence operations in Western Australia on 1 July 2020.
- 11.5. Because the NDIS is now available across Australia, all jurisdictions are now considered ‘host jurisdictions’ and from 1 July 2020, all jurisdictions will also be considered ‘participating jurisdictions’. It would therefore be appropriate to replace all existing references to ‘host’ or ‘participating’ jurisdictions with ‘states and territories’. This will reflect that the NDIS is truly a national system of support for people with severe and profound disability.
- 11.6. The NDIS Act also differentiates between the registration requirements that would apply to an NDIS provider in a host jurisdiction that is not a participating jurisdiction, and the arrangements that apply to NDIS providers in host jurisdictions that are also participating jurisdictions. From 1 July 2020, the former provisions will be obsolete as there will be no host jurisdictions that are not participating jurisdictions. From 1 July 2020, the registration of all NDIS providers across Australia will be managed by the NDIS Quality and Safeguards Commission and subject to the Commissioner’s registration powers at Chapter 4, Part 3A of the NDIS Act and the NDIS Rules made for the purposes of that part.
- 11.7. The NDIS Act also references a number of ‘firsts’. For example, arrangements that apply to the appointment of the first CEO of the Agency, the first reviewing actuary, the first report that must be provided to the Board about the scheme’s performance and the first review of the NDIS Act to occur in 2015. These provisions can also be removed as these events have already occurred.
- 11.8. While none of these changes are strictly required for the NDIS to operate under full scheme arrangements, amending the NDIS Act as proposed will reduce complexity and confusion and provide an important signal that the NDIS has moved beyond the roll out stage. A full list of the suggested amendments to be made to the NDIS Act is provided at Appendix E.

2015 Independent Review of the NDIS Act

- 11.9. In accordance with existing legislative provisions, the NDIS Act was reviewed in 2015. The purpose of the review was to assess the operation of the NDIS Act and consider whether or not any amendments could be made to enable governments to further the objects and principles of the NDIS Act.
- 11.10. The 2015 review recommended a number of minor and technical amendments to help governments manage risks proactively, so the NDIS stays on time, on budget and keeps delivering positive outcomes for people with disability. The review also made a number of recommendations that show there are opportunities to provide greater clarity to the legislative framework. To date, these amendments have not been legislated.
- 11.11. There is no compelling reason not to proceed with the 2015 review recommendations. On this basis, any update made to the legislation to give effect to the Participant Service Guarantee should also implement the 2015 Act review recommendations, as agreed by COAG in December 2016. The 2015 recommendations include:
- e. removing moderating language;
 - f. including amendments to reflect the centrality of people with disability and their inclusion in a co-design capacity; and
 - g. amending the principles of the NDIS Act to acknowledge the unique experiences of women and LGBTQIA+ people with disability.
- A full list of the suggested amendments to be made to the NDIS Act as a result of the 2015 review is provided at Appendix F.

Updating the NDIS Rules

11.12. A significant number of NDIS Rules were created to give effect to trial and transition periods and will not be relevant from 1 July 2020. These include:

- a. the *National Disability Insurance Scheme (Facilitating the Preparation of Participants plans – Australian Capital Territory) Rules 2014* and equivalent rules relating to New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and Western Australia.
- b. the *National Disability Insurance Scheme (Prescribed Programs – New South Wales) Rules 2016*;
- c. the *National Disability Insurance Scheme (Prescribed Program – Western Australia) Rules 2018*;
- d. the *National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*; and
- e. the *National Disability Insurance Scheme (Timeframes for Decision Making) Rules 2013* (to be replaced by a new rule giving effect to the Participant Service Guarantee).

These Rules should be repealed.

11.13. This review has not considered the SDA Rules as a separate review process is underway to refresh them in line with the 2018 review of the SDA Pricing and Payments Framework. In addition, this review does not propose any amendments to the information disclosure or accounting for compensation Rules, as these Rules are better considered in parallel with the suggested additions to the DRC's future work program, as discussed in Chapter 2.

11.14. All remaining Rules made for the administration of the NDIS by the NDIA should be repealed and replaced with Rules that have been drafted in accordance with best practice drafting standards. This will ensure consistency and clarity of interpretation, correction of drafting errors, and removal of unnecessary repetition without altering the intention of the rule. In particular, the rules at Box 8 should be repealed and replaced:

Table 8: NDIS Rules proposed to be repealed and replaced

Name of Rule	Description
National Disability Insurance Scheme (Becoming a Participant) Rules 2016	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent (see Chapter 5).
National Disability Insurance Scheme (Children) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Nominees) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Plan Management) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Clarify that supports in a participant’s plan should be used flexibly, except in limited circumstances, such as capital supports (see Chapter 7). • Provide the NDIA more defined powers to undertake market intervention on behalf of participants (see Chapter 7). • Outline that requests for participants to ‘plan-manage’ their NDIS funding be subject to the same considerations that apply when a participant seeks to ‘self-manage’ (see Chapter 7).
National Disability Insurance Scheme (Supports for Participants) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Reinforce that the determination of reasonable and necessary supports for children with disability will: <ul style="list-style-type: none"> ○ recognise the additional informal supports provided by their families and carers, when compared to children without disability; ○ provide families and carers with access to supports in the home and other forms of respite; and ○ build the capacity of families and carers to support children with disability in natural settings such as the home and community (see Chapter 6). • Clarify the boundaries and responsibilities of the NDIS and other service systems following DRC decisions (see Chapters 3 and 6). • Outline the matters to be considered in determining support coordination as reasonable and necessary (see Chapter 7).

Recommendation 27: The NDIS Act and Rules are amended to:

- a. remove trial and transition provisions;
- b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act; and
- c. reflect current best practice drafting standards, and other amendments as proposed in this review.

The National Disability Strategy 2010-2020

11.15. The National Disability Strategy (the Strategy) provides a ten-year national policy framework for improving the lives of people with disability, their families and carers. The Strategy represents the commitment of all Australian governments to a unified, national approach to policy and program development and has a vision of enabling an 'inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. In giving effect to the objects of the NDIS Act, regard must be had for the Strategy as endorsed by COAG on 13 February 2011.

11.16. The Strategy helps incorporate the principles of the UNCRPD into government policies and programs that affect people with disability, their families and carers.

11.17. The current Strategy is due to finish at the end of 2020. This review recognises the disability landscape has changed significantly since the current Strategy was endorsed by COAG, particularly with the introduction of the NDIS. This review also recognises that governments across Australia are working together to design a new Strategy to replace the current Strategy from the start of 2021.

11.18. Therefore, the NDIS Act should be amended to have regard to the Strategy as it is in force from time to time rather than referring specifically to the title of the current Strategy that will finish at the end of 2020.

Recommendation 28: The NDIS Act is amended to reference the National Disability Strategy as in force from time to time.

11.19. Over the last three years, there have been a number of reviews and inquiries that have made recommendations to improve the effectiveness of the current Strategy. These reviews showed that while some things are working well and progress has been made, there is still room for improvement.

- 11.20. This review considers that the new Strategy should make reference to how it complements and builds on the NDIS by driving improved outcomes for people with disability in all areas of their lives, regardless of whether or not they are NDIS participants. This includes driving improvements in the performance of mainstream service systems in delivering outcomes for all people with disability.
- 11.21. Despite being the most substantial reform driving the disability policy agenda, the NDIS should not remove governments' policy attention from other aspects of the Strategy, such as learning and skills, employment and accessible communities. The NDIS should not be the sole focus and effort of governments as it cannot be the only vehicle through which people with disability receive services and supports.
- 11.22. Rather, it should be recognised that the Strategy's focus on improving mainstream services and community access will be vital to ensuring the long-term viability and effectiveness of the NDIS in improving outcomes for people with disability. This is because people with disability use a broad range of Commonwealth, state and territory government-funded services and supports that are outside the scope of the NDIS and all governments have an ongoing responsibility to support the accessibility and inclusion of people with disability in all aspects of their community.

Recommendation 29: The new National Disability Strategy being developed for beyond 2020 makes reference to how it complements and builds on the NDIS.

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APPENDIX A

Public submissions to the review

List of submissions
A4: Autism, Aspergers Advocacy Australia
ACT Disability Aged and Carer Advocacy Service (ADACAS)
ACT Human Rights Commission
ACT Public Trustee and Guardian
Advocacy for Inclusion
Advocacy Tasmania
Alliance20
Association for Children with a Disability
Australian Small Business and Family Enterprise Ombudsman
Australian Society of Rehabilitation Counsellors
Autism Family Support Association Victoria
Autism Spectrum Australia (Aspect)
Barkly Regional Council
Blind Citizens Australia
Brain Injury SA
Cara Inc South Australia
Carers ACT
Carers Australia
Carers Australia NSW
Carers Australia Victoria
Carers Tasmania
Children and Young People with Disability Australia
Cochlear Ltd, First Voice and Cicada
Commonwealth Ombudsman
Community Lifestyle Accommodation Ltd
Consumers of Mental Health WA
Darwin Community Legal Service
Dementia Australia
Dieticians Association of Australia
Disability Advocacy Vic, Rights Information and Advocacy Centre, Disability Discrimination Legal Service and Leadership plus
Disability Justice Australia
Early Childhood Intervention Australia (ECIA)
Every Australian Counts

List of submissions
Fragile X Association of Australia
Haines, Dr Helen MP
Health & Community Solutions
Horses for Hope
Ideas
Independent Advocacy in the Tropics
Intellectual Disability Rights Service
Maurice Blackburn Lawyers
Melbourne Disability Institute
Mental Health Australia, Community Mental Health Australia and Mental Illness Fellowship of Australia
Mental Health Carers Australia
Mental Health Victoria
Mind Australia
Mission Australia
Motor Neurone Disease Australia
Mudgeeraba State Special School P&C Association
My Plan Manager
National Disability and Carer Alliance
National Disability Services
National Legal Aid
National Mental Health Commission
Neurodevelopment and Behavioural Pediatric Society of Australasia
Noah's Ark
North Metropolitan Health Service WA
NSW Carers Advisory Council
NSW Government
NSW Trustee and Guardian
Occupational Therapy Australia
O'Donovan, Dr Darren
People with Disabilities WA
People with Disability Australia
Perth Inner City Youth Service Inc
Physical Disability Council of NSW
Plan Partners
PointZero5 Disability Campaign
Prader-Willi Syndrome Australia
Public Interest Advocacy Centre
Purple Orange

List of submissions
Queensland Advocacy Inc
Queensland Alliance for Mental Health
Queensland Government
Queensland Public Advocate
Queensland Public Guardian
Queenslanders with Disability Network
RoundSquared
Royal Australian and New Zealand College of Psychiatrists (RANZCP)
Royal Australian College of General Practitioners
Royal Australian College of Physicians
Scope Australia
St Vincent's Mental Health
Settlement Services International
Solve Disability Solutions
South Australian Government
Speech Pathology Australia
State Trustees Victoria
Stroke Foundation
Summer Foundation
Syndromes without a Name (SWAN)
Tandem
Tasmanian Government
The Disability Trust
Victorian Council of Social Services
Victorian Healthcare Association
Vision 2020 Australia
Vision Australia
WA's Individualised Services
Women with Disabilities ACT
Women with Disabilities Victoria
Young People In Nursing Homes National Alliance
Youth Connections Group

*The submissions list contains the names of organisations, including government agencies that made submissions to the Review. It also includes some individuals who made submissions in their professional capacity. The Review received 201 submissions in total (80 from individuals) of which 152 submissions have been published on the engage.dss.gov.au website.

APPENDIX B

Survey data analysis

Approximately 2,100 respondents started the long-form and short-form versions of the survey; however, some people only completed part of the opening questions of each survey. Therefore, 1,273 respondents form the usable sample for analysis of the long-form survey and 467 respondents form the sample of analysis of the short-form survey.

Five respondents completed the survey using the AUSLAN video survey link. Their responses are included in the analysis of long-form survey data.

This appendix sets out the demographic details of the survey respondents (long and short-form combined), and key findings relating to the administration of access, planning and plan review decisions.

Respondent Demographics

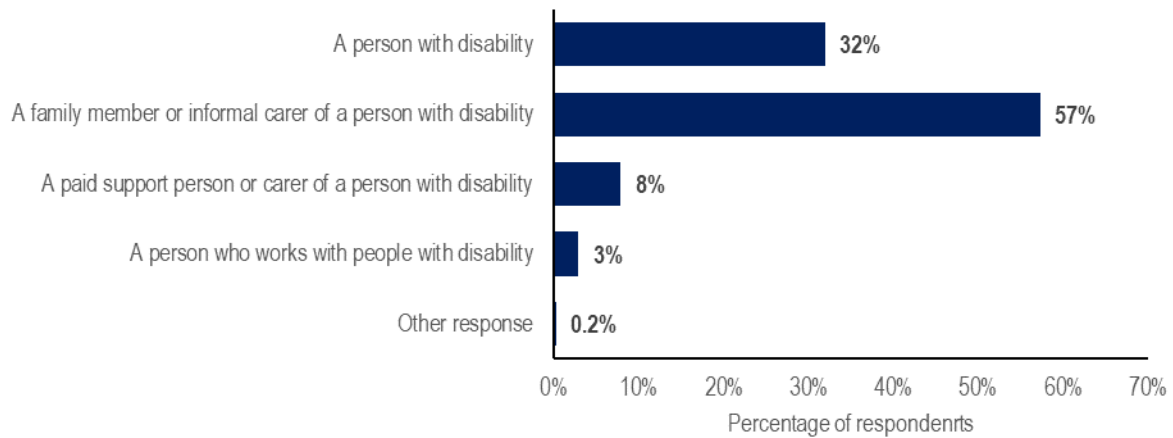


Figure 10: Respondents main role of interest in the NDIS (n=1,740)

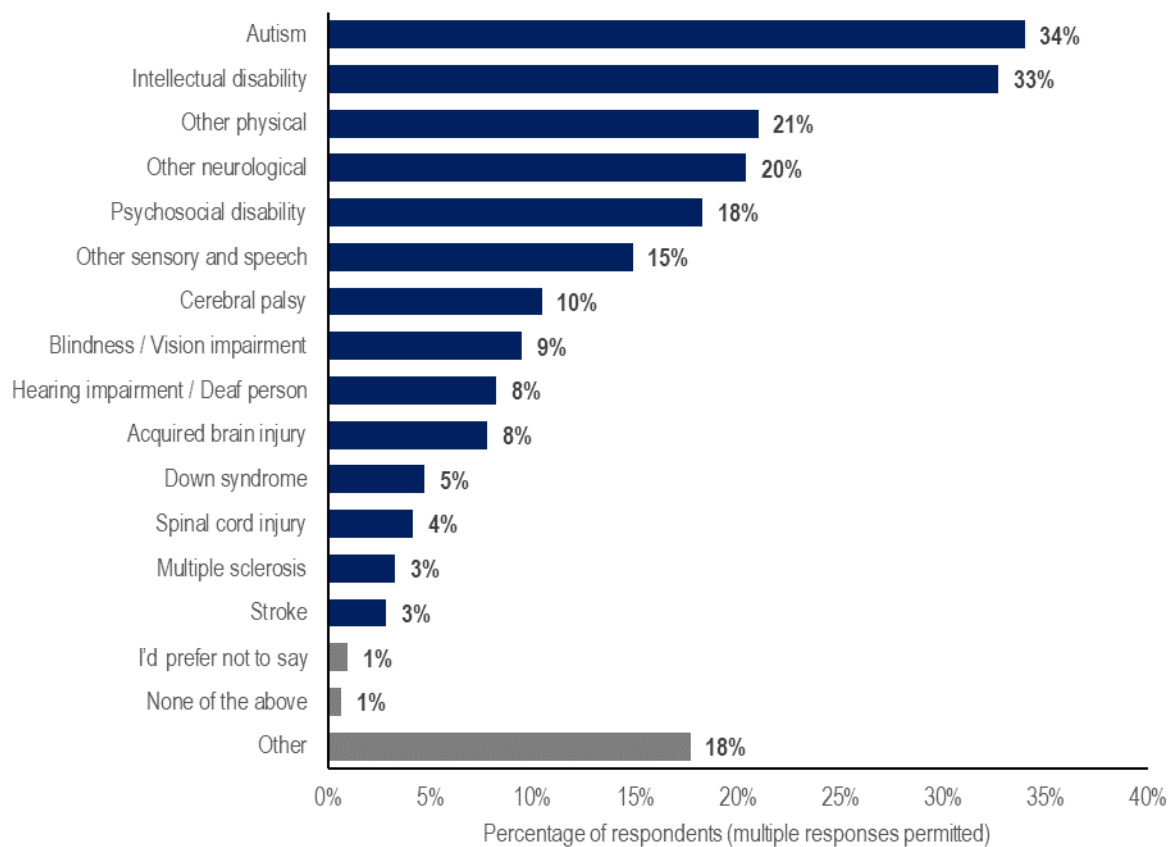


Figure 11: Disability type of respondent or of the person they care for (n=1,740)

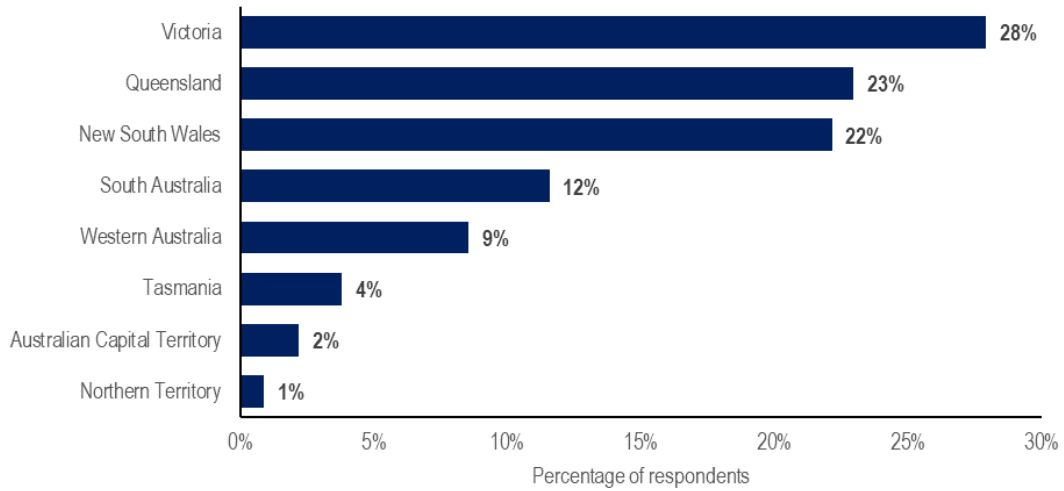


Figure 12: Respondents state or territory of residence (n=1,734)

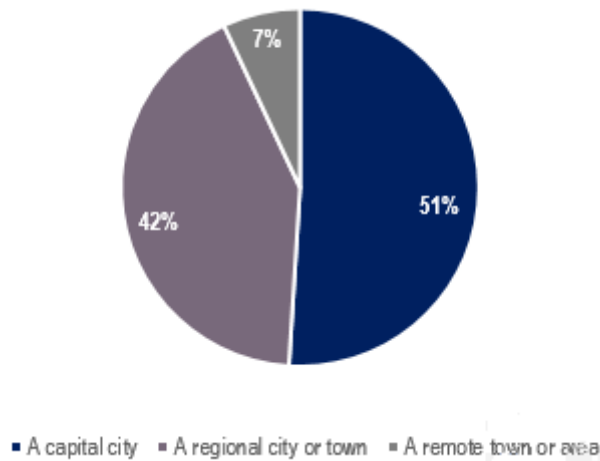


Figure 13: Respondents geographic remoteness (n=1,731)

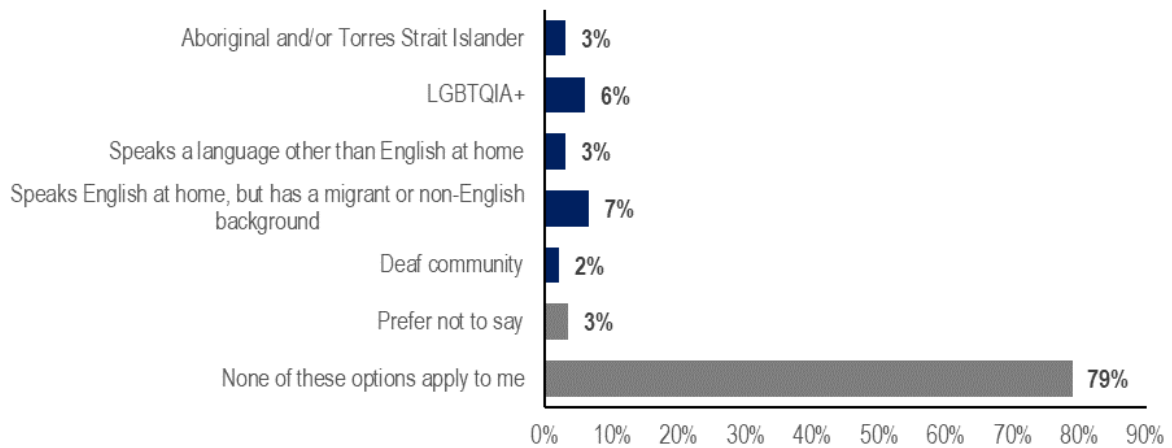


Figure 14: Specific population groups for respondents (n=1,729)

Participant's perceptions of the NDIS

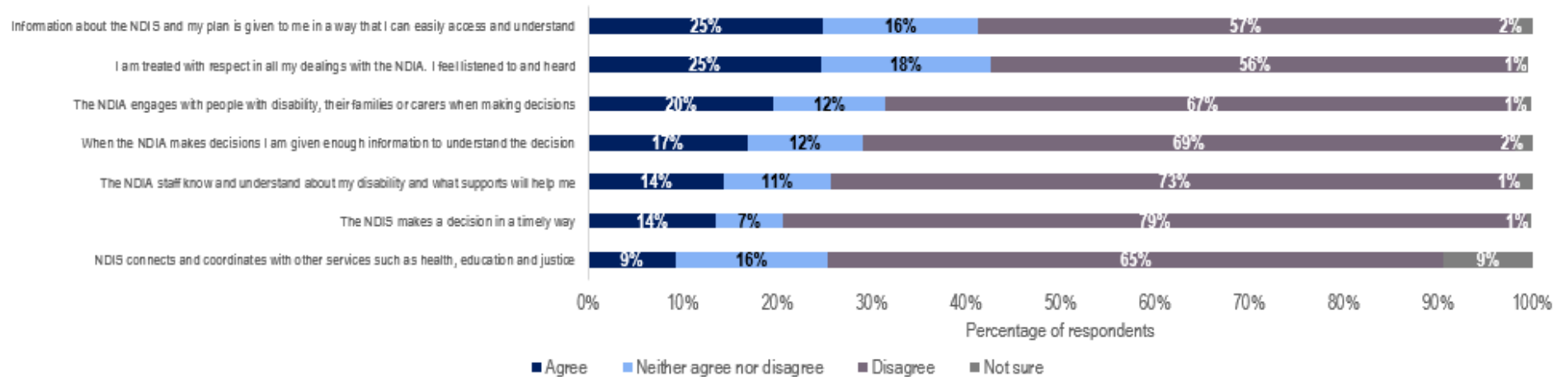


Figure 15: Perceptions of the NDIS (n=1,273) (Long-form survey)

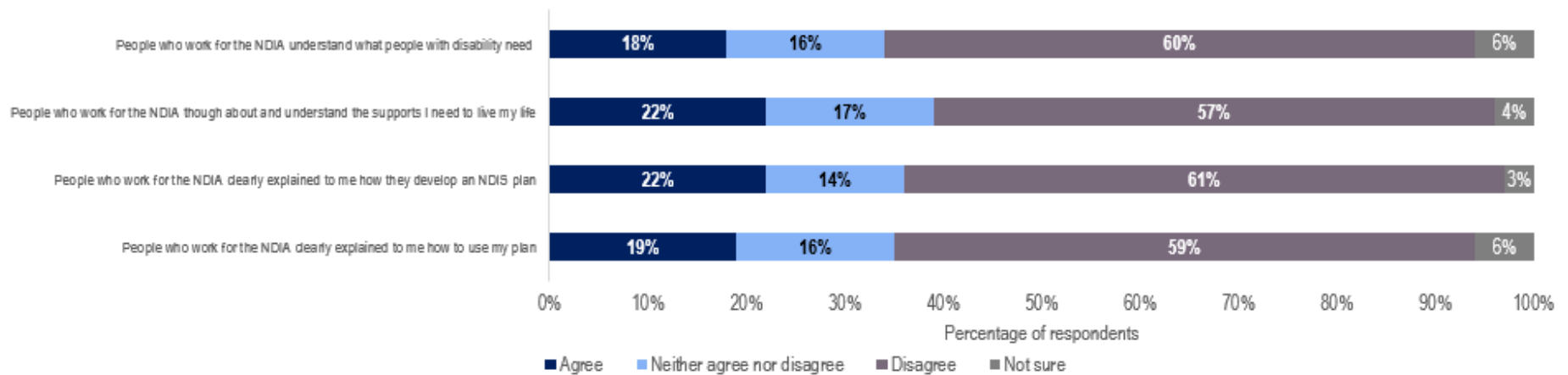


Figure 16: Perceptions of the experience of people who work for the NDIA (n=383) (Short-form survey)

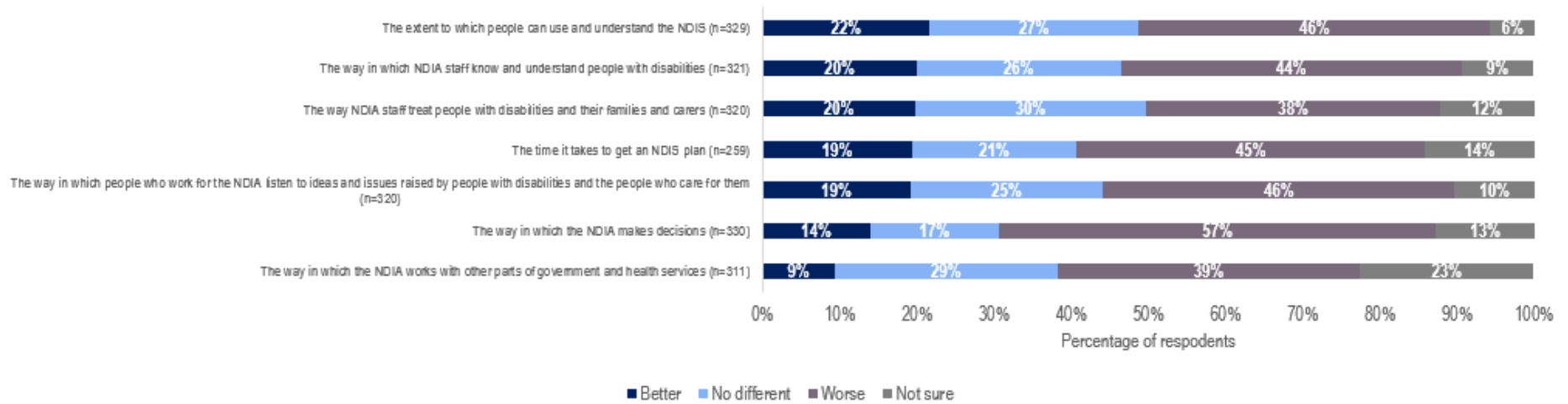


Figure 17: Perceptions of the NDIS over time (Short-form survey)

Applying to the NDIS

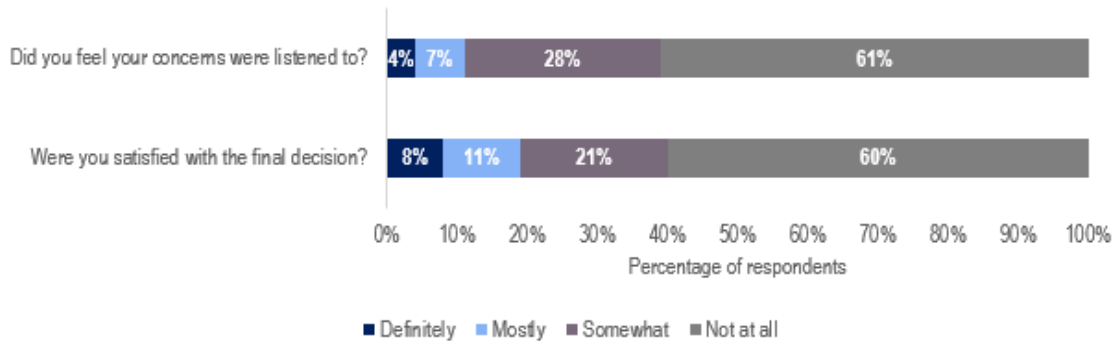


Figure 18: Respondents who required help to make an application (Long-form survey)

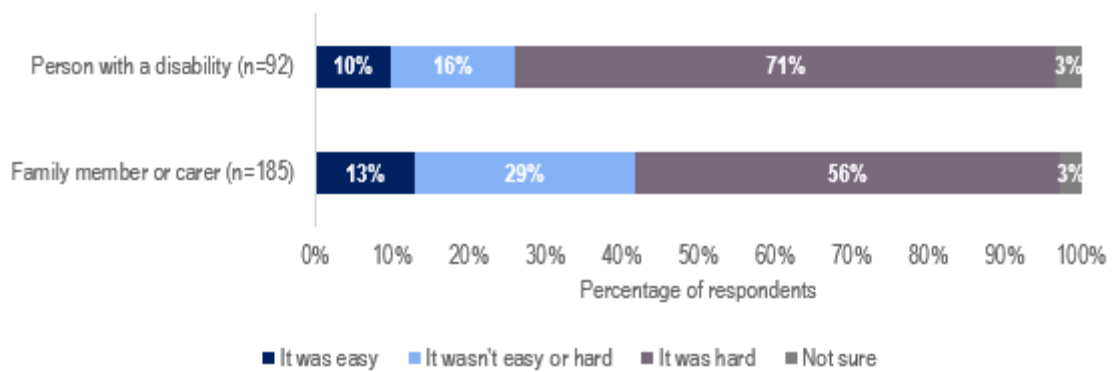


Figure 19: How easy or hard was it to apply for the NDIS, by respondent role (Short-form survey)

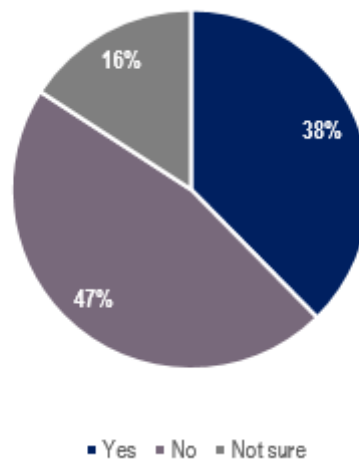


Figure 20: Did you find the process of filling out the Access Request form or making a Verbal Access Request easy to understand? (n=1,075) (Long-form survey)

Preparing for planning meetings

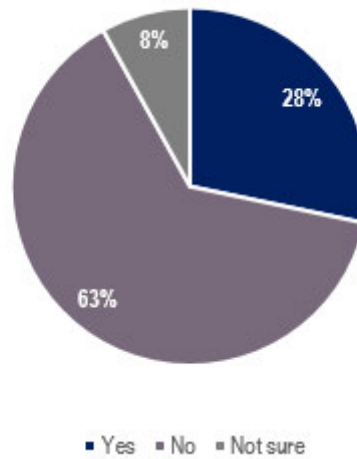


Figure 21: Once you were told you had been approved to access the NDIS, was there enough information provided to you about what would happen next? (n=1,056) (Long-form survey)

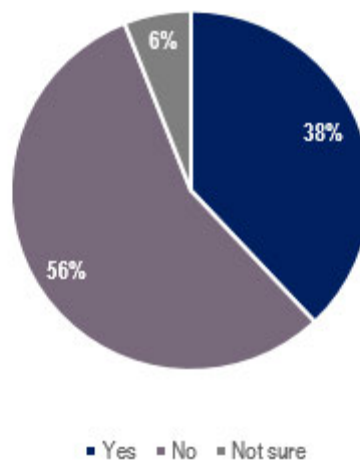


Figure 22: Did you know where to find information to help you start preparing for your planning meeting? (n=1,056) (Long-form survey)

Planning meetings

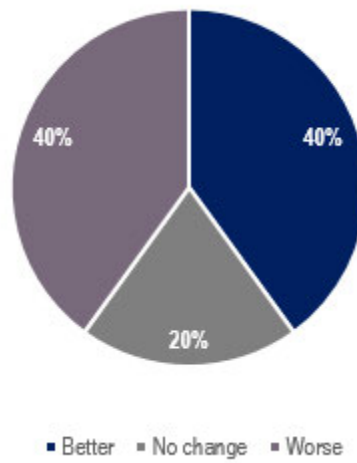


Figure 23: Changes in respondents' experience of the planning process since their first plan (n=705) (Long-form survey)

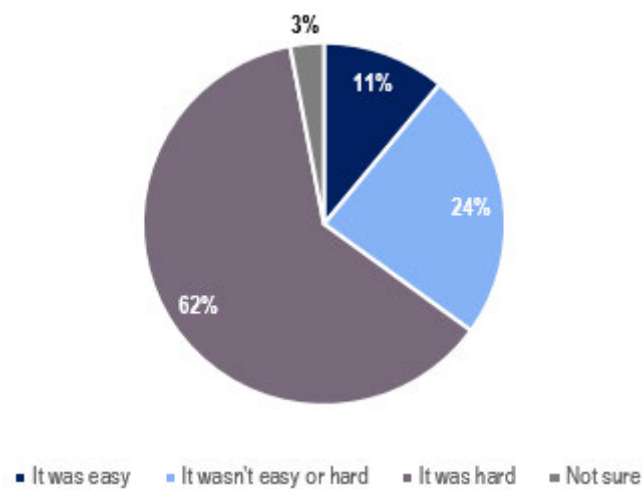


Figure 24: How easy or hard was it to set up your first plan? (n=214) (Short-form survey)

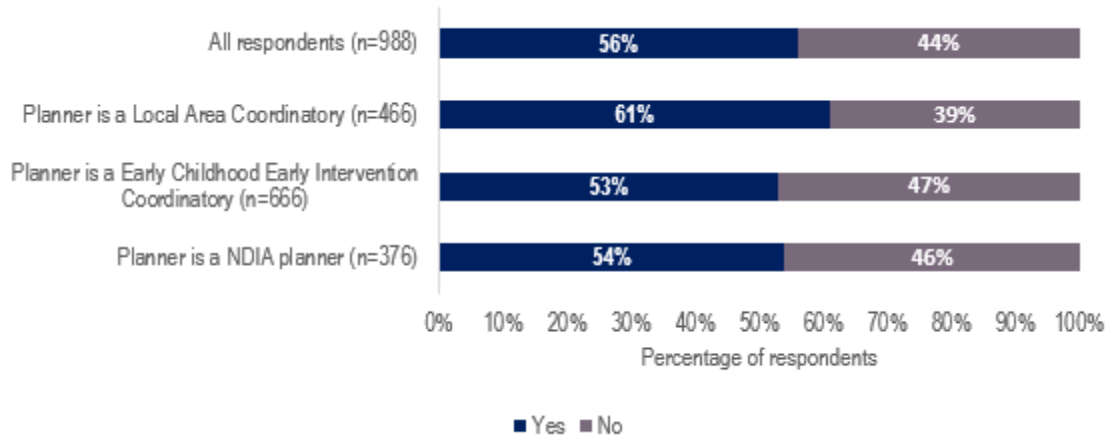


Figure 25: Do you think your planner listened to you? (by type of planner) (Long-form survey)

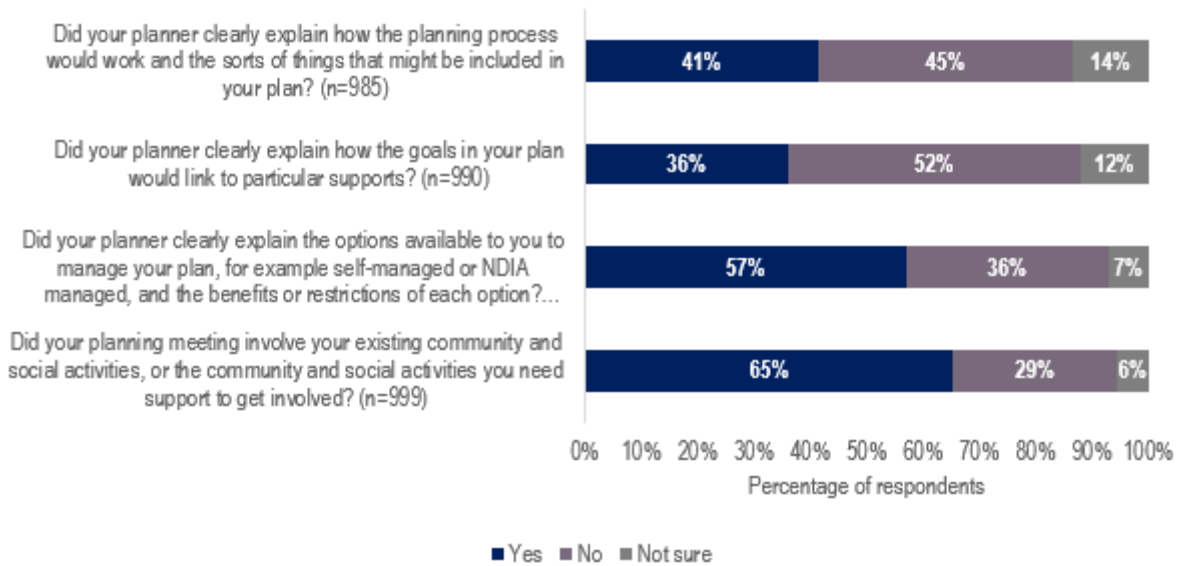


Figure 26: Information covered in planning meeting (Long-form survey)

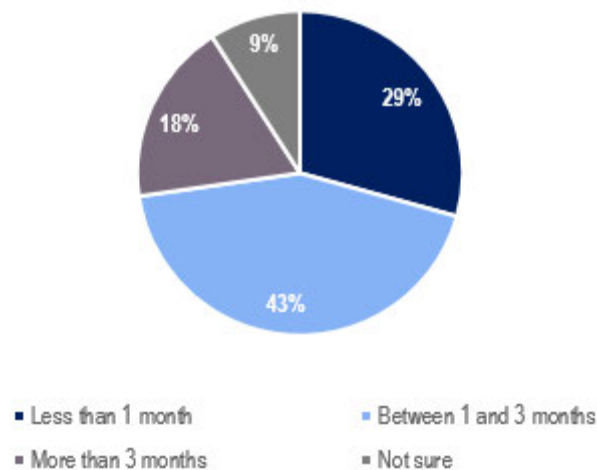


Figure 27: Time taken for NDIA to approve plan from first planning meeting (n=994) (Long-form survey)

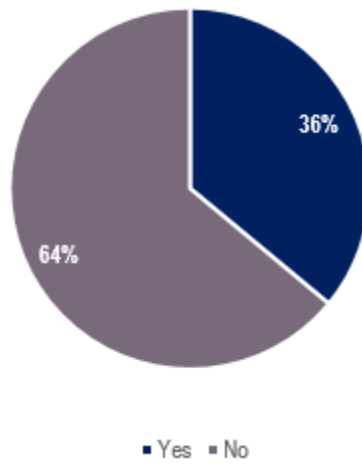


Figure 28: Did you receive the level of support you expected in your plan? (n=965) (Long-form survey)

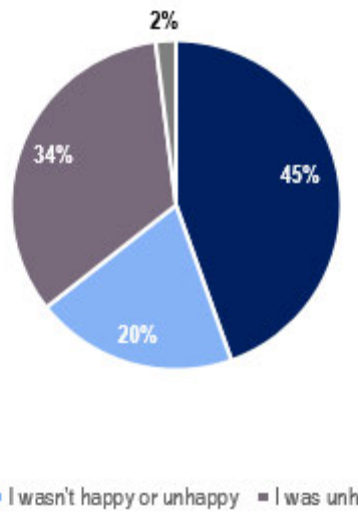


Figure 29: Were you satisfied with the level of support in your plan? (n=208) (Short-form survey)

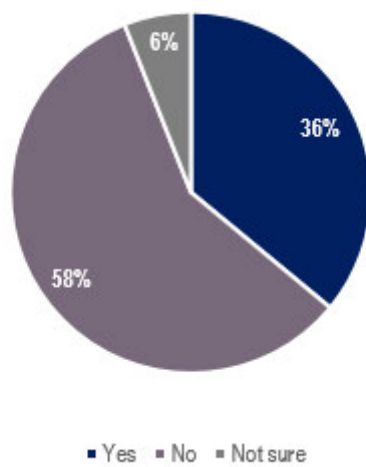


Figure 30: Did you understand everything in your plan? (n=963) (Long-form survey)

Using your NDIS plan

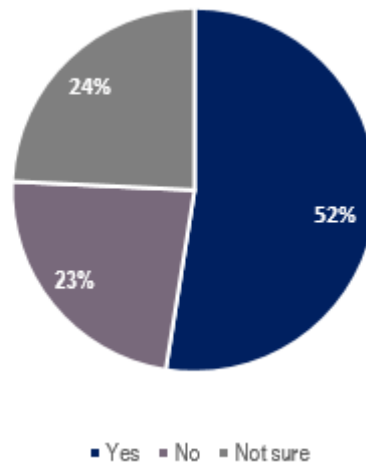
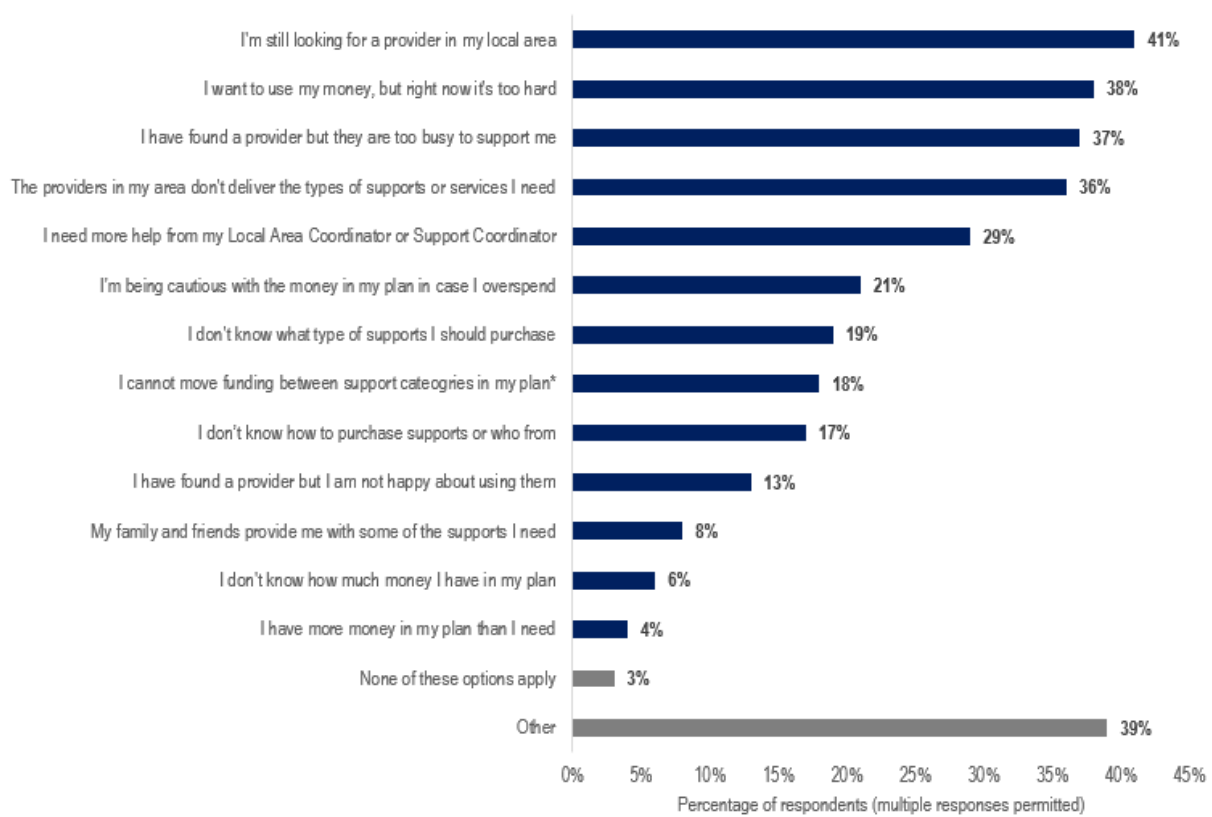


Figure 31: Are you likely to spend all your money in your plan? (n=961) (Long-form survey)



*derived from free text responses to the survey question

Figure 32: Reasons for not being likely to spend all of money in plan (n=224) (Long-form survey)

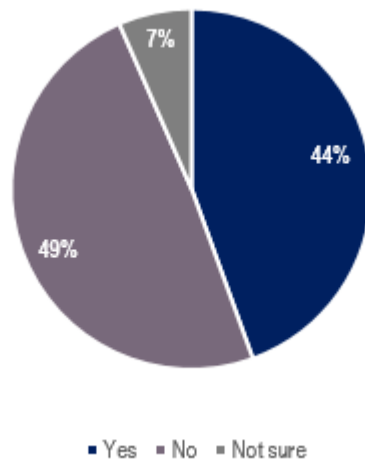


Figure 33: Did you get help to use the supports in your plan? (n=960) (Long-form survey)

Changing or reviewing NDIS plans

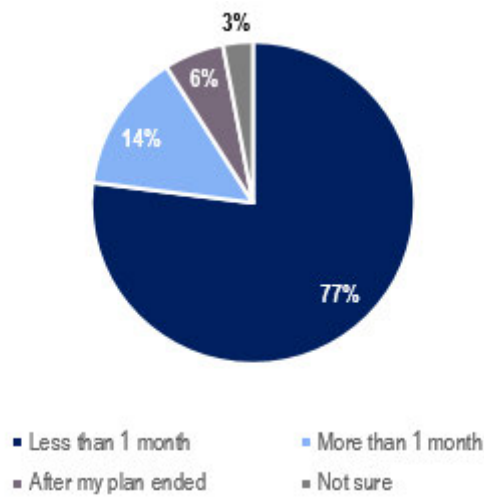


Figure 34: How long before your plan was due to end did someone contact you to make an appointment for your plan review? (n=472) (Long-form survey)

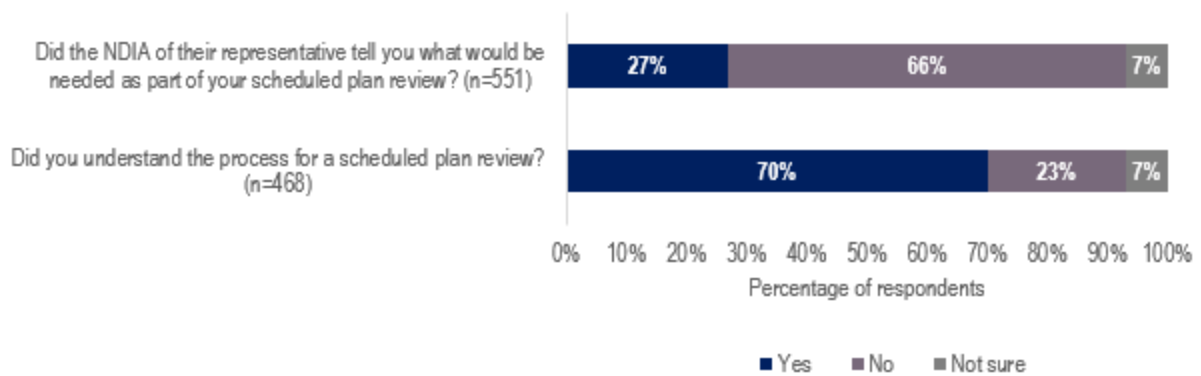


Figure 35: Respondents understanding of the scheduled plan review process (Long-form survey)

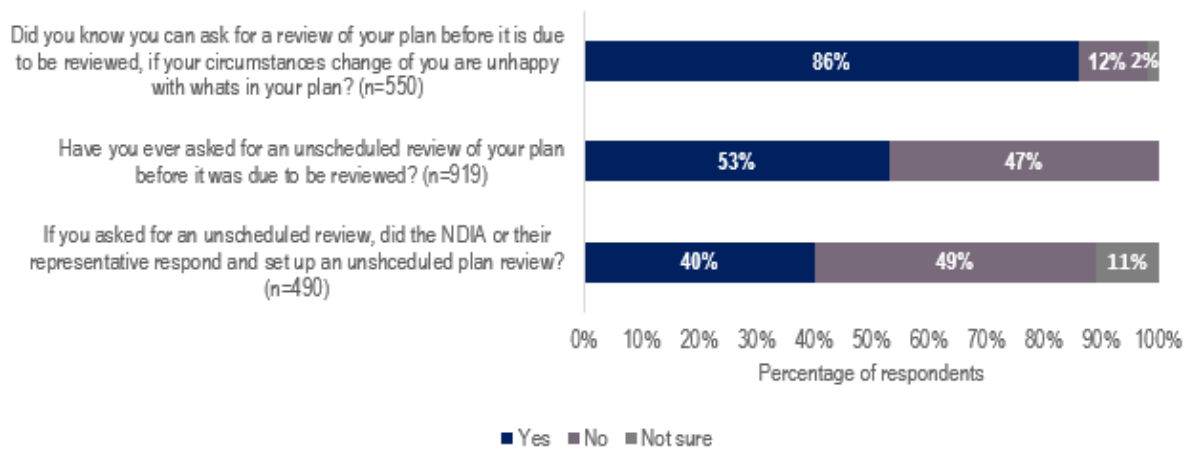


Figure 36: Respondents understanding and experience of the unscheduled plan review process (Long-form survey)

NDIA decision-making

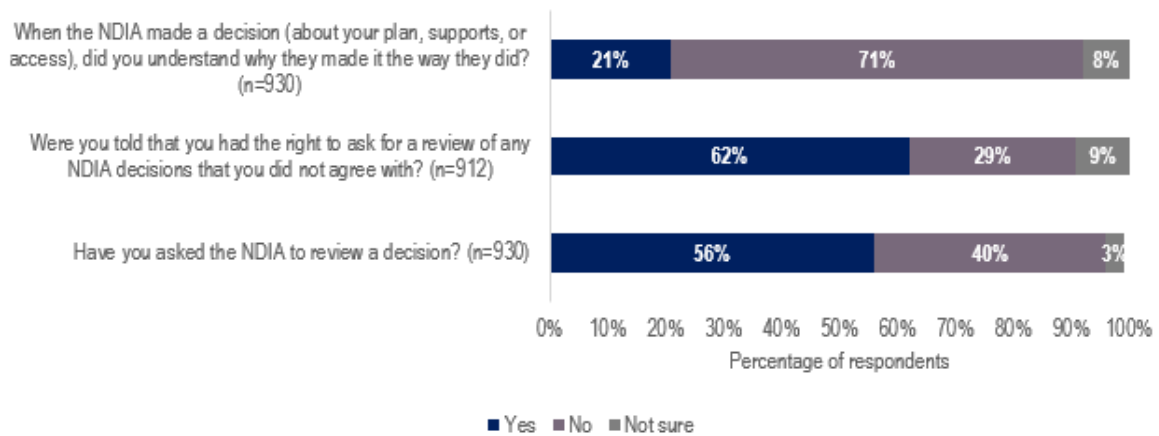


Figure 37: Respondents understanding of NDIA decision-making and internal review process (Long-form survey)

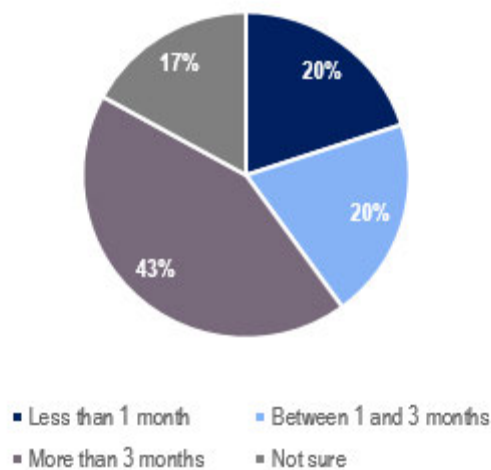


Figure 38: Time taken for the NDIA to tell respondents if they would review their decision (n=460) (Long-form survey)

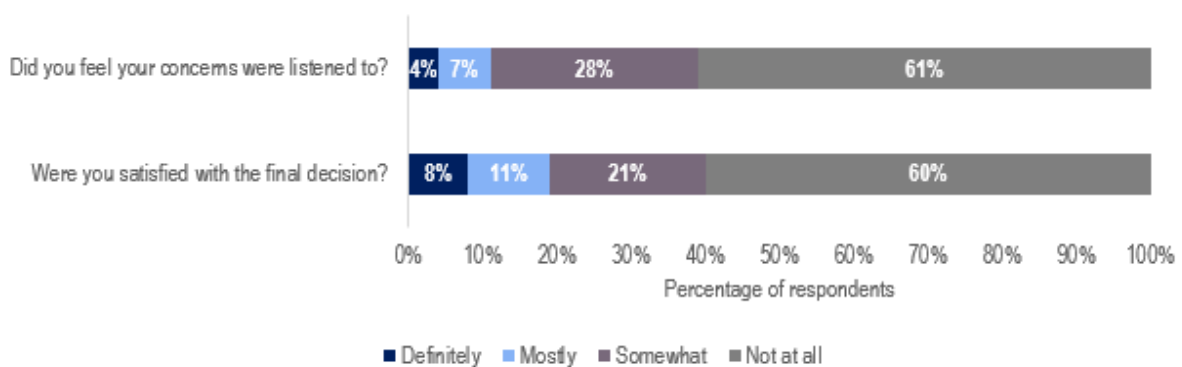


Figure 39: Satisfaction with review decision (n=515) (Long-form survey)

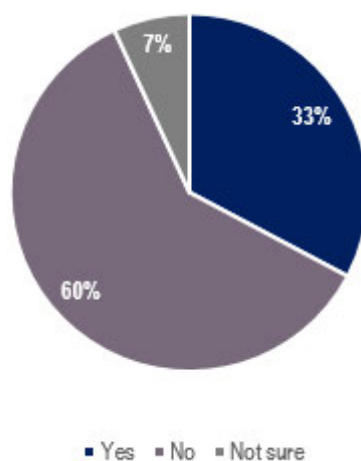


Figure 40: If you were still unhappy after the NDIA reviewed the decision, did you make an appeal to the Administrative Appeals Tribunal? (n=232) (Long-form survey)

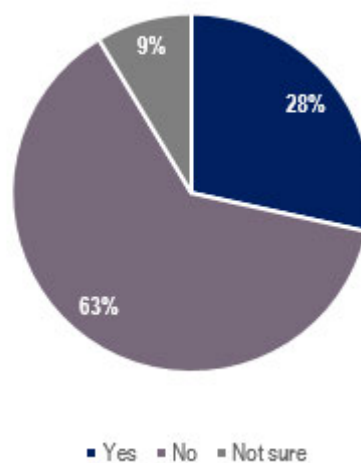


Figure 41: Is the review and appeals process for the NDIS clear to you? (n=232) (Long-form survey)

APPENDIX C

Persons and organisations met with in the conduct of the review

Persons and organisations Mr Tune met with:
The Hon. Stuart Robert MP, Minister for the National Disability Insurance Scheme, and senior officials from the Commonwealth Department of Social Services
The Hon. Gareth Ward MP, New South Wales Minister for Families, Communities and Disability Services, and senior officials from the New South Wales Department of Family and Community Services
The Hon. Luke Donellan MP, Victorian Minister for Disability, Ageing and Carers, and senior officials from the Victorian Department of Health and Human Services
The Hon. Coralee O'Rourke MP, Queensland Minister for Disability Services, and senior officials from the Queensland Department of Communities, Disability Services and Seniors
The Hon. Stephen Dawson MLC, Western Australia Minister for Disability Services, and senior officials from the Western Australia Department of Communities
The Hon. Robert Jaensch MP, Tasmanian Minister for Disability Services and Community Development, and senior officials from the Tasmanian Department of Disability and Community Services
Ms Suzanne Orr MLA, Australian Capital Territory Minister for Disability
Senior officials from the South Australian Department of Human Services
Senior officials from the Northern Territory Department of Health
The Chair of the NDIA Board, NDIA Board and senior NDIA officials
Australian Federation of Disability Organisations
Autism Aspergers Advocacy Australia (A4) and associated member organisations
Boston Consulting Group
Brotherhood of St. Laurence
Carers Australia
Children and Young People with Disability Australia
Community Mental Health Australia
Disability Advocacy Network Australia and other advocacy partners, including: <ul style="list-style-type: none"> • Independent Advocacy in the Tropics Inc • Speak Out Advocacy • VALID • Queensland Advocacy Inc • Leadership Plus • Action for More Independence and Dignity in Accommodation
Every Australian Counts
First Peoples Disability Network

Persons and organisations Mr Tune met with:

Mental Health Australia

National Disability Services

Mental Illness Fellowship of Australia

On Mr Tune's behalf, the Review Secretariat met with:

Disability Justice Australia

Legal Aid Australian Capital Territory

Legal Aid New South Wales

Legal Aid Queensland

Legal Aid Tasmania

Legal Aid Victoria

Legal Aid Western Australia

Legal Services Commission South Australia

NDIS Independent Advisory Council

Office of the Public Advocate Victoria

APPENDIX D

Information on NDIA operational reforms implemented to date

Improvements to Assistive Technology

- D.1. The NDIA has been working to make it easier and quicker for NDIS participants to access Assistive Technology, including better tracking to ensure more timely outcomes. As at 1 July 2019, the NDIA had made several process improvements, including:
- a. Assistive Technology under \$1,500 can be purchased without further quotes or approvals once it is approved in a participant's plan;
 - b. planners have clearer guidance to ensure sufficient funding is included in plans for the repair and maintenance of Assistive Technology, and the requirements for replacing worn out or outgrown Assistive Technology have been simplified;
 - c. improved Assistive Technology assessment templates have been released to support better information sharing between professionals and the NDIA; and
 - d. Assistive Technology codes have been revised with updated, market-based benchmark prices to minimise delay when considering quotes provided by participants.
- D.2. In addition, the NDIA has developed and is evaluating more complex process improvements for people with disability requiring Assistive Technology, including:
- a. improvements to processes and systems and instigating an independent Assistive Technology assessor panel to improve the quality and timeliness of recommendations for participants requiring complex and non-standard Assistive Technology; and
 - b. methods to facilitate flexible access to the right Assistive Technology for participants with changing needs. The development of libraries or loan banks of relevant Assistive Technology, and safe access to refurbished or used Assistive Technology are also being explored with the market.

Improvements to Specialist Disability Accommodation

- D.3. The NDIA has been working to improve access to SDA for eligible participants and with governments to improve provision of accessible and well-designed housing for people with disability. Reforms already implemented by the NDIA include:
- a. establishing a dedicated team to fast-track eligibility decisions; and
 - b. developing an innovation plan to detail the actions that the NDIA will take to encourage more innovation in SDA and accommodation support models.
- D.4. This work supplements the actions taken by governments to change the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to give participants greater flexibility in their choice of living arrangements, including who they live with.

Communications, engagement and ICT

- D.5. The NDIA is continuing to review its communications approach and has a range of initiatives in place to improve its communications and engagement practices.
- D.6. In January 2019, through an extensive redevelopment, the NDIA improved the structure, functionality, accessibility and information available through the NDIS website. The website redevelopment includes a clear pathway prominently throughout the website that was designed along with extensive user testing and consultation with key stakeholders such as Blind Citizens Australia and Disability Advocacy Network Australia.
- D.7. Through 2018-19, the NDIA transitioned the National Contact Centre to a new supplier. This transition has seen a reduction in:
- a. the average speed of answer (from four minutes and 43 seconds to 28 seconds);
 - b. a reduction in abandoned call rates (from 17.5 per cent to 1.5 per cent);
 - c. an increase in first contact resolution (from 70 per cent to 85 per cent); and
 - d. quality score results averaging 91 per cent.
- D.8. The NDIA has also released three new participant booklets to support people with disability and participants throughout their NDIS journey. The booklets are intended to be a practical tool to help people with disability, participants, their families, carers and the wider community to learn more about the NDIS, prepare for a planning meeting and to implement their plan. The NDIA has also recently released a suite of information on employment supports available through the NDIS in an easy read format.

- D.9. In addition, the NDIA has:
- a. simplified access to and use of interpreting services for NDIS participants, NDIA staff, the Partners in the Community workforce and providers from CALD backgrounds;
 - b. undertaken extensive stakeholder engagement to resolve inconsistencies in terminology and phrases used to describe supports in the NDIS price guide, MyPlace portal and participant plans;
 - c. provided participants with the option to request their plans in the format of their choice (e.g. large font, audio, e-text and braille); and
 - d. reviewed all existing NDIA publications, fact sheets and brochures to ensure the NDIA is providing up-to-date information that is aligned with recent DRC decisions to make it easy to understand and available in a number of accessible formats and languages.
- D.10. The NDIA has acknowledged that a good ICT system will reduce administrative burden and ensure consistency of NDIA internal operations and decisions and facilitate improved outcomes for participants. To this end, the NDIA has been working to simplify and streamline existing ICT arrangements and is providing more assistance to participants and providers to use the portal and make payments and claims.
- D.11. In August 2019, the NDIA introduced ICT changes to ensure participants can continue to access supports if a plan review is not completed by the scheduled plan review date. This change reflects the current provisions in the NDIS Act, in that a plan does not lapse in the event that a scheduled plan review is not completed by the plan review date. The extension also means that providers can continue to claim for the supports they have provided until the new plan is approved.
- D.12. In November 2019, the NDIA updated their ICT, planner guidance and public communications to provide the opportunity for participants in a stable situation to have longer plans of up to three years. A longer plan review duration means participants can carry on with their lives without needing to go through an annual plan review process.

- D.13. Other recent changes to the MyPlace Portal include, but are not limited to:
- a. enhancements to the Provider Finder Tool that make it easier for participants to find providers;
 - b. interface and accessibility improvements for participants, including the ability for participants to receive text messages when a provider has changed a service booking and improvements in the way a participants budget is displayed, including how much funding is committed or used; and
 - c. new functionality for providers that offers greater flexibility in managing service bookings, including a new dashboard for providers to see the participants that they work with.

Workforce training and development

- D.14. The NDIA has acknowledged that a participant's engagement with NDIA staff, including planners and the Partners in the Community workforce significantly impacts how participants and their families and carers perceive the NDIS. The NDIA has also acknowledged participant feedback that planners do not possess specialist skillsets, particularly in disability awareness, and that there is a need to strengthen communications and training resources, particularly for those planners supporting people with complex needs and vulnerable backgrounds.
- D.15. To this end, the NDIA has been investing in staff training to support workforce growth and assist in the implementation of the pathways reforms. The NDIA has indicated that their service delivery employees, which includes NDIA planners and Partners in the Community, undertake a range of training programs prior to supporting participants, including a six week New Starter Program that includes face-to-face sessions, eLearning and on-the-job training. Example modules include:
- a. disability-specific training, including awareness of psychosocial disabilities;
 - b. NDIA-specific training, including work health and safety, fraud awareness and NDIA induction;
 - c. service delivery specific training on the participant pathway, including reasonable and necessary supports, mainstream support interfaces, housing, employment support, self-management and Assistive Technology; and
 - d. specific training to support the implementation of disability-related health supports in NDIS plans.

- D.16. The NDIA has advised that ongoing training is provided to build and maintain the specialised skillset of planners and Partners and that key areas of future focus include:
- a. training in pathways service enhancements and building cultural awareness of Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, and people who identify as LGBTIQ+; and
 - b. collaborating with the Disability Advocacy Network of Australia and other peak bodies to raise disability awareness and help improve the participant experience, including through:
 - i. learning for planners on Contemporary Disability Rights;
 - ii. videos where participants share their lived experience of their disability; and
 - iii. a facilitator led workshop focusing on how the NDIA can be more inclusive and respectful with participants, their families and carers.

Outreach and engagement strategies

- D.17. The NDIA has a significant body of work underway to enhance pre-access and engagement for diverse and hard to reach populations. This work is in addition to the pathway service enhancements and local engagement strategies being implemented by NDIA state and territory offices to engage with and facilitate successful contacts between the NDIS, Aboriginal and Torres Strait Islander communities, CALD populations and people with psychosocial disability.

Aboriginal and Torres Strait Islander communities

- D.18. The NDIA has entered into 31 Aboriginal Community Controlled Organisations across Western Australia, the Northern Territory, South Australia and Queensland servicing 244 communities to employ local community connectors in remote areas. This program, referred to as the Remote Community Connector Program, is a cultural brokerage which aims to engage, inform and assist people from Aboriginal and Torres Strait Islander backgrounds and rural and remote communities through the NDIS pathway process. The RCC program has proven to be critical in supporting the rollout of the scheme in remote and very remote regions and is in the process of expanding to more communities.
- D.19. The NDIA is also undertaking targeted engagement in remote and rural schools to raise access about the NDIS. The NDIA is also working closely with the local shire, particularly Early Learning Centres to build awareness of the NDIS and identify potential participants. Engagement focuses on information exchange and building trust with elders and members of the community to build trust before being invited to work within a community.

- D.20. The NDIA is also engaging of Aboriginal Community Controlled Organisations, at a national, state and territory and community level to work collaboratively on resolving issues in local communities, including the cost, availability and accessibility of culturally appropriate services, access to assessments, and build trust in the scheme and the benefits it can offer the community. A pilot program is operating in South-East Queensland to support at least 500 Aboriginal and Torres Strait Islander people to access the NDIS and through the planning process.
- D.21. The NDIA and Partners are also supporting local Aboriginal engagement initiatives, working with and attending local community days and event to support engagement and understanding of the NDIA, and developing targeted communication products for Aboriginal and Torres Strait Islander communities.

People from CALD backgrounds

- D.22. The NDIA has enhanced language navigation tools for the NDIS website and key NDIS participant planning information is available in languages other than English. The NDIA is also engaging with language interpreters to support their understanding of the NDIS so when they are called to support individuals from CALD backgrounds they are confident with terminology and able to assist in getting the best outcomes for that person.
- D.23. The NDIA has also entered into partnerships with National Ethnic Disability Alliance to improve engagement with CALD communities in targeted locations, in particular through the Department of Social Services Humanitarian Support Program, which assists new arrivals in Australia. The NDIA is also working actively with settlement services and multicultural support services to educate and inform support workers and case managers on the NDIS, providing additional trusted people in communities to support people from culturally diverse communities to identify potential participants and support them to engage with the NDIS.
- D.24. The NDIA currently employs two Cultural Liaison officers in South east Queensland to work with CALD population to engage, inform and assist people from CALD backgrounds through the NDIS pathway process. In time, this will be expanded to cover more communities across Australia through the national community connector program and employ local people from local communities to be trusted and informative sources supporting access to and use of the NDIS.

People with psychosocial disability

- D.25. The NDIA has implemented a number of pathway enhancements for participants with psychosocial disability and has been working with all governments, Mental Health Australia and other sector stakeholders to examine what further improvements could be made to improve outreach and referral services to bring people with psychosocial disability into the NDIS. This work includes:
- a. streamlined access processes that support prospective participants to begin their access request verbally with a support worker or another trusted person;
 - b. new resources to resolve confusion about the information needed to demonstrate evidence of disability for people with psychosocial disabilities;
 - c. enhancing the role of Partners in the Community and Community Connectors to undertake outreach activities to increase access to the NDIS for people with psychosocial disability, with role specifications completed by April 2020, after which new information and marketing strategies will be rolled out;
 - d. projects to support Primary Health Networks and provider organisations to support people transitioning to the NDIS from Commonwealth mental health programs;
 - e. improving linkages and referrals to mainstream mental health supports and the community mental health sector for people not eligible for the NDIS, with new arrangements commencing from March 2020;
 - f. establishing a new psychosocial disability recovery framework, including a new psychosocial recovery coach support pricing item by 1 July 2020; and
 - g. strengthening information sharing and working arrangements between Commonwealth, state and territory governments and the NDIA, including the provision of six-monthly NDIS data reports on psychosocial disability so that jurisdictions can monitor developments.

APPENDIX E

Provisions in the NDIS Act to revoke or amend from 1 July 2020

Section	Currently states	Description
3(d)	<p><i>The objects of this Act are to...</i></p> <p>Provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and</p>	Strike the word 'launch'.
3(2a)	<p><i>These objects are to be achieved by....</i></p> <p>providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and</p>	Strike the word 'launch'.
3(3a)	<p>In giving effect to the objects of the Act, regard is to be had to...</p> <p>a. the progressive implementation of the National Disability Insurance Scheme.</p>	Strike point a.
3(3ci)	<p>In giving effect to the objects of the Act, regard is to be had to...</p> <p>the broad context of disability reform provided for in:</p> <p>(i) the National Disability Strategy 2010-2020 as endorsed by COAG on 13 February 2011; and</p>	Add 'and as updated from time to time' after 13 February 2011.
4(17a)	<p>It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the CEO, the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to:</p> <p>a. the progressive implementation of the National Disability Insurance Scheme; and</p> <p>b. the need to ensure the financial sustainability of the National Disability Insurance Scheme.</p>	Strike point a.

Section	Currently states	Description
8	Depending on where a person with disability lives, he or she may receive supports or services from registered providers of supports (Part 3 of Chapter 4) or from registered NDIS providers (Part 3A of Chapter 4). Supports and services may also be received from providers who are not registered.	Strike 'from registered providers of supports (Part 3 of Chapter 4) or'.
8	This Act also provides for the establishment of the National Disability Insurance Scheme Launch Transition Agency (Chapter 6).	Strike 'Scheme Launch Transition'.
9	Agency means the National Disability Insurance Scheme Launch Transition Agency established by section 117.	Strike 'Scheme Launch Transition'.
9	FaHCSIA agreement means the enterprise agreement known as the Department of Families, Housing, Community Services and Indigenous Affairs Enterprise Agreement 2012-2014 approved on 24 April 2012 in decision [2012] FWAA 3549.	Strike definition.
9	<i>Host jurisdiction</i> has the meaning given by section 10.	Strike definition.
9	National Disability Insurance Scheme means: <ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to a prescribed area; and c. the arrangements referred to in paragraph (b) as they apply when those arrangements are not limited on the basis of residence in a prescribed area. 	Strike everything after Chapter 3 in point b.
9	National Disability Insurance Scheme launch means: <ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and 	Strike definition.

Section	Currently states	Description
	<p>b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to the prescribed area.</p>	
9	<p>participant means a person who is a participant in the National Disability Insurance Scheme launch (see sections 28, 29 and 30)</p>	Strike 'launch'.
9	<p><i>Participating jurisdiction</i> has the meaning given by section 10A</p>	Strike definition.
9	<p>Prescribed area means an area prescribed by the National Disability Insurance Scheme rules for the purposes of paragraph 22(2)(a) or subsection 23(3).</p>	Strike definition.
9	<p>registered plan management provider means:</p> <p>a. for a provider providing supports to a participant in a participating jurisdiction—an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a); or</p> <p>b. otherwise—a registered provider of supports who is approved in relation to managing the funding for supports under plans as mentioned in paragraph 70(1)(a).</p>	Strike point b.
9	<p>Registered provider of supports means a person or entity approved under section 70 as a registered provider of supports.</p>	Strike definition.
10	<p>Definition of host jurisdiction</p> <p>The Minister may, by legislative instrument, specify that a State or Territory is a host jurisdiction, with the agreement of that State or Territory.</p> <p><i>Note: Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</i></p>	Strike definition.

Section	Currently states	Description
10A	<p>Definition of <i>participating jurisdiction</i></p> <p>The Minister may, by legislative instrument, specify that a host jurisdiction is a participating jurisdiction, with the agreement of that host jurisdiction.</p> <p><i>Note: Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</i></p>	Strike definition.
18	A person may make a request (an <i>access request</i>) to the Agency to become a participant in the National Disability Insurance Scheme launch.	Strike 'launch'.
21(2)	<p>If the CEO is not satisfied as mentioned in subsection (1), the person <i>meets the access criteria</i> if the CEO is satisfied of the following:</p> <ul style="list-style-type: none"> a. at the time of considering the request, the person satisfies the requirements in relation to residence prescribed as mentioned in subsection 23(3) (whether or not the person also satisfies the requirements mentioned in subsection 23(1)); 	Strike point a.
22(1-2)	<p>(1) A person <i>meets the age requirements</i> if:</p> <ul style="list-style-type: none"> a. the person was aged under 65 when the access request in relation to the person was made; and b. the person satisfies any other requirements in relation to age that are prescribed by the National Disability Insurance Scheme rules. <p>(2) Without limiting paragraph (1)(b), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <ul style="list-style-type: none"> a. may prescribe that a person must be a prescribed age on a prescribed date or a date in a prescribed period only if the person resides in a prescribed area of Australia; and b. may prescribe different ages and different dates in relation to different areas of Australia. 	Strike 1(b) and all of point 2.

Section	Currently states	Description
23(1-3)	<p>(1) A person <i>meets the residence requirements</i> if the person:</p> <ul style="list-style-type: none"> a. resides in Australia; and b. is one of the following: <ul style="list-style-type: none"> i. an Australian citizen; ii. the holder of a permanent visa; iii. a special category visa holder who is a protected SCV holder; and c. satisfies the other requirements that are prescribed by the National Disability Insurance Scheme rules. <p>(2) In deciding whether or not a person resides in Australia, regard must be had to:</p> <ul style="list-style-type: none"> a. the nature of the accommodation used by the person in Australia; and b. the nature and extent of the family relationships the person has in Australia; and c. the nature and extent of the person’s employment, business or financial ties with Australia; and d. the nature and extent of the person’s assets located in Australia; and e. the frequency and duration of the person’s travel outside Australia; and f. any other matter relevant to determining whether the person intends to remain permanently in Australia. <p>(3) Without limiting paragraph (1)(c), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <ul style="list-style-type: none"> a. may require that a person reside in a prescribed area of Australia on a prescribed date or a date in a prescribed period in order to meet the residence requirements; and 	Strike 1(c) and all of point 3.

Section	Currently states	Description
	<ul style="list-style-type: none"> b. may require that a person has resided in a prescribed area for a prescribed period in order to meet the residence requirements; and c. may require that a person continue to reside in a prescribed area of Australia in order to meet the residence requirements; and d. may require that a person satisfy a prescribed requirement relating to either or both of the following: <ul style="list-style-type: none"> i. the purpose for which the person resides in a particular geographical area; ii. exceptional circumstances applying in relation to the person. 	
28(1)	<p>When a person becomes a participant</p> <p>(1) A person becomes a participant in the National Disability Insurance Scheme launch on the day the CEO decides that the person meets the access criteria.</p>	Strike 'launch' from point 1.
29(1)	<p>When a person ceases to be a participant</p> <p>(1) A person ceases to be a participant in the National Disability Insurance Scheme launch when:</p> <ul style="list-style-type: none"> a. the person dies; or b. the person enters a residential care service on a permanent basis, or starts being provided with home care on a permanent basis, and this first occurs only after the person turns 65 years of age; or c. the person's status as a participant is revoked under section 30; or d. the person notifies the CEO in writing that he or she no longer wishes to be a participant. <p>Note: <i>Residential care service</i> and <i>home care</i> have the same meanings as in the <i>Aged Care Act 1997</i>.</p>	Strike 'launch' from point 1.

Section	Currently states	Description
30(1)	<p>Revocation of participant status</p> <p>(1) The CEO may revoke a person’s status as a participant in the National Disability Insurance Scheme launch if:</p> <ul style="list-style-type: none"> a. the CEO is satisfied that the person does not meet the residence requirements (see section 23); or b. the CEO is satisfied that the person does not meet at least one of the following: <ul style="list-style-type: none"> i. the disability requirements (see section 24); ii. the early intervention requirements (see section 25). <p>(2) The CEO must give written notice of the decision to the participant, stating the date on which the revocation takes effect.</p>	Strike ‘launch’ from point 1
32A	Rules about preparation of plans	Strike entire section.
33(6)	<p>To the extent that the funding for supports under a participant’s plan is managed by the Agency, the plan must provide that the supports are to be provided only by:</p> <ul style="list-style-type: none"> a. for supports provided to a participant in a participating jurisdiction—a registered NDIS provider; or b. otherwise—a registered provider of supports. 	Strike points a and b. Strike ‘only’ and add ‘a registered NDIS provider’ to the end of the heading.
55(2)	<p>Power of CEO to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme</p> <p>(2) The matters are as follows:</p> <ul style="list-style-type: none"> a. whether a prospective participant meets the access criteria; b. whether a participant continues to meet the access criteria; 	Replace ‘registered provider of supports’ in points i and j with “registered NDIS provider”.

Section	Currently states	Description
	<ul style="list-style-type: none"> c. whether a person purporting to act on a person’s behalf for the purposes of this Act has the authority to do so; d. the preparation or review of a participant’s plan; e. the monitoring of supports funded for, or provided to, a participant; f. whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant’s plan; g. whether a participant or other person has complied with section 46; h. whether a participant receives: <ul style="list-style-type: none"> i. supports or funding through a statutory compensation scheme or a statutory care or support scheme; or ii. any other disability support; i. whether an applicant for approval as a registered provider of supports meets the criteria for approval; j. whether a registered provider of supports continues to meet the criteria for approval; k. the functions of the Agency. 	
Chapter 4, Part 3	Registered Providers of Support	Strike entire part.
s.99	Reviewable decisions and decision-makers	Strike items 7 and 8 in the table at 99(1).

Section	Currently states	Description
Chapter 6	<p>Chapter 6 – National Disability Insurance Scheme Launch Transition Agency</p> <p>Part 1 – National Disability Insurance Scheme Launch Transition Agency</p> <p>s.117 Establishment</p> <p>(1) The National Disability Insurance Scheme Launch Transition Agency is established by this section.</p>	Strike ‘Scheme Launch Transition’ in Chapter and Part heading and in 117(1).
144 (1)	<p>Function of the Advisory Council</p> <p>(1) The Advisory Council’s function is to provide, on its own initiative or at the written request of the Board, advice to the Board about the way in which the Agency:</p> <ul style="list-style-type: none"> a. performs its functions relating to the National Disability Insurance Scheme; and b. supports the independence and social and economic participation of people with disability; and c. provides reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and d. enables people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and e. facilitates the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and f. promotes the provision of high quality and innovative supports to people with disability; and g. raises community awareness of the issues that affect the social and economic participation of people with disability, and facilitates greater community inclusion of people with disability. 	Strike ‘launch from point 1(c).
144(3)	<p>(3) Advice provided by the Advisory Council must not relate to:</p> <ul style="list-style-type: none"> a. a particular individual; or 	Strike point b.

Section	Currently states	Description
	<ul style="list-style-type: none"> b. the approval of a person or entity as a registered provider of supports or the revocation of that approval; or (ba) the registration of a person or entity as a registered NDIS provider, or the variation, suspension or revocation of that registration; or c. the corporate governance of the Agency or the Commission; or d. the money paid to, or received by, the Agency. 	
160(6-8)	<p>(6) Despite subsection (1), the first CEO is to be appointed by the Minister.</p> <p>(7) Before the Minister makes an appointment under subsection (6), the Minister must consult the host jurisdictions about the appointment.</p> <p>(8) This Part (other than subsection (1)) applies to the CEO appointed under subsection (6) as if the CEO had been appointed under subsection (1).</p>	Strike sections 6, 7 and 8.
171A	<p>Transitional provisions for staff of the Agency</p> <p>Schedule 1 has effect</p>	Strike.
174(5)	<p><i>Quarterly report to the Ministerial Council - First report</i></p> <p>(5) If this section commences on a day other than a day (a <i>quarter start day</i>) mentioned in paragraph (1)(a):</p> <ul style="list-style-type: none"> a. the Board members are not required to prepare a report for the period ending immediately before the next quarter start day; and b. the first report under this section must be for the period: <ul style="list-style-type: none"> i. starting on the day this section commences; and 	Strike all of point b.

Section	Currently states	Description
	<ul style="list-style-type: none"> ii. ending immediately before the second quarter start day after the day this section commences. 	
180D(5)	<p>Reviewing actuary for first 3 years</p> <p>(5) The Board must nominate the Australian Government Actuary under subsection (1) as the first reviewing actuary, as soon as reasonably practicable after the commencement of this section. The nomination has effect for 3 years, despite subsection (2) of this section and subsection 33(3) of the <i>Acts Interpretation Act 1901</i>, but subject to subsection (3) of this section.</p>	Strike.
203(1)	<p>Application of Act to unincorporated bodies</p> <p>(1) This Act applies to an entity that:</p> <ul style="list-style-type: none"> a. is a registered provider of supports; or b. wishes to apply for approval as a registered provider of supports; or c. is a registered NDIS provider; or d. wishes to apply for registration as a registered NDIS provider; or e. is an NDIS provider; <p>as if the entity were a person, but with the changes mentioned in subsections (3), (4) and (5).</p>	Strike points a and b.
Chapter 7, Part 4	Review of the Act	Strike entire part.
209(5)	<p>(5) The Minister must not make Category B National Disability Insurance Scheme rules relating to:</p> <ul style="list-style-type: none"> a. an area, law or program of a host jurisdiction; or b. the commencement of the facilitation of the preparation of plans of participants who are identified (wholly or partly, and directly or indirectly) by reference to a host jurisdiction; 	Strike point b.

Section	Currently states	Description
	unless the host jurisdiction has agreed to the making of the rules.	
Schedule 1	Transitional provisions for staff of the Agency	Strike entire schedule.
If not addressed through the amendments as proposed above....		
Other references to launch	179	Strike reference.
References to 'host jurisdictions'	120(4), 121(3), 125(3), 131(2), 134(3), 134(4a), 134(3bii), 135(2), 151(2), 155(3), 155(4a), 155(4bii), 156(2), 173(2), 174(2a), 174(2b), 175(1a), 175(1b), 175(2)(a), 175(2)(b), 175(2)(c), 179, 201(2), 207(2)(note), 209(4), 209(5a), 209(6), 209(7), 210(2)(a), 210(2b)	Strike reference, replace with 'states and territories'.
References to 'participating jurisdictions'	Definition of 'registered plan management provider' (point a), 73A, 73E(1b)	Strike reference, replace with 'states and territories'

APPENDIX F

2015 NDIS Act Review Recommendations

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
1.	Amend principles that directly reference carers so that they align with the 'recognise and respect' terminology of the Carer Recognition Act 2010 (Cth).	Agreed	Supported	Add a new subsection after 4(12) which reads: <i>"(12A) The relationship between people with disability and their carers is to be recognised and respected."</i> After a new paragraph after 31(c) which reads: <i>"(ca) where relevant, recognise and respect the relationship between participants and their carers; and"</i>
2.	Amend section 5(d) to reference lesbian, gay, bisexual, transgender and intersex status.	Agreed	Supported	The proposed new subsection 5(d) will read: <i>"(d) the cultural and linguistic circumstances, and the sex, gender identity, sexual orientation and intersex status of people with disability should be taken into account."</i>
3.	Amend relevant principles to remove moderating language (e.g., 'to the extent of their ability' and 'to the full extent of their capacity').	Agreed	Supported	Remove <i>"to the extent of their ability"</i> in subsection 4(2) and <i>"to the full extent of their capacity"</i> in subsection 4(8).
4.	Add a new principle to section 4 that reflects the concepts of the centrality of people with disability and co-design.	Agreed	Supported	The proposed new subsection 4(9)(a) will read: <i>"(9A) People with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity"</i>

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
5.	Add a new principle to section 4, reflecting the importance of a diverse and sustainable market that provides choice and control and high quality supports to people with disability.	Agreed	Supported	Remove existing subsection 4(15) and add: <i>“(15) In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted.”</i>
6.	Provide greater definition on ILC in the legislative framework.	Agreed	Supported	Remove existing subsection 14(a), and replace it with: <i>“(a) for the purposes of enabling those persons or entities to provide information in relation to disability and disability supports or services; or</i> <i>(ab) for the purposes of enabling those persons or entities to provide assistance in building capacity within the community in connection with the provision of goods and services to people with disability and their families and carers; or</i> <i>(ac) for the purposes of enabling those persons or entities to assist people with disability to realise their potential for physical, social, emotional and intellectual development; or</i> <i>(ad) for the purposes of enabling those persons or entities to assist people with disability, and their families and carers, to participate in social and economic life; or”</i>
7.	Clarify the intent of section 17A (relative to sections 4 and 5).	Agreed	Supported	Add a subsection under section 17A which requires the NDIA Chief Executive Officer (CEO) to take into account the principles outlined in section 4 of the NDIS Act.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
				<p>The proposed subsection 17A(1A) will read: <i>“(1A) In performing the CEO’s functions and exercising the CEO’s powers under this Chapter, the CEO must have regard to the principles in this section.”</i></p> <p>The proposed subsection 17A(4) will read: <i>“(4) The principles in this section are in addition to the principles in section 4 to which the CEO is to have regard in performing the CEO’s functions and exercising the CEO’s powers under this Act.”</i></p>
8.	Amend the legislative framework to include principles on how the disability requirements are intended to operate for people with chronic health conditions.	Agreed	Supported pending further policy development	This issue is addressed through recommendation 1 of this review.
9.	Remove section 24(1)(e) (unless this requirement is amended to support recommendation 8).	Agreed	Supported pending further policy development	While there is merit in clarifying the boundaries of the NDIS and chronic health conditions, further policy development is required to support a legislative framework that does not create perverse outcomes for people with disability.
10.	Amend section 29 to include a ‘cooling-off period’, during which a participant’s decision to revoke their participant status (under section 29(1)(d) could be reversed.	Noted	Out of Scope	In accordance with COAG’s view, this review considers the NDIA should consider incorporating the recommendation into the Operational Guidelines, instead of amending the legislation,
11.	Amend the legislative framework to align the access request process with	Agreed	Superseded	With the transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
	bilateral agreements and the phasing rules made under section 32A.			
12.	Remove 'where possible' from section 31(d).	Agreed	Supported	The amended paragraph 31(d) will read: <i>"(d) strengthen and build capacity of families and carers to support participants who are children; and"</i>
13	Amend the Supports for Participants Rules to provide further guidance on how value for money could be determined.	Agreed	Supported	This issue is proposed to be addressed through contemporizing the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i> , as proposed in Chapter 11.
14	Amend the Supports for Participants Rules to provide greater guidance on the matters that may be used for the purposes of deciding whether a support will be, or is likely to be, effective and beneficial for a participant.	Agreed	Supported	This issue is proposed to be addressed through contemporizing the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i> , as proposed in Chapter 11.
15	Add a statement to clause 3.4 of the Supports for Participants Rules to require the CEO to consider 'the extent of any other caring responsibilities'.	Agreed	Supported	This issue is addressed through recommendation 12 of this review.
16	Amend the legislative framework to provide greater guidance on the rights of participants to request a review of their plan.	Agreed	Supported	This issue is addressed through recommendation 12 of this review.
17	Consider amending section 55 to broaden the powers of the CEO to	Agreed	Supported	Add an additional paragraph under paragraph 55(2)(a), which will read:

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
	obtain information to ensure the integrity of the NDIS.			<i>“(aa) whether a person with disability may be eligible for services or supports under the National Disability Insurance Scheme;”</i>
18	Add a new provision to section 60 authorising the NDIA to collect information that would satisfy the NDIS Act definition of protected information.	Agreed	Supported	Subsection 60(1) should be deleted from the NDIS Act, as the <i>Privacy Act 1988</i> (Cth) already permits the NDIA to collect the information this subsection provided. As such, the subsection is unnecessary. It is also proposed to remove section 61, which is an offence provision relating directly to subsection 60(1) and has no other application. Remove all other references to section 60(1) and 61.
19	Amend the legislative framework to provide greater clarity on the purpose of NDIA registration during the period leading up to full Scheme.	Agree in principle.	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
20	Consider the feasibility of amending the legislative framework to allow for a probationary form of registration.	Agreed	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
21	Operationalise the Australian Law Reform Commission (ALRC) recommendations relating to the NDIS in the 2014 report <i>Equality, Capacity and Disability in Commonwealth Laws</i> .	Noted	Noted	This intention of this issue is addressed through recommendation 1 of this review.
22	Amend section 90 to allow the CEO to cancel or suspend a nominee appointment if the nominee ceases to be the guardian of the participant.	Agreed	Supported	Adding a new subsection 90(3A) which reads: <i>“Nominee no longer has guardianship etc. (3A) The CEO may, by written instrument, cancel the appointment of a nominee if:</i>

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
				<p><i>(a) at the time the appointment was made, the nominee was a person who, under a law of the Commonwealth, a State or a Territory:</i></p> <p><i>(i) had guardianship of the participant; or</i></p> <p><i>(ii) was appointed by a court, tribunal, board or panel (however described) who had power to make decisions for the participant and whose responsibilities in relation to the participant were relevant to the duties of a nominee; and</i></p> <p><i>(b) the nominee no longer has guardianship of the participant or holds the appointment referred to in subparagraph (a)(ii) (as the case requires)."</i></p>
23	Amend the legislative framework to limit the term 'review' to 'review of decisions'.	Agreed	Supported	This issue is addressed through recommendation 22 of this review.
24	Amend section 104(3)(f) to reference carers.	Agreed	Supported	<p>The proposed amended paragraph will read:</p> <p><i>"(f) the impact of the requirement to take action on the participant or prospective participant and his or her family or carers."</i></p>
25	Amend section 118 to reflect the functions of the NDIA in relation to ILC.	Agreed	Supported	The intention of this recommendation is implemented to the extent that section 14(a) is amended to provide greater definition on ILC (Item 6 in this table)
26	Clarify the intent of section 127(2)(a) in terms of it encompassing 'lived experience with disability'.	Agreed	Out of Scope	Matters relating to the governance of the NDIS are not in scope of this review. However, it is noted that this recommendation is broadly supported by governments, NDIA and the public. Making this proposed amendment to the NDIS Act would not be controversial.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
27	Amend the legislative framework to require the Principal Member of the Independent Advisory Council (IAC) to be a Board member as well	Noted	Out of Scope	Matters relating to the governance of the NDIS are not in scope of this review. However, it is noted that this recommendation is broadly supported by governments, NDIA and the public. Making this proposed amendment to the NDIS Act would not be controversial.
28	Consider the legislated timeframes related to the production of the quarterly reports.	Agreed	Supported	As discussed in Chapter 10 of this report, to allow time for in-depth data analysis in the context of reporting on the Participant Service Guarantee, it is recommended to remove "1 month" from paragraph 174(1)(b) and replace it with "6 weeks".
29	Amend the NDIS Act to replace the 'National Disability Insurance Scheme Launch Agency' with the 'National Disability Insurance Agency'.	Agreed	Superseded	This issue is addressed through recommendation 27 of this review.
30	Amend section 182(2)(c) to exclude from its application, payments relating to approved supports that have already been delivered.	Agreed	Supported	Replacing the existing paragraph 182(2)(c), with: <i>"(c) the payment was made in respect of reasonable and necessary supports funded under a participant's plan and the participant died before the supports were provided."</i>
31	Conduct a further review of the NDIS Act in two-to-three years.	Agree in principle	Out of Scope	Decisions in relation to the timing of reviews of the NDIS Act is a matter for Government consideration, however, it is noted that a full review of the NDIS Act is currently scheduled to occur in 2021.
32	Amend section 209(3) to reference the objects and principles of the NDIS Act.	Agreed	Supported	Replacing the existing subsection 209(3), with: <i>"(3) When making National Disability Insurance Scheme rules, the Minister must have regard to: (a) the objects and principles of this Act; and (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme."</i>

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
33	Consider what, if any, amendments to the legislative framework are required to support the operationalisation of the bilateral agreements between the Commonwealth and the States and Territories.	Agreed	Superseded	With the transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.

s22

From: s22
Sent: Tuesday, 5 November 2019 11:47 AM
To: s47F(1)
Cc: Tune NDIS Review; s22
Subject: Board meeting tomorrow [SEC=OFFICIAL]
Attachments: 1. NDIA Board - Tune Review considerations - Review notes.docx

Hi David,

For tomorrow's board sub-committee meeting – attached is the agenda and dial in details. I have also provided some papers and possible TP's should you need them. This includes our commentary against the NDIA's submission.

I am also working on the assuming that you will dial in from home, and that I'm dialling in from here.

Cheers

s22

s22

Director
NDIS Governance
NDIS Participant and Performance Group
Department of Social Services
P: s22 | **M:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: s22
Sent: Monday, 4 November 2019 4:24 PM
To: s22
Cc: s22
Subject: Draft agenda for Wed meeting [SEC=OFFICIAL]

Hi s22

Hope you are going ok.

Can you please let me know if David would be comfortable with the attached draft agenda for the discussion with the Board sub-committee on Wednesday?

I've kept the agenda to 1 hour but we have 1.5 hours booked just in case.

s22

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NDIA Board sub-committee proposed priority topics for Tune Review

1.	Issue	Comments	NDIS Act reference
1.1	Topic: Eligibility criteria Eligibility of children of NZ citizens	<ul style="list-style-type: none"> Children born in Australia to two NZ parents generally do not meet NDIS residence requirements. The NDIA Board supports expanding eligibility to include all children born in Australia who are expected to be ordinarily resident until the age of 10, including children born to two NZ parents. Continued access to the NDIS should be contingent on the provision of evidence to the Agency which demonstrates the child acquired Australian citizenship at age 10 or shortly thereafter. 	s23(1)(b)
1.2	Functional impairment due to chronic health conditions	<ul style="list-style-type: none"> The NDIA Board is of the view that disability requirements in the Act should more explicitly link functional impairment to disability. The issue of eligibility through functional impairment due to chronic health conditions was examined through the 2015 Independent Review of the NDIS Act but was not resolved at this time. 	s24(1)
1.3	Impact of requirement for impairment that affects capacity for social and economic participation	<ul style="list-style-type: none"> The NDIA Board is concerned that the requirements of s 24(1)(d) could discourage people from social and economic participation. There may be benefit to considering a more positively worded criteria, such as whether the Scheme has the potential to improve the person's capacity for social and economic participation. 	s24(1)(d)
1.4	Episodic nature of mental illness	<ul style="list-style-type: none"> The NDIA Board supports amendments to clarify the definition of permanency for people with psychosocial disability, given the episodic nature of mental illness. It is important that the recognition of episodic illness is limited in scope to psychosocial disability and does not inadvertently expand access to the Scheme. 	s24(1)(b), s24(2)
1.5	Early intervention eligibility for children	<ul style="list-style-type: none"> The NDIA Board suggests that the inclusion of s25(1)(a)(iii) makes eligibility criteria for early intervention too broad and should be reconsidered. 	s25(1)(a)(iii), s 9

s47C

Issue	Comments	NDIS Act reference	s47C
1.6	Functional assessment	<ul style="list-style-type: none"> The NDIS Act should provide the CEO with the discretion to require a prospective participant to undergo an independent functional assessment where appropriate. Having a discretion to require a detailed functional assessment for a prospective participant will promote equity, fairness and consistency of access. The NDIA has successfully piloted functional assessments and intends to build on the pilot as part of a potential national rollout. The amendments will also enable a discretion for functional assessments to provide independent evidence to support the ongoing assessment of a participant's access to the NDIS (including, but not limited, to Early Intervention). The NDIS Act should be amended to provide the CEO with discretionary powers to support this approach, noting that an independent assessment may not be mandatory for all prospective participants and participants 	s26(1), s36, s50, s30
1.7	Ability of the CEO to reconsider eligibility of defined participants	<ul style="list-style-type: none"> Alignment between defined programs and disability requirements is not robust in every instance, resulting in some people transitioning to the NDIS who may not meet the legislative criteria if they were to be assessed. The NDIS Act provides the CEO with a discretionary power to revoke a person's status as a participant, but the CEO does not have a power to request information from a participant for this purpose. The CEO should have explicit powers to reassess participants and revoke access where they do not meet the legislative criteria. 	s30
2. Topic: Reasonable and necessary supports			
2.1	Functional assessment	<ul style="list-style-type: none"> The CEO should have discretionary powers to require participants to undergo a functional assessment to help inform the development of a participant's NDIS plan. Functional assessments will improve the fairness, equity, consistency and sustainability of the NDIS package of supports for participants 	S34

Issue	Comments	NDIS Act reference
2.1 Definition of reasonable and necessary	<ul style="list-style-type: none"> • 'Reasonable and necessary' is not defined in the NDIS Act, noting that a support will be considered 'reasonable and necessary' when it meets all of the criteria at s 34. • AAT matters are resulting in s 34 being interpreted in a way that may be inconsistent with the original intention of the legislation. • Mortimer J of the Federal Court in McGarrigle held that once a decision is made that the support, as identified and described, is reasonable and necessary, then subject to the other requirements in s 33(5) and s 34, the scheme requires and contemplates that support "will" be funded. That can only mean wholly or fully funded. • The Agency appealed this decision to the Full Federal Court, but the appeal was dismissed. • Therefore, McGarrigle is the authority that where a support is reasonable and necessary, the CEO cannot use s 34(1)(e) to say that the NDIS will only fund a contribution to the total cost of the support. Clarity should be sought on how the NDIA may apply s 34(1)(e) as the Federal Court in McGarrigle formed a different view on how to interpret s 34, particularly s 34(1)(e). • In McKenzie (Qld air-conditioning case), the Tribunal found that the participant's social participation occurs substantially within his activities of daily living in his home, and air-conditioning reduced the worsening of his MS symptoms to undertake those activities. The AAT found that an air-conditioner is a support that would meet s 34(1)(b) by assisting the participant to pursue his relevant goals, objectives and aspirations and that there were no comparable supports that would achieve the same benefit, therefore this support also met the value for money criteria (s 34(1)(c)). • In McPherson (purchase of a car), the Tribunal found that the issue was speculative as the participant did not have a driver's licence, and there was evidence that the participant would require a carer or attendant for all community outings. Further, the Scheme Actuary's evidence in relation to risks to financial sustainability if the NDIS funded private motor vehicles was accepted. The support was not considered value for money (s 34(1)(c)) as the participant already has a car, and the participant also had informal networks who can drive him, in addition to NDIS funded support workers (s 34(1)(e)). • Despite AAT decisions in McGarrigle and McKenzie, it is the NDIA's view that the original intent of the NDIS Act was that everyday costs of living were not expected to be covered by the Scheme and the NDIA Board strongly supports amending s34 to clarify this and to clarify the scope of reasonable and necessary generally. 	s9, s34
2.2 Package of reasonable and necessary supports	<ul style="list-style-type: none"> • The Agency supports participants in exercising full choice and control in the planning and delivery of their supports. • In doing so, the Agency considers that the reasonable and necessary criteria at section 34 should be amended to allow for the provision of funding generally, and not restrict the CEO to considering supports at a granular level. • Moving to a model that provides a 'package' of reasonable and necessary supports will provide participants with flexibility in the pursuit of their goals, and acknowledges the changing priorities of daily life. This is in line with the Productivity Commission's original intent of the NDIS. • Using this model, the Agency would provide greater emphasis on plan implementation with participants to ensure the package of supports meets individual need. 	s34

s47C

3.	Issue	Comments	NDIS Act reference	s47C
3. Topic: composition of plan				
3.1	Plan flexibility	<ul style="list-style-type: none"> Section 33(3) allows funded supports to be specifically identified in the plan or described generally. The NDIA Board supports changes to Plan Management Rules to allow participants to manage their funding for supports flexibly between core and capacity building support categories. Where supports are described generally in the plan, it gives participants greater flexibility in how supports are delivered and by whom. This approach is more aligned with the principle of individual choice and control. 	s33(3)	
3.2	Plan length	<ul style="list-style-type: none"> The NDIS Act does not prescribe a universal length or duration for a plan. This approach is supported. As a part of the decision to approve the statement of participant supports, the CEO must determine the date, or the circumstances, by which the plan will be reviewed. This is a discretionary decision, and gives the CEO flexibility to determine the plan duration with regard to the individual circumstances of each participant. 	s33(2)	
4 Topic: plan review				
4.1	Plan amendment	<ul style="list-style-type: none"> The inability to vary a plan after it comes into effect is driving large volumes of plan review requests, impacting on participants and the Agency. The NDIA Board supports amendments to allow plan amendments in certain circumstances such as addition of quotes for capital and to allow additional funding in crisis situations. 	s37(2)	
4.2	Unscheduled plan review	<ul style="list-style-type: none"> The NDIA Board supports inverting the unscheduled plan review deeming decision so that an unscheduled plan review is required if a decision is not made by the CEO within the time specified. We recommend that the timeframe for CEO decision be extended from 14 to 21 days to allow time for early resolution to be attempted, which prevents a participant from going through a full plan review process unnecessarily. 	s48	
5. Topic: Fraud control				
<p>It is the responsibility of the NDIA to pursue criminal action and undertake compliance action in relation to misuse of NDIS amounts. Enhanced regulatory powers and information sharing / gathering powers will support the NDIA's ability to more effectively detect and respond to fraud risks such as participant collusion and provider conflict of interest (outlined below), as well as other fraud risks.</p>				
<p>The NDIA seeks powers such as compliance and monitoring powers from the <i>Regulatory Powers Act 2014</i> to enable it to investigate fraud against the NDIS and undertake compliance action in relation to misuse of NDIS amounts.</p>				
<p>To strengthen the NDIA's ability to detect and respond to fraud and non-compliance, other information gathering and information sharing powers are also required. Once a matter is accepted as a criminal investigation, the Agency loses its powers under s 55 of the NDIS Act.</p>				
<p>In addition, the NDIA seeks to strengthen the legislative framework for debt recovery where NDIS amounts have been misused, to ensure these funds are repaid and returned to participants plans where appropriate - excluding circumstances of participant collusion. This would include introducing reviewable decisions on debts owed to the Scheme and debt calculation.</p>				

5.1	Issue	Comments	NDIS Act reference	s47C
	Participant collusion	<ul style="list-style-type: none"> Once a participant's plan is approved, the only obligation on the participant is to spend NDIS amounts in accordance with their plan. Where supports in plans are described generally, it can be difficult to determine whether NDIS amounts have been spent in accordance with the plan. Stronger measures are needed to deter participant collusion in fraudulent activities, especially to balance the introduction of greater funding flexibility through generally describing supports in participant plans. 	s46(1)	
5.2	Provider conflict of interest	<ul style="list-style-type: none"> Some providers are engaging in sharp practice by influencing participants to use other services they provide or control. This impacts on participants' individual choice and control. The NDIA should play a greater role in preventing, identifying and mitigating provider conflicts of interest. 		
6.	Topic: other issues			
6.1	COAG quarterly reports	<ul style="list-style-type: none"> The timeframe for providing reports should be extended from one month to six weeks. This is consistent with 2015 Act Review recommendations, which the Tune Review is seeking to re-affirm and progress. 	s174	
6.2	Nominee	<ul style="list-style-type: none"> The NDIA Board supports the introduction of an 'access nominee'. This would give the CEO a power to appoint a nominee for the purposes of making an access request for a person who does not have capacity to this themselves. 	Chapter 4, Part 5	
6.3	Membership of IAC	<ul style="list-style-type: none"> The 2015 Act Review recommended that the Principal Member of the IAC also be a Board member. While legislative amendment is not required to give effect to this, the NDIA Board recommends legislative amendment to make it a requirement for the IAC. 	s146	
6.4	NDIS Price Guide	<ul style="list-style-type: none"> There is no reference to the NDIS Price Guide in the NDIS Act. The Agency is unable to effectively enforce the NDIS Price Guide as it does not have contractual arrangements with service providers. The NDIA Board recommends that the NDIS Act be amended to reference the NDIS Price Guide to the effect that all funding for reasonable and necessary supports be provided in accordance with prices determined in the NDIS Price Guide. 		

s22

From: Tune NDIS Review
Sent: Tuesday, 5 November 2019 4:38 PM
To: s47F(1)
Cc: s22 Tune NDIS Review
Subject: NDIS PSG Key Submissions and Secretary's Meeting [SEC=OFFICIAL]
Attachments: NDIA Attachment A - NDIA priorities for Tune Review.pdf

Hi David,

Thanks for the insights and discussion yesterday.

Please find attached the key submissions we went over yesterday: NSW Gov, Tas. Gov, SA Gov and the NDIA Board.

We are also starting to analyse and parse the key representative organisations as they come in with submissions.

Unfortunately there's been a mixup with the diary scheduling with Secretary Campbell on our end – can you make this Friday 9.30am? Otherwise can you let us know what availability you may have on Monday 11 November.

Thank you.

s22

Assistant Director
Tune Review and Legislation Section
NDIS Transition Oversight and Governance Branch
Department of Social Services

P: s22 **E:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

NDIA proposed priority topics for Tune Review

	Issue	Comments	NDIS Act reference
1.	Topic: Eligibility criteria		
1.1	Eligibility of children of NZ citizens	<ul style="list-style-type: none"> Children born in Australia to two NZ parents generally do not meet NDIS residence requirements. The NDIA Board supports expanding eligibility to include all children born in Australia who are expected to be ordinarily resident until the age of 10, including children born to two NZ parents. Continued access to the NDIS should be contingent on the provision of evidence to the Agency which demonstrates the child acquired Australian citizenship at age 10 or shortly thereafter. 	s23(1)(b)
1.2	Functional impairment due to chronic health conditions	<ul style="list-style-type: none"> The NDIA Board is of the view that disability requirements in the Act should more explicitly link functional impairment to disability. The issue of eligibility through functional impairment due to chronic health conditions was examined through the 2015 Independent Review of the NDIS Act but was not resolved at this time. 	s24(1)
1.3	Impact of requirement for impairment that affects capacity for social and economic participation	<ul style="list-style-type: none"> The NDIA Board is concerned that the requirements of s 24(1)(d) could discourage people from social and economic participation. There may be benefit to considering a more positively worded criteria, such as whether the Scheme has the potential to improve the person's capacity for social and economic participation. 	s24(1)(d)
1.4	Episodic nature of mental illness	<ul style="list-style-type: none"> The NDIA Board supports amendments to clarify the definition of permanency for people with psychosocial disability, given the episodic nature of mental illness. It is important that the recognition of episodic illness is limited in scope to psychosocial disability and does not inadvertently expand access to the Scheme. 	s24(1)(b), s24(2)

	Issue	Comments	NDIS Act reference
1.5	Early intervention eligibility for children	<ul style="list-style-type: none"> The NDIA Board suggests that the inclusion of s25(1)(a)(iii) makes eligibility criteria for early intervention too broad and should be reconsidered. 	s25(1)(a)(i ii), s 9
1.6	Functional assessment	<ul style="list-style-type: none"> The NDIS Act should provide the CEO with the discretion to require a prospective participant to undergo an independent functional assessment where appropriate. Having a discretion to require a detailed functional assessment for a prospective participant will promote equity, fairness and consistency of access. The NDIA has successfully piloted functional assessments and intends to build on the pilot as part of a potential national rollout. The amendments will also enable a discretion for functional assessments to provide independent evidence to support the ongoing assessment of a participant's access to the NDIS (including, but not limited, to Early Intervention). The NDIS Act should be amended to provide the CEO with discretionary powers to support this approach, noting that an independent assessment may not be mandatory for all prospective participants and participants. 	s26(1), s36, s50, s30
1.7	Ability of the CEO to reconsider eligibility of defined participants	<ul style="list-style-type: none"> Alignment between defined programs and disability requirements is not robust in every instance, resulting in some people transitioning to the NDIS who may not meet the legislative criteria if they were to be assessed. The NDIS Act provides the CEO with a discretionary power to revoke a person's status as a participant, but the CEO does not have a power to request information from a participant for this purpose. The CEO should have explicit powers to reassess participants and revoke access where they do not meet the legislative criteria. 	s30

Issue	Comments	NDIS Act reference
2.	Topic: Reasonable and necessary supports	
2.1	Functional Assessment The CEO should have discretionary powers to require participants to undergo a functional assessment to help inform the development of a participant's NDIS plan. <ul style="list-style-type: none"> Functional assessments will improve the fairness, equity, consistency and sustainability of the NDIS package of supports for participants 	s34
2.2	Definition of reasonable and necessary <ul style="list-style-type: none"> 'Reasonable and necessary' is not defined in the NDIS Act, noting that a support will be considered 'reasonable and necessary' when it meets all of the criteria at s 34. AAT matters are resulting in s 34 being interpreted in a way that may be inconsistent with the original intention of the legislation. Mortimer J of the Federal Court in <i>McGarrigle</i> held that once a decision is made that the support, as identified and described, is reasonable and necessary, then subject to the other requirements in s 33(5) and s 34, the scheme requires and contemplates that support "will" be funded. That can only mean wholly or fully funded. The Agency appealed this decision to the Full Federal Court, but the appeal was dismissed. Therefore, McGarrigle is the authority that where a support is reasonable and necessary, the CEO cannot use s 34(1)(e) to say that the NDIS will only fund a contribution to the total cost of the support. Clarity should be sought on how the NDIA may apply s 34(1)(e) as the Federal Court in McGarrigle formed a different view on how to interpret s 34, particularly s 34(1)(e). 	s9, s34

Issue	Comments	NDIS Act reference
	<ul style="list-style-type: none"> In <i>McKenzie</i> (Qld air-conditioning case), the Tribunal found that the participant's social participation occurs substantially within his activities of daily living in his home, and air-conditioning reduced the worsening of his MS symptoms to undertake those activities. The AAT found that an air-conditioner is a support that would meet s 34(1)(b) by assisting the participant to pursue his relevant goals, objectives and aspirations and that there were no comparable supports that would achieve the same benefit, therefore this support also met the value for money criteria (s 34(1)(c)). In <i>McPherson</i> (purchase of a car), the Tribunal found that the issue was speculative as the participant did not have a driver's licence, and there was evidence that the participant would require a carer or attendant for all community outings. Further, the Scheme Actuary's evidence in relation to risks to financial sustainability if the NDIS funded private motor vehicles was accepted. The support was not considered value for money (s 34(1)(c)) as the participant already has a car, and the participant also had informal networks who can drive him, in addition to NDIS funded support workers (s 34(1)(e)). Despite AAT decisions in McGarrigle and McKenzie, it is the NDIA's view that the original intent of the NDIS Act was that everyday costs of living were <u>not</u> expected to be covered by the Scheme and the NDIA Board strongly supports amending s34 to clarify this and to clarify the scope of reasonable and necessary generally. 	
2.3	Package of reasonable and necessary supports	s34

Issue	Comments	NDIS Act reference
	<ul style="list-style-type: none"> In doing so, the Agency considers that the reasonable and necessary criteria at section 34 should be amended to allow for the provision of funding generally, and not restrict the CEO to considering supports at a granular level. Moving to a model that provides a 'package' of reasonable and necessary supports will provide participants with flexibility in the pursuit of their goals, and acknowledges the changing priorities of daily life. This is in line with the Productivity Commission's original intent of the NDIS. Using this model, the Agency would provide greater emphasis on plan implementation with participants to ensure the package of supports meets individual need. 	
3.	Topic: composition of plan	
3.1	Plan flexibility <ul style="list-style-type: none"> Section 33(3) allows funded supports to be specifically identified in the plan or described generally. The NDIA Board supports changes to Plan Management Rules to allow participants to manage their funding for supports flexibly between core and capacity building support categories. Where supports are described generally in the plan, it gives participants greater flexibility in how supports are delivered and by whom. This approach is more aligned with the principle of individual choice and control. 	s33(3)
3.2	Plan length <ul style="list-style-type: none"> The NDIS Act does not prescribe a universal length or duration for a plan. This approach is supported. As a part of the decision to approve the statement of participant supports, the CEO must determine the date, or the circumstances, by which the plan will be reviewed. 	s33(2)(c)

Issue	Comments	NDIS Act reference	
	<ul style="list-style-type: none"> This is a discretionary decision, and gives the CEO flexibility to determine the plan duration with regard to the individual circumstances of each participant. 		
4	Topic: plan review		
4.1	Plan amendment	<ul style="list-style-type: none"> The inability to vary a plan after it comes into effect is driving large volumes of plan review requests, impacting on participants and the Agency. The NDIA Board supports amendments to allow plan amendments in certain circumstances such as addition of quotes for capital and to allow additional funding in crisis situations. 	s37(2)
4.2	Unscheduled plan review	<ul style="list-style-type: none"> The NDIA Board supports inverting the unscheduled plan review deeming decision so that an unscheduled plan review is required if a decision is not made by the CEO within the time specified. We recommend that the timeframe for CEO decision be extended from 14 to 28 days to allow time for early resolution to be attempted, which prevents a participant from going through a full plan review process unnecessarily. 	s48
5.	Topic: Fraud control	<p>It is the responsibility of the NDIA to pursue criminal action and undertake compliance action in relation to misuse of NDIS amounts. Enhanced regulatory powers and information sharing / gathering powers will support the NDIA's ability to more effectively detect and respond to fraud risks such as participant collusion and provider conflict of interest (outlined below), as well as other fraud risks.</p> <p>The NDIA seeks powers such as compliance and monitoring powers from the <i>Regulatory Powers Act 2014</i> to enable it to investigate fraud against the NDIS and undertake compliance action in relation to misuse of NDIS amounts.</p> <p>To strengthen the NDIA's ability to detect and respond to fraud and non-compliance, other information gathering and information sharing powers are also required. Once a matter is accepted as a criminal investigation, the Agency loses its powers under s 55 of the NDIS Act.</p>	

Issue	Comments	NDIS Act reference
<p>In addition, the NDIA seeks to strengthen the legislative framework for debt recovery where NDIS amounts have been misused, to ensure these funds are repaid and returned to participants plans where appropriate - excluding circumstances of participant collusion. This would include introducing reviewable decisions on debts owed to the Scheme and debt calculation.</p>		
5.1	<p>Participant collusion</p> <ul style="list-style-type: none"> • Once a participant’s plan is approved, the only obligation on the participant is to spend NDIS amounts in accordance with their plan. • Where supports in plans are described generally, it can be difficult to determine whether NDIS amounts have been spent in accordance with the plan. • Stronger measures are needed to deter participant collusion in fraudulent activities, especially to balance the introduction of greater funding flexibility through generally describing supports in participant plans. 	s46(1)
5.2	<p>Provider conflict of interest</p> <ul style="list-style-type: none"> • Some providers are engaging in sharp practice by influencing participants to use other services they provide or control. This impacts on participants’ individual choice and control. • The NDIA should play a greater role in preventing, identifying and mitigating provider conflicts of interest. 	
<p>6. Topic: other issues</p>		
6.1	<p>COAG quarterly reports</p> <ul style="list-style-type: none"> • The timeframe for providing reports should be extended from one month to six weeks. • This is consistent with 2015 Act Review recommendations, which the Tune Review is seeking to re-affirm and progress. 	s174
6.2	<p>Nominee</p> <ul style="list-style-type: none"> • The NDIA Board supports the introduction of an ‘access nominee’. This would give the CEO a power to appoint a nominee for the purposes of making an access request for a person who does not have capacity to this themselves. 	Chapter 4, Part 5

	Issue	Comments	NDIS Act reference
6.3	Membership of IAC	<ul style="list-style-type: none"> The 2015 Act Review recommended that the Principal Member of the IAC also be a Board member. While legislative amendment is not required to give effect to this, the NDIA Board recommends legislative amendment to make it a requirement for the IAC. 	s146
6.4	NDIS Price Guide	<ul style="list-style-type: none"> There is no reference to the NDIS Price Guide in the NDIS Act. The Agency is unable to effectively enforce the NDIS Price Guide as it does not have contractual arrangements with service providers. The NDIA Board recommends that the NDIS Act be amended to reference the NDIS Price Guide to the effect that all funding for reasonable and necessary supports be provided in accordance with prices determined in the NDIS Price Guide. 	

s22

From: s22
Sent: Monday, 18 November 2019 9:57 AM
To: 'David Tune'
Cc: s22 BROADHEAD, Peter; s22
Subject: Briefing for Private meeting with JSC [SEC=OFFICIAL]
Attachments: JSC NDIS Mr Tune briefing - updated.docx

Hi David,

In preparation for your private briefing with the JSC on Thursday, please find attached a briefing pack which, at a high level, maps the JSC work to the work of your review.

I now understand that the Secretary and Michael Lye will be attending prior item on the agenda (the DSS session). I am unsure if the intent is for one of them to stick around and support you, but I hope to confirm soon.

Cheers,

s22

s22

Director
NDIS Governance
NDIS Participant and Performance Group
Department of Social Services
P: s22 | **M:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

Private Briefing with the Joint Standing Committee (JSC) on the National Disability Insurance Scheme (NDIS)

Date of Meeting: Thursday 21 November 2019

Time and location: 3pm, Canberra (TBC)

You are attending a private hearing with the JSC on NDIS to discuss the overlaps and intersections between their current inquiry into NDIS planning and your review of the *National Disability Insurance Scheme Act 2013* (NDIS Act). You will be meeting with the full JSC, chaired by the Hon Kevin Andrews MP (Liberal Party of Australia). Details on the committee membership is at **Attachment A**.

Key Issues

1. The JSC is tasked with inquiring into the following:
 - a. the implementation, performance and governance of the NDIS;
 - b. the administration and expenditure of the NDIS; and
 - c. such other matters in relation to the NDIS as may be referred to it by either House of the Parliament.

2. The JSC occasionally undertakes inquiries into specific aspects of the Scheme. Currently it is inquiring into, and will report on, NDIS Planning, with particular reference to:
 - a. the experience, expertise and qualifications of planners;
 - b. the ability of planners to understand and address complex needs;
 - c. the ongoing training and professional development of planners;
 - d. the overall number of planners relative to the demand for plans;
 - e. participant involvement in planning processes and the efficacy of introducing draft plans;
 - f. the incidence, severity and impact of plan gaps;
 - g. the reassessment process, including the incidence and impact of funding changes;
 - h. the review process and means to streamline it;
 - i. the incidence of appeals to the Administrative Appeals Tribunal (AAT) and possible measures to reduce the number;
 - j. the circumstances in which plans could be automatically rolled-over;
 - k. the circumstances in which longer plans could be introduced;
 - l. the adequacy of the planning process for rural and regional participants; and
 - m. any other related matters.

3. Further background on the JSC's inquiry into NDIS Planning and intersections with your review of the NDIS Act is at **Attachment B**.

4. Talking points for the hearing is at **Attachment C**.

Committee membership

Chair: The Hon Kevin Andrews MP (Liberal Party of Australia)

Deputy Chair: Senator Carol Brown (Australian Labor Party)

Senator Wendy Askew (Liberal Party of Australia)

Senator Anthony Chisholm (Australian Labor Party)

Ms Libby Coker MP (Australian Labor Party)

Senator Hollie Hughes (Liberal Party of Australia)

Dr Fiona Martin MP (Liberal Party of Australia)

Ms Alicia Payne MP (Australian Labor Party)

Senator Jordon Steele-John (Australian Greens)

Mr Andrew Wallace MP (Liberal National Party of Queensland)

Background to JSC's current inquiry into NDIS planning

In conducting its inquiry, the JSC held a national public consultation process, with written submissions closing on 6 September 2019. The JSC received 147 written submissions including from a number of disability representative and advocacy organisations such as Brotherhood of St Laurence, Children and Young People with Disability, Every Australian Counts and the National Mental Health Commission. The committee also held five public hearings in Hobart, Melbourne, Adelaide, Brisbane and Sydney.

Intersections with the review of the NDIS Act

The vast majority submissions made to the JSC's inquiry point to issues and recommendations made to the review of the NDIS Act you are currently undertaking.

Specifically, submissions to the inquiry noted:

- The lack of experience and expertise of NDIA Planners, and its Partners in the Community in working with people with disability and understanding their support needs, particularly those with complex needs, communication barriers, or those in institutions. NDIA staff also have a lack of understanding of the NDIS Act.
- Inconsistencies and a lack of transparency in NDIA decision making, particularly in finding when a support is reasonable and necessary.
- Significant delays in access, planning and plan review processes.
- Participants do not feel heard or listened to by the NDIA and have difficulty navigating the system.
- Participants feel like information or evidence they present, even if requested by the Planner, are disregarded in the process of developing their plan.
- Insufficient number of planners relative to demand, which is leading to delays in plan approvals.
- The bureaucracy of the NDIS is complex and excessive. Participants are experiencing difficulties in finding the right person and right information to support them.
- Review and appeal processes are unclear, with many participants not knowing how to, or feel they cannot, challenge a NDIA decision.
- Artificial plan gaps imposed by the IT system is resulting in participants not being able to access their funded supports. Plan gaps are also place pressure on service providers to provide services without NDIS funding.
- The lack of a family centred approach to planning.

- The use of standardised and “one size” fits all approaches to planning, which is eroding individualisation.
- Some marginalised or disadvantaged cohorts are not accessing supports under the NDIS at the same rate as participants from other cohorts, such as Aboriginal and Torres Strait Islander people with disability, culturally and linguistically diverse people with disability and women with disability.
- Participants should have be able to view a draft plan to ensure errors can be corrected and to agree on the wording and intent of the plan.

It is not yet known when the JSC intends on handing down its report.

A summary of the key themes emerging from JSC submissions, linked to draft recommendations of your report, is at **Attachment B.2**.

Talking Points

- My review of the NDIS Act focuses on removing legislative impediments to positive participant and provider experiences and supporting the implementation of a Participant Service Guarantee (the Guarantee).
- Importantly, my review does not consider broader issues affecting the general operation of the NDIS and is not intended to call into question the fundamental objectives and principles of the NDIS. It also does not consider all aspects of the NDIA's service delivery, or the way governments work together to support its administration. This is because I was specifically asked to evaluate the particular legislative changes that would be required to improve participant experiences with the scheme.
- Nevertheless, one of the intentions of my review is to suggest areas where operational changes would support legislative changes that impose timeframes or other requirements as part of the Guarantee.
- Across all engagement platforms, responses to the review were materially consistent, with a high degree of frustration and anger being expressed in the way the NDIS is currently being implemented. This is consistent with the Terms of Reference for this review, which were designed to examine issues driving negative experiences with the NDIS.
- I am aware that responses to this review may not be representative of all participant experiences – that is responses I received are likely to have a negative bias. I do not consider this diminishes the relevance of those responses. Instead, it supports taking a close look at the areas that can be improved in order to strengthen the experience for all NDIS participants
- Like many submissions made to the JSC, feedback to my review indicates that participants:
 - are frustrated about delays in, and seeking more transparency and clarity of, NDIA decision-making processes;
 - want to have more support to become informed and effective consumers;
 - feel the scheme is too complex and difficult to navigate;
 - feel they are not recognised as the experts in their disability; and
 - feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.

- In making my recommendations, I am considering how to build on the work already underway by the NDIA to improve participants experience with the NDIA, including through the Participant Pathways Reforms, and other measures recently announced by the Minister for the NDIS on 14 November 2019. Some of those measures:
 - resolving backlogs in plan approvals for children who enter in the ECEI gateway;
 - streamlined process for assistive technology and home modification approvals;
 - rolling out of joint planning meetings – with participants able to see a draft plan summary;
 - rolling out an independent assessment pilot to improve the consistency and reliability of access and funding decisions; and
 - providing greater flexibility to participants in utilising their plan budgets.

- The Government’s election commitment was that the Guarantee should set timeframes for decision making. However, when looking at the underlying drivers for issues being raised by participants, their families and carers, my initial view is that Guarantee based solely around timeframes for decision-making is likely to drive perverse outcomes for participants, and risks compromising the quality of the NDIS participant experience.

- On that basis, I am considering whether the Guarantee should also include qualitative indicators, which will provide participants with expected standards of quality in all their engagement with the NDIA.

- Consultation feedback indicated that people with disability and the sector more broadly is supportive of a qualitative aspect to the Guarantee to ensure the NDIA remains accountable to engaging with, and working alongside people with disability in delivering the NDIS.

- I am also considering what performance metrics should apply, and ways the NDIA should report on the measures set out in the Guarantee. At this stage, I am likely to propose expanding the current quarterly reporting arrangement, so the NDIA is required to publically report on its performance in meeting each timeframe in the Guarantee, as well as the activities undertaken or improvements made in the quarter in relation to each qualitative service standard.

- I am also carefully considering what should occur if the NDIA fails to meet or work toward the elements contained in the Guarantee.

- I am working to finalise my report in the fortnight, and will hand it to government in December, with any legislative amendments to give effect to the Guarantee to take effect from 1 July 2020.
- Whether or not my report is published is a matter for government.

If asked: Likely recommendations/focus areas of the Act Review

- Many of the key issues being raised in feedback to the Act review are strongly correlated to themes evident in the submissions made to the JSC.
- Aside from looking at what legislative change will be needed to give effect to the Guarantee, my review is also considering issues such as:
 - the evidence that is required to support NDIA decision-making and opportunities to reduce the burden on prospective participants and participants in producing or obtaining information required for the purposes of becoming a participant and developing or reviewing their plan.
 - the confusion that exists about the NDIS eligibility criteria, particularly the criterion of “permanency” in the context of psychosocial disability
 - ways to strengthen family centred planning approaches, particularly for young children with disability;
 - ways to maximise the benefits of early intervention for young children with disability;
 - ways to support participants to utilise the full value of their NDIS supports, particularly in the early years of a plan, to maximize the benefits of their NDIS funding; and
 - opportunities to streamline cumbersome plan review arrangements, including by creating a new power that would allow a plan to be amended, without requiring a full plan review. This would be particularly relevant for participants who require Assistive Technology or Home Modifications, and would enable quick access to funding.
- I am also exploring ways in which the NDIA could support people with disability to navigate the NDIS, particularly those with limited capacity to make decisions or self-advocate. Specifically, I am considering the concept of a “navigator” who would actively assist, troubleshoot and support those who lack the capacity to navigate the NDIS unsupported.
- While I acknowledge the NDIA Partners in the Community were intended to provide some of these supports, anecdotal feedback made to my review suggests that their capacity to effectively perform a navigation role has been constrained because of planning demands and pressure to meet the transition targets.

- I am also thinking about the benefits of the increased utilisation of (or more appropriately targeted, time and funded) support coordination to assist in building participant readiness and capability, increasing plan utilisation and lifting or sustaining participant outcomes.

If asked: Details on consultation activities

- The consultation process included:
 - discussions with Ministers and/or senior officials from all states and territories;
 - meeting with the NDIA Board;
 - meetings with 17 organisations from the disability or mental health sectors;
 - 15 community workshops spanning all capital cities and eight regional locations
 - six targeted workshops for Aboriginal and Torres Strait Islander peoples; and
 - seven smaller focus groups for culturally and linguistically delivered people with disabilities, people with intellectual disabilities, and those with psychosocial disabilities.
- The review received 199 written submissions to a discussion paper and 2,134 survey responses (1,866 useable responses for analysis) to a survey for NDIS participants or people who care for NDIS participants.

s22

From: s22
Sent: Wednesday, 20 November 2019 7:56 PM
To: s47F(1)
Cc: s22
Subject: NDIS Tune Review - Second Draft - 20112019 [SEC=OFFICIAL]
Attachments: NDIS Tune Review - Second Draft - 20112019.pdf

Hi David,

Second draft + the teams submissions analysis

Cheers

s22

s22

Director
NDIS Governance
NDIS Participant and Performance Group
Department of Social Services
P: s22 | **M:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

REVIEW OF THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013

**Removing red-tape and implementing the
NDIS Participant Service Guarantee**

SECOND DRAFT

**David Tune AO PSM
December 2019**

DRAFT

LETTER OF TRANSMITTAL

The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services
Parliament House
CANBERRA ACT 2600

Dear Minister,

As the independent reviewer appointed to conduct a review of the *National Disability Insurance Scheme Act 2013*, I am pleased to provide you with my report and recommendations on streamlining NDIS processes, removing red tape for participants, and the introduction of a Participant Service Guarantee.

The review concludes that the *National Disability Insurance Scheme Act 2013* is broadly fit for purpose, but there are a number of areas that can be improved to reflect the policy intent of stakeholders and improve the overall participant experience.

In undertaking this review, I have consulted widely with a range of stakeholders within the disability community, including participants of the NDIS, their family, friends and carers, providers of NDIS services, disability advocacy bodies, the National Disability Insurance Agency and State and Territory governments.

Yours sincerely

David Tune AO PSM
____ December 2019

DRAFT

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GLOSSARY

[Note: to be updated once report text is finalised]

CALD	Culturally and Linguistically Diverse
COAG	Council of Australian Governments
DRC	Disability Reform Council
ECEI	Early Childhood Early Intervention
ICT	Information and Communications Technology
ILC	Information, Linkages and Capacity Building
LAC	Local Area Coordinator
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/questioning, Asexual or other gender and sexual diversities
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>

EXECUTIVE SUMMARY

The *National Disability Insurance Scheme Act 2013* was enacted to deliver a world first approach to the provision of disability support by putting people with disability at the centre of decision-making through the principles of reasonable and necessary supports and individual choice and control.

Since its inception, the National Disability Insurance Agency (NDIA) has been responsible for the once in a lifetime role of completely transforming the disability support sector, with the key focus over the last three years to transition people with disability from existing state and territory service systems to the NDIS. The nature and speed of this transition was highly ambitious.

For many of its participants, the NDIS is helping to improve their social and economic outcomes, increasing their ability to live an ordinary life and achieve their goals and aspirations. However, it is evident that the pressure of rolling out the scheme across Australia has directly impacted the NDIA's ability to provide people with disability with a consistent, effective and high quality service delivery offering.

For many people with disability, the implementation of the NDIS has been far from smooth. Many have reported significant frustrations about the administration of the NDIS by the NDIA and poor experiences stemming from inconsistent decisions, significant delays in decision-making, and a wide variety of experiences with NDIA staff and its Partners in the Community.

The NDIA as an entity is not yet mature. Many of its enabling systems are still being developed and the current ICT system has significant limitations. Appropriate workflow management tools are yet to be fully deployed, and significant usability features are in the process of being refined. In addition, more time is needed to strengthen the capability of the NDIA workforce in being understanding and responsive to the needs of people with disability.

1 July 2020 represents one of the most important milestones in the history of the NDIS - the date that the NDIS becomes available across all of Australia, and the transition of state and territory participants is due to be completed. This new phase of the NDIS presents opportunities to deliver and embed improvements in the way the NDIS is delivered, with a stronger focus on improving the participant experience and maximizing the benefits of what the NDIS can offer. It is clear, however, that it will still take a number of years before the NDIS is delivering consistent positive experiences for people with disability.

The NDIA already has a significant reform program underway, following reviews into the participant and provider experience in 2017, and through recent announcements made by the Australian government, including longer plans and the ability to see draft plan summaries. These reforms are aimed at improving the consistency and quality of

decisions, and reduce significant pain points experienced by participants. The NDIA has also developed a forward work program of improvements to their ICT systems. Indeed, when considering feedback about the NDIS, this review considers the vast majority of issues are operational in nature, or are legacy issues driven by a lingering effect of the previous state and territory disability systems.

That is to say that the *National Disability Insurance Scheme Act 2013* and its accompanying rules are broadly fit for purpose. However, after more than six years of implementation experience, feedback from participants indicate that modest improvements can be made to the legislation to support improved experiences, and that all governments can provide more clarity and direction to NDIA decision makers in exercising their role in implementing the NDIS. The fundamentals of the legislation, however, do not need to be changed.

The Legislative Framework of the NDIS

The design of the NDIS is generally centered around a model of supporting adult people with physical disability. The inclusion of psychosocial disability and early intervention criteria (developmental delay) within the NDIS has been challenging, with the NDIA's operational response working around an awkward legislative model. The NDIS can deliver better outcomes for these cohorts through legislating changes that:

- redefine the concept of permanency for people with psychosocial disability in order to better reflect the episodic nature of their impairments;
- move the concept of reasonable and necessary support for psychosocial disability towards best practice recovery models;
- provide more support to build the capacity of families, often new to disability, to understand the needs of their child and exercise informed choice and control;
- maximize the benefits of early intervention through providing access to funded supports immediately upon being granted access to the NDIS; and
- move the concept of reasonable and necessary support for children towards a family centered planning approach.

The concept of reasonable and necessary in the legislation, while not being new to legislative frameworks across Australia, is subject to differing interpretations by NDIS participants and NDIA decision makers. This is principally caused because there is no clear legislative definition of what constitutes a reasonable and necessary support. This drives confusion around the role and purpose of the NDIS itself, driving a number of individual cases towards tribunals and courts, where those tribunals and courts seek to interpret the intent of governments when the legislation was put in place.

It is, therefore, more appropriate that all governments and the NDIA take a greater role in determining and defining reasonable and necessary in order to provide additional clarity for all parties. Following feedback from participants and in reviewing decisions of the Administrative Appeals Tribunal and Federal Court, there are a number of actions that can deliver improvements in this area, including:

- providing more publically available and accessible example of reasonable and necessary supports, including providing the NDIS Act and its rules in accessible versions such as easy read;
- supporting the recent decisions by the Disability Reform Council on the interface between the NDIS and mainstream interfaces, by reflecting these decisions in the legislative framework;
- adding the interface between the NDIS and ordinary living costs to the future agenda of DRC, to resolve decision making processes where a requested support may overlap, or may have interactions with supports that might ordinarily be considered an ordinary living expense;
- clarifying that supports provided in a plan should not be considered in isolation from others, reflecting that a plan is a package of supports to achieve an individuals goals and aspirations; and
- clarifying the role of the NDIS in providing supports when that support is not available through a more appropriate service system.

Importantly, these improvements are not focused on narrowing the scope of the NDIS, rather they are focused on reinforcing its boundaries. If implemented properly, the debate around the role of the NDIS and what is reasonable and necessary can be elevated from individual participant experiences toward a more appropriate debate between governments and people with disability.

Flexibility is key to the participant experience and current implementation of the NDIS is impacted by needless complexity. This can be driven by NDIA operational procedures, however, there areas of the NDIS Act that are unnecessarily rigid or do not incentivise flexibility. The inability to amend a plan is one of the biggest frustrations of participants, and one of the biggest weaknesses of the NDIS Act.

Introducing the ability to amend a plan, in appropriate circumstances would be one of the biggest levers governments can provide to the NDIA to improve the participant experience. This would allow small changes, such as the addition of quotes, or a response to crisis to occur quickly, with low administrative burden. It would also help to resolve current jurisdictional issues between the NDIA and the Administrative Appeals Tribunal.

Supporting this change, participants need the ability to use funding provided in their plan across support categories. The Australian Government recently announced changes to collapse the 'core' and 'capacity building' budgets into one budget to support flexibility. Notwithstanding these reforms, flexibility should be enshrined into legislation, with a principle that, subject to certain limited conditions, the default position is that a participant can use their NDIS funding flexibly.

Long wait times and a lack of information is one of the most regular complaints about the NDIS, with many participants often indicating they have had to wait many months for the NDIA to contact them or make a decision. As the transition from existing state and territory disability systems comes to a close, and as the workforce of the NDIA and its Partners continues to mature, the NDIA has made significant inroads into its administrative

backlogs, with the most September 2019 Quarterly Report to DRC indicating a number of improvements to average access and planning timeframes.

The Participant Service Guarantee

However the lack of clear timeframes for participants is driving uncertainty, and thus this review has been asked to consider what timeframes would be appropriate to insert into legislation to provide more clarity for participants as to when decisions will be made, in the form of a Participant Service Guarantee.

As the NDIS transition period has demonstrated, there is a clear tension between the speed and the quality of decision-making, and the NDIA's current state of maturity. It is also important to recognize that the circumstances of each individual are different, and so there are risks in providing a one size fits all system of timeframes. This also needs to be balanced against introducing legislative complexity.

Firstly, the Participant Service Guarantee needs to reinforce high quality engagement principles by the NDIA to ensure the NDIA remains accountable for the way in which it engages with and works alongside people with disability in delivering the NDIS. The legislative framework can be built around five key principles:

- Transparency - Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, that is easy to understand and presented in formats that meet their needs.
- Responsiveness - Participants and people with disability are supported, their individual needs, circumstances addressed, and their independence maximised.
- Dignity and Respect - Participants and prospective participants are valued, listened to and respected.
- Empowerment - Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.
- Connectedness - The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.

Secondly, timeframes included in the legislation should be ambitious, but achievable and recognise that business as usual timeframes may not be deliverable by 1 July 2020, and/or requisite changes to the NDIA's ICT systems may not be deliverable by 1 July 2020. To provide certainty for participant, the Participant Service Guarantee should have a staged implementation, with slightly longer timeframes for the 2020-21 financial year.

From 1 July 2020, new legislated timeframes should be introduced to the vast majority of NDIA's decision-making processes, including:

- extending the timeframe for participants to provide information to support an access decision from 28 days to 90 days;

- a participant's first plan be put in place within 10 weeks of an access decision; reducing to eight weeks from 1 July 2021, with the exception of children receiving an early intervention initial budget;
- a plan implementation meeting to be offered and held no more than four weeks following the approval of a plan;
- a scheduled plan review process to commence no less than 8 weeks from the scheduled plan review date, reducing to no less than 6 weeks from 1 July 2020 (noting current practice is 90 days before the scheduled plan review date);
- providing certainty that if the NDIA does not make a decision to undertake an unscheduled plan review within 3 weeks, they are deemed to have decided to conduct it;
- the new plan amendment process, which covers the quote approval process for Assistive Technology and Home Modifications, to be completed within four weeks following the provision of information to the NDIA;
- the internal review process to be completed within 90 days, reducing to 60 days from 1 July 2021.

However, these timeframes should have two caveats applied. The first is if information is required from a participant. Under these circumstances, the timeframes on the NDIA should be paused, with the NDIA to make a decision within 14 days of the requisite information being provided.

Secondly, in circumstances where a participant's individual circumstances are on the upper end of complexity, the NDIA should have the capacity to take more time to make the correct decision. Therefore, in limited circumstances, the NDIA should be able to notify a participant that their circumstances are complex, and in this eventuality, the NDIA would be granted additional time to undertake a plan amendment, a plan review, an unscheduled review or an internal review, of no more than 50 per cent longer than the proposed timeframes.

Finally, the NDIA should be made to report on its performance against these metrics and other relevant indicators of performance through a legislated requirement to report on performance against the Participant Service Guarantee as part of its regular quarterly reporting to DRC. In addition, the NDIA should strongly consider introducing a tracking system that provides participants with updates on how decisions are progressing within the NDIA.

Conclusion

Through the proposed legislative changes outlined in this report and the introduction of the Participant Service Guarantee, NDIS participants will be provided with more certainty on the role of the NDIS, have clearer understandings over the time the NDIA should take to make decisions, and more support will be provided for children and their families and those with psychosocial disability. However, it must still be recognized that there is still a long way to go before the NDIS is a mature system.

RECOMMENDATIONS

Recommendation 1: The NDIA undertake a trial where all planning functions are undertaken by NDIA delegates, to compare the benefits of that approach with current operational reforms underway.

Recommendation 2: That more certainty is provided to NDIA delegates and NDIS participants when considering the concept of reasonable and necessary, with:

- a. the NDIA to provide clearer guidance on how it makes reasonable and necessary decisions;
- b. the NDIS Rules be updated to reflect recent and upcoming decisions by the DRC in relation to the interface between the NDIS and other service systems;
- c. DRC adding, to its forward work program, resolving the interface between the NDIS and ordinary living costs;
- d. the NDIS Act to be amended to clarify the interaction among individual supports within a plan; and
- e. the NDIS Act to be amended to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

Recommendation 3: The Commonwealth and NDIA produce accessible versions of the NDIS Act and NDIS Rules.

Recommendation 4: That the NDIS Act be amended to strengthen the emphasis on functional assessments to support high quality and consistent decision-making, by:

- a. clarifying the purpose of an “assessment” under the NDIS Act is to provide evidence of functional capacity;
- b. allowing evidence of functional capacity able to be used for multiple purposes under the NDIS Act; and
- c. providing that the NDIA may require a participant undertake a functional assessment for the purposes of decision-making under the NDIS Act

Recommendation 5: The NDIS Act and Rules be amended to:

- a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent;
- b. remove references to psychiatric conditions when determining eligibility

Recommendation 6: The NDIS Act be amended to extend the timeframe for a prospective participant to provide information requested by the NDIA to support an access decision.

Recommendation 7: The NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS.

Recommendation 8: The NDIS Act be amended to reflect that a plan must be facilitated and approved in accordance with the rules made for the purpose of the Guarantee.

Recommendation 9: The NDIS Rules be amended to:

- a. to strengthen the role of families in early intervention and parental or carers rights to reasonable supports in the home and other forms of respite; and
- b. recognise the importance of family centred planning for children to support them in their natural environment and everyday experiences and activities.

Recommendation 10: The NDIS Act be amended to provide for an early intervention payment following an access decision, in order to support the develop the capacity of families new to disability, including their ability to exercised informed choice and control.

Recommendation 11: The NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they should only be prescribed specifically in limited circumstances.

Recommendation 12: The NDIS Rules be amended to outline the considerations the NDIA will have regard to in providing funded support coordination in a participant's plan.

Recommendation 13: The NDIS rules be amended to clarify the ability for the NDIA to undertake more appropriate market intervention through flexible commissioning models on behalf of participants.

Recommendation 14: The NDIA work with governments, researchers and experts in the provision of disability support to establish a dynamic repository of information about evidence based best practice approaches, to assist participant exercise informed choice and control.

Recommendation 15: The NDIS Act be amended to redefine the ' plan-managed' management type as a form of 'self-management'.

Recommendation 16: That the NDIS Act be amended to introduce a new Category D rule making power that includes criteria on when the NDIA should agree to undertake an unscheduled plan review.

Recommendation 17: The NDIS Act be amended to:

- a. introduce a new Category D rule making power giving the NDIA the ability to amend a plan in limited circumstances; and
- b. require all matters a plan can be amended for to be considered reviewable decisions under section 99 of the NDIS Act.

Recommendation 18: The NDIS Act be amended to resolve confusion surrounding the duplication and twin-use of the word "review".

Recommendation 19: The NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended based on trilateral agreement while a matter is before the AAT.

Recommendation 20: That the Guarantee be legislated through a new Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision-making move from the NDIS Act to the new rule;
- b. the proposed timeframes, quality indicators and performance metrics;
- c. participants (and prospective participants) being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. a new, independently designed participant satisfaction survey to be introduced; and
- e. the Guarantee to be reviewed within two years of being enacted.

Recommendation 21: That the NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Guarantee

Recommendation 22: That the NDIS Act and accompanying rules be amended to:

- a. remove trial and transition provisions; and
- b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act.

Recommendation 23: That the NDIS Act be amended to reference the National Disability Strategy as in force from time to time.

CHAPTER 1 – INTRODUCTION

- 1.1. In June 2019, the Australian Government commissioned a review of the NDIS Act, with a focus on streamlining NDIS processes and removing red tape for NDIS participants and providers. Specifically, the review was called in acknowledgement many participant's experiences of the scheme have fallen short of their expectations, and honours a commitment made during the 2019 election campaign.
- 1.2. This review identifies opportunities to amend the NDIS Act to make NDIS processes simpler and more straight forward and will support the implementation of a NDIS Participant Service Guarantee (the Guarantee).
- 1.3. The Guarantee, subject to consideration by Parliament, is intended to be legislated and take effect from 1 July 2020. The Guarantee will, among others, set standards and timeframes for NDIA decision-making as it affects NDIS participants, their families and carers. It will also have a focus on key cohorts, including children and people with disability requiring assistive technology and home modifications.

Scope of the review

- 1.4. The Terms of Reference for this review focus on removing legislative impediments to positive participant and provider experiences and supporting the implementation of the Guarantee. Accordingly, this review does not consider broader issues affecting the general operation of the NDIS and is taking the fundamental objectives and principles of the NDIS Act or the scheme as given.
- 1.5. In undertaking this review, I have considered the experiences of people with disability, their families and carers with the administration of the NDIS by the NDIA, to the extent those experiences inform or complement any legislative change that gives effect to the Guarantee or contribute to increasing the efficiency of the schemes administration. **Box 1** outlines the terms of reference for the review.

Box 1: Terms of Reference for the review

The review is to consider:

1. opportunities to amend the NDIS Act to:
 - a) remove process impediments and increase the efficiency of the Scheme's administration; and
 - b) implement a new NDIS Participant Service Guarantee.
2. any other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences.

In undertaking this review, regard should be given to:

1. the objectives and principles of the NDIS Act;
2. the experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes;
3. the roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services;
4. current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation framework; and
5. recommendations agreed by the Council of Australian Governments from the 2015 Independent Review of the NDIS Act.

Within the scope of the review, there should be broad consultation with:

1. people with disability, their families and carers;
2. the disability services sector;
3. Ministers and officials from the Commonwealth and State and Territory governments; and
4. the National Disability Insurance Agency.

Consultation activities

- 1.6. This review was designed to be shaped by the experiences of people with disability, their families and carers. To support this, I undertook a range of consultation activities to seek feedback about their experiences with the NDIS, what should be included in the Guarantee, and what they felt was important to consider in my review of the NDIS Act.
- 1.7. On 26 August 2019, I called for written submissions, which closed on 31 October 2019. I received **XX** submissions from a range of stakeholders, including NDIS participants, their families and carers, service providers, advocates and peak bodies. Of these, **XX** asked their submissions not be published, while all other submissions were published on the review's webpage (the Commonwealth Department of Social Services' Engage website). A list of the submissions I received is at Appendix **A**.
- 1.8. On 9 September 2019, an online survey was published to understand how participants and the people who support them experience the NDIS. The survey closed on 31 October 2019. It was available in long-form (up to **96** questions) and short-form (**46** questions). **1,273 usable** responses were received to the long-form survey and **467** to the short-form survey.
- 1.9. Throughout late September and October 2019, **15** face-to-face community workshops were held in every capital city and in a regional location in each state and territory.
- 1.10. Targeted consultations were also conducted with Aboriginal and Torres Strait Islander people so they could have their say in culturally appropriate and safe spaces. **Six** consultations were undertaken for first peoples, led by a peak body representing the interests of Aboriginal and Torres Strait Islander people with disability.
- 1.11. **Seven** focus groups for people with intellectual disability, people from CALD backgrounds and people with psychosocial disability were also undertaken. These focus groups were conducted in Sydney, Melbourne, Adelaide, Brisbane and Perth.
- 1.12. I also met with the NDIA Board, senior officials from the NDIA, state and territory disability ministers, senior officials from the state and territory governments and key disability agencies, including advocacy organisations, peak bodies and national providers. A list of all persons and organisations I met is at Appendix **B**.
- 1.13. Across all engagement platforms, responses to this review were materially consistent, with a high degree of frustration and anger being expressed in the way the NDIS is currently being implemented. This is consistent with the Terms of Reference for this review, which were designed to examine issues driving negative experiences with the NDIS.

- 1.14. Implicit in this approach is that responses to this review may not reflect a representative sample of all participant experiences - that is, responses to this review are likely to have a negative bias. This does not diminish the relevance of those responses. Instead, it provides for a focused examination of areas that can be improved in order to strengthen the participant experience across the whole NDIS eligible population.

Reports that have informed this review

- 1.15. This is not the first review of the NDIS Act that has been commissioned since its inception in 2013. In addition, it is not the first report that has made recommendations to improve how people with disability interact with the NDIA and experience the NDIS.
- 1.16. I have drawn on previous reviews, reports and inquiries where appropriate, including:
- a. the 2015 Independent Review of the NDIS Act, as commissioned by COAG and required by the NDIS Act;
 - b. previous Productivity Commission Inquiries, including its most recent review of NDIS Costs in 2017;
 - c. previous and current inquiries of the Joint Standing Committee on the NDIS;
 - d. the NDIA's 2017 Pathways Review, released in February 2018; and
 - e. the Quarterly Reports provided by the NDIA Board to DRC, which are publically available on the NDIS website.
- 1.17. These reviews provided a valuable reference point, allowing me to consider any outstanding recommendations made that have not yet been implemented in either the legislation or the operational practices of the NDIA. I also drew on other reports and analysis that were made available to me; these are identified in the relevant chapters.
- 1.18. In developing recommendations for this review, additional information, data, research and analysis of policy options was sometimes necessary. Where needed, I requested the Commonwealth Department of Social Services undertake that work and provide it.

Structure of this report

- 1.19. Chapter 2 provides background to the establishment of the NDIS, the experience of trial and transition and the actions undertaken by the NDIA to date to improve participant and provider experiences with the scheme.
- 1.20. Chapter 3 considers how the scheme engages with people with disability and the participant experience. It also recommends actions to improve the transparency of how the NDIA makes decisions, including when determining a support is reasonable and necessary.
- 1.21. Chapters 4 considers the evidence required to support NDIA decision-making and opportunities to reduce the burden on prospective participants and participants in producing or obtaining information required for the purposes of becoming a participant and developing or reviewing their plan.
- 1.22. Chapters 5 to 9 explore each connection point in a participant's NDIS journey, from navigating the access process to their experience of developing, implementing and reviewing their plan, or appealing an NDIA decision.
- 1.23. Chapter 10 sets out what should be included in the Guarantee, including the timeframes for decision-making referred to in previous chapters, and the qualitative indicators to support positive participant experiences with the scheme. It also considers reporting arrangements to ensure the NDIA delivers on the requirements set out in the Guarantee.
- 1.24. Chapter 11 considers other options to contemporise the legislation to ensure it is fit-for-purpose as the scheme continues to evolve.

CHAPTER 2 – BACKGROUND AND CONTEXT

About the NDIS

- 2.1. The NDIS is the most significant social reform of its kind since the introduction of Medicare. It was established in 2013 through the NDIS Act and represents a social insurance model of care for eligible Australians with disability.
- 2.2. Prior to the NDIS, disability services were administered under a patchwork of block funded and procured services administered by each state and territory government. This system was seen as being ‘underfunded, unfair, fragmented and inefficient’ with many people with disability not receiving supports or services they required how, when or in the way they needed them¹.
- 2.3. As an insurance-based scheme, the NDIS takes a lifetime approach to a participant’s support needs and goals and aspirations. It provides important assurance to both those with permanent and significant disability, and those who may acquire such disability in the future, that they will receive the support they require. The NDIS also seeks to empower them, through providing individual funding, to purchase the services and supports they need from a competitive and consumer-driven marketplace.
- 2.4. The objectives of the NDIS (as outlined in the NDIS Act) include:
 - a. supporting the independence and social and economic participation of people with disability;
 - b. providing reasonable and necessary supports, including early intervention supports, for participants;
 - c. enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - d. facilitating the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
 - e. promoting the provision of high quality and innovative supports to people with disability.
- 2.5. A key principle of the NDIS is that all people with disability have the same fundamental rights as all members of Australian society to participate in the social and economic life of the community and to make their own choices and decisions. However, it does not stand alone in achieving this vision.
- 2.6. As outlined in the National Disability Strategy, inclusion of, and access for, people with disability to the supports they need to realise their full potential is a shared

¹ Productivity Commission. (2011). *Disability Care and Support Inquiry: Overview and Recommendations*

responsibility of all Australian governments, non-government organisations, businesses and the wider community.

- 2.7. The NDIS is not intended to fully replace services provided elsewhere in government or the community. While the NDIS is designed to benefit all Australians with disability, only a proportion will become NDIS participants. Of the estimated 4.4 million Australians with disability, around 500,000 (those people with a ‘permanent and significant’ disability) will receive individualised supports under the scheme (Figure 1 refers).

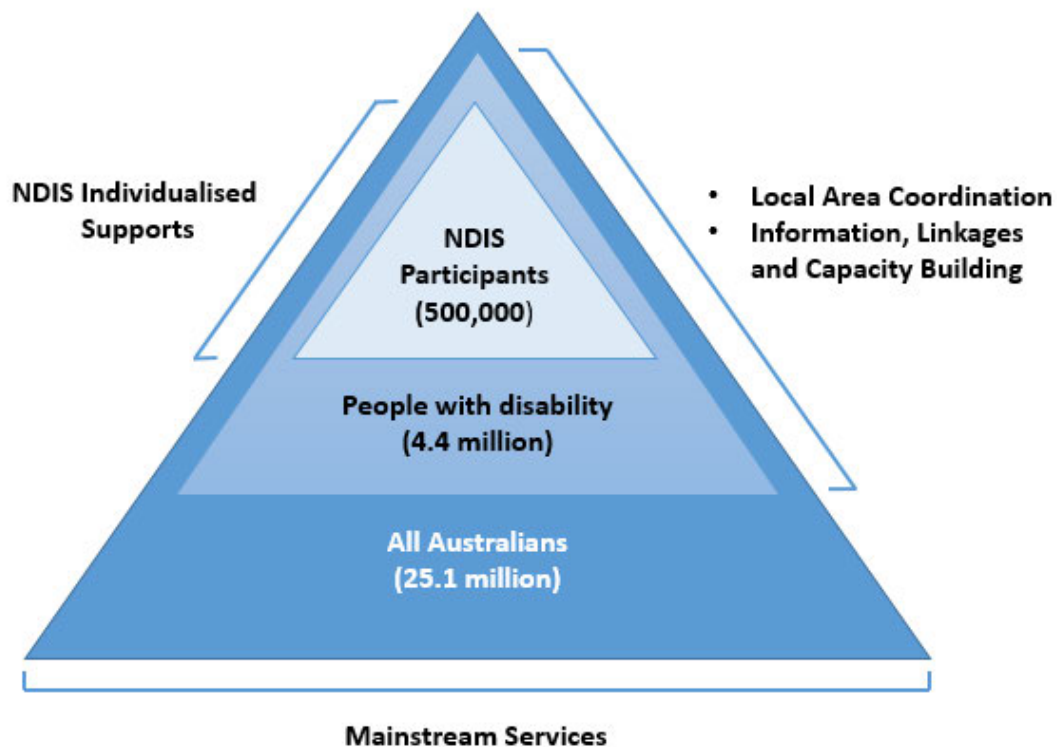


Figure 1: The NDIS and other service systems²

- 2.8. As such, the legislative framework for the NDIS needs to be considered alongside other policies and legislation, such as the *Disability Discrimination Act 1992* (Cwlth), the *Carer Recognition Act 2010* (Cwlth), the National Disability Strategy and the COAG agreed “Applied Principles” that guide the interaction between the NDIS and mainstream supports. It also needs to be considered alongside state and territory legislation, and in conjunction with other obligations Australia is a party to, such as the United Nations Convention on the Rights of People with Disability (UNCRPD).
- 2.9. It is also important to acknowledge the NDIS only gives effect to the UNCRPD in part. The Convention does not address how the Australian Government should implement it, nor does it assign responsibilities to particular service systems to provide people with disability the supports they need to fully and effectively

² Number of Australians and those with disability are based on 2018 ABS data. NDIS participants are the projected number of participants at 2022-23.

participate in society on an equal basis as their non-disabled peers. Rather, all governments, including the states and territories, have an important role in ensuring service systems remain inclusive, accessible, and designed for all Australians.

Summary of the legislative architecture

- 2.10. The NDIS is established by two tiers of legislation.
- 2.11. The first tier is the NDIS Act itself. The NDIS Act is essentially a framework: it establishes the NDIA as the body responsible for delivering the NDIS, sets out the general definition of eligibility and the governance arrangements that underpin the scheme, including the way governments work together to make decisions and the role of the NDIA Board and Independent Advisory Council. The NDIS Act also establishes the NDIS Quality and Safeguards Commission to oversee the quality and safety of NDIS supports and services.
- 2.12. The second tier is the NDIS Rules, which are legislative instruments that sit under the NDIS Act, set out further laws on matters of detail in relation to the operation of the NDIS, and must be read in conjunction with the NDIS Act.
- 2.13. There are two categories of NDIS Rules:
 - a. rules made by the Commonwealth Minister responsible for the NDIS in relation to the administration of the NDIS by the NDIA; and
 - b. rules made by the NDIS Quality and Safeguards Commissioner, as delegated by the Commonwealth Minister responsible for the NDIS, in relation to the roles and functions of the NDIS Quality and Safeguards Commission.
- 2.14. The Rules made for the purpose of the administration of the NDIS by the NDIA go to issues such as:
 - a. when a person becomes a participant;
 - b. when a support is 'reasonable and necessary';
 - c. when a person should be appointed as a nominee to act on behalf of a participant;
 - d. when a person is responsible for undertaking actions and making decisions on behalf of children;
 - e. how participants can manage the funding in their plan;
 - f. how the NDIS works alongside other service systems; and
 - g. arrangements for the protection and disclosure of NDIS information.
- 2.15. The NDIS Rules made by the NDIS Quality and Safeguards Commissioner are in relation to the NDIS Quality and Safeguards Commission's stated powers under the NDIS Act, including: the registration requirements NDIS providers must comply with, worker screening arrangements and reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.

- 2.16. This review only considers the operation of the NDIS Rules made for the purpose of the administration of the NDIS by the NDIA. It does not consider those made by the NDIS Quality and Safeguards Commissioner, unless there are consequential impacts arising from recommendations made in this report.
- 2.17. The NDIS Act provides for the role of states and territories in the making of NDIS rules. There are four categories of rules requiring different levels of consultation or agreement with jurisdictions before the Commonwealth Minister for the NDIS, or the NDIS Quality and Safeguards Commissioner, may make or amend them:
- a. Category A rules are those that relate to significant policy matters with financial implications for the Commonwealth and states and territories, or which interact closely with relevant state and territory laws. The unanimous agreement of the Commonwealth and all states and territories is required for the making (or amending) of these rules;
 - b. Category B rules relate to an area, law or program of a particular state or territory, or to the commencement of the facilitation of the preparation of plans of participants identified wholly or partly, and directly or indirectly, by reference to that state or territory. These rules cannot be made (or amended) without the agreement of that state or territory;
 - c. Category C rules require the agreement of the Commonwealth and a majority of states and territories as they still relate to policy issues, but are not expected to have a financial impact; and
 - d. Category D rules are considered to be more administrative than policy in character, and states and territories need only to be consulted before making (or amending) these rules.
- 2.18. Where this review makes recommendations in relation to existing NDIS rules or the rule making powers set out in the NDIS Act, it considers the intention of these consultation requirements and the roles of states and territory governments in their making or amending.

The NDIS roll out

- 2.19. From 1 July 2016, the NDIA commenced the full-scale rollout of the NDIS across Australia, with a goal to transition more than 400,000 participants into the NDIS over four years through a mix of phasing arrangements. In some states and territories, participants phased into the NDIS based on the region they lived in and, in others, how old they were.
- 2.20. In Western Australia, the rollout of the NDIS occurred differently, with the Commonwealth and Western Australian governments' first agreeing to a Western Australia-delivered but nationally consistent NDIS from July 2017, before agreeing to the NDIA-delivered model from 1 July 2018.

- 2.21. The NDIS transition period was a unique, and the most complex, period in the life of the NDIS. The transition coincided with the dismantling of existing state and territory disability support systems and transferring support structures towards a market-based system where eligible participants receive funding based on need and are supported to exercise choice and control in the planning and delivery of their supports.
- 2.22. On 1 July 2018, New South Wales and South Australia were the first jurisdictions to complete their transition and move into full scheme arrangements. Victoria, Tasmania, the Australian Capital Territory and the Northern Territory joined them on 1 July 2019.
- 2.23. The transition to full scheme in Queensland and Western Australia is ongoing, with efforts in Queensland currently focused on transitioning people into the NDIS who have not previously received disability supports from the Queensland Government and were expected to join the scheme before 1 July 2019. Efforts in Western Australia are focusing on the transition of people currently receiving disability support from the Western Australian government. These people are expected to transition to the NDIS by 1 July 2020.
- 2.24. As at 30 September 2019, around 310,000 participants were being supported by the NDIS. Of this number, over 114,069 (37 per cent) are receiving supports for the very first time, helping them live active and independent lifestyles and achieve their goals and aspirations.
- 2.25. On 1 July 2020, when the NDIS becomes available for people with disability who live on the Christmas and Cocos (Keeling) Islands, the NDIS will be available across all of Australia. This represents the completion of the transition period, with the NDIS entering a new phase of implementation.

Implementation challenges

- 2.26. The sheer scale and complexity of the transition period inevitably led to implementation challenges, and significant criticism of the NDIA. While there is overwhelming support for the NDIS across all levels of government and the community, it is clear from consultation feedback and submissions made to this review that many of the benefits the NDIS seeks to achieve are yet to be consistently realised.

- 2.27. Feedback to this review indicates participants:
- have found the shift to the NDIS confusing and frustrating, with many citing they 'missed' the supports offered under state and territory systems, particularly active case management;
 - are frustrated about delays in, and seeking more transparency and clarity of, NDIA decision-making processes;
 - want to have more support to become informed and effective consumers;
 - feel the scheme is too complex and difficult to navigate;
 - feel they are not recognised as the experts in their disability; and
 - feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.
- 2.28. This review heard that, in combination, these issues have resulted in some participants reporting their engagement with the NDIS has led to lasting negative impacts on their well-being.

"I would be happier to go back before NDIS. It is a complicated process and my daughter is much worse off. It has caused a lot of stress for our family."

Carer of NDIS Participant, Regional New South Wales

"Families who have endured hardship as a result of inadequate plans may be traumatized by the process. I become unwell each time my daughter has a review meeting. I know my family's ability to stay together is reliant on the NDIS and that's something no parent should have to imagine."

Carer of NDIS Participant, Metropolitan South Australia

"Dealing with the processes from meeting access to having my plan approved - I was on a verge of having a mental and emotional breakdown. The stress it caused for not only myself but also my entire family was not fair."

NDIS Participant, Regional Queensland

- 2.29. The speed and pace of rollout was highly ambitious given the magnitude of the reform the NDIS represents. This review, however, is not the first to raise that there have been trade-offs between scale and pace and quality participant experiences. Similar concerns have been consistently acknowledged during the transition period ([Box 2 refers](#)).

Box 2: Summary of implementation challenges highlighted in other reports and inquiries

Productivity Commission - 2017 Inquiry into NDIS Costs

"It is no surprise, given the size, speed and complexity of the reform, that there are transitional issues with the rollout of the NDIS. All major reforms are followed by a (sometimes protracted) period of disruption and adjustment... most transitional issues are expected to be ironed out as the scheme rollout is completed and the scheme matures... however, if transitional issues are not dealt with quickly and effectively, they can become entrenched problems that endure in the longer term and affect the success and sustainability of the scheme." (p.76)

"Planning processes are currently not operating well. The speed of transition and performance indicators that focus on participant numbers have placed pressure on the National Disability Insurance Agency to finalise plans quickly, and the quality of plans has been compromised." (p. 181)

Commonwealth Ombudsman - 2018 Report on the administration of reviews under the NDIS Act

"We acknowledge the NDIA's resources are limited and, since commencement of the national rollout, the Agency has been under considerable pressure to ensure it meets its various bilateral targets. This pressure is likely to continue for several years, until the Scheme is fully implemented; however, it should not be used as a reason to deprioritise or delay other work, especially where the decisions in question affect participants' daily lives." (pp.17-18)

National Institute of Labour Studies - 2018 Final Report, Evaluation of the NDIS

"The evaluation has found that on the whole, the objectives of the NDIS and its high level design are working very well. However, hindsight suggests that the speed of implementation was too fast and that more thought needs to go into the practical aspects of the NDIS rollout. Some of the practical issues appeared to be getting solved during the three-year evaluation period, some remained largely unchanged, and some appeared to be getting worse." (pp.xxiii-xxiv)

NDIA - 2018 improving the NDIS Participant and Provider Experience

"From the commencement of transition in July 2016 and as the number of participants entering the Scheme ramped up, it became obvious that the NDIA's processes and systems had not always resulted in a participant and provider experience of a consistently high standard. Systems and processes migrated to at transition posed Information and Communication Technology (ICT) challenges. This combined with the use of telephone contact to develop participant plans and the very pace of participants entering the Scheme collectively caused many participants and providers to report poor plan experiences." (p.8)

- 2.30. This review acknowledges a number of factors have contributed to how participants have experienced the NDIS to date. These include:
- a. the pressure to meet the participant intake targets set by all governments as part of bilateral agreements for the transition period;
 - b. the quality of data provided by all governments to support the transition of people with disability from their existing service systems. In some cases, this data was inadequate to support the NDIA to make timely decisions about a participant's eligibility for the NDIS and the supports in their plan;
 - c. the quality of the NDIA's enabling systems, including its ICT solutions and workflow management tools; and

- d. the need for a rapid expansion of a workforce capable of implementing NDIS processes under the NDIS Act.
- 2.31. This review does not infer the NDIS is failing to improve outcomes for participants once they have become a participant, have a robust plan in place and are accessing supports. Indeed, longitudinal outcomes data collected by the NDIA demonstrates participant outcomes are improving the longer they are in the scheme³.
- 2.32. This review also acknowledges the NDIA has developed a number of strategies to address these issues and improve the participant experience. Much of this work was generated as a result of the 2017 review of the NDIS Pathways, which the NDIA initiated to address people's feedback about their experience with the NDIS and to identify areas for improvement.
- 2.33. The NDIA is also rolling out new reforms, such as joint planning meetings, the provision of draft plan summaries and other work to resolve existing pressure points for NDIS participants. Further information on the key operational improvements previously implemented by the NDIA (or which are currently in the process of being implemented) is provided at [Attachment C](#).
- 2.34. These reforms are starting to have an effect. As outlined in the NDIA's report to DRC for the September 2019 quarter:
- a. wait times for access decisions has reduced from 38 days in the June 2019 quarter to 12 days;
 - b. first plans are being approved faster, from 133 days in the June 2019 quarter to 88 days.
 - c. unscheduled plan reviews as a proportion of NDIS participants has reduced from 30.5 per cent in the March 2017 quarter to 16.1 per cent; and
 - d. complaints from participants and providers are also tracking downwards and are at their lowest levels for more than two years⁴.
- 2.35. Notwithstanding these steady improvements and the NDIA's current program of work to improve the participant experience, feedback to this review indicates the NDIA is not yet getting it right the first time for each and every participant and ongoing effort is needed to realise the expected benefits of the NDIS. This review also notes many of the operational reforms currently underway to give effect to pathway reforms are yet to be rolled out nationally, or evaluated for their effectiveness.

³ COAG Disability Reform Council Quarterly Report 30 September 2019, Part 2 p.26-30.

⁴ COAG Disability Reform Council Quarterly Report 30 September 2019, p.7.

New 2019 Commitments

- 2.36. In October 2019, the Australian Government announced an increase in the NDIA workforce of around 800 positions to ensure the NDIA can deliver on the pathways reforms, including implementing the improvements that will form part of the Guarantee.
- 2.37. The Australian Government has also committed to expand the NDIS Community Connectors program to assist people with disability and their families in hard to reach communities to navigate the NDIS and get the services they or their children need. This expansion will provide \$20 million over two years, building on the NDIA's Remote Community Connector Program and other activities undertaken by Partners in the Community ([Attachment C refers](#)).
- 2.38. The expanded Community Connectors program will assist people in hard to reach communities to engage with the NDIS, and support them throughout the access, planning and implementation processes. Hard to reach communities include Aboriginal and Torres Strait Islander peoples, CALD communities, people with psychosocial disability, and ageing parents or carers of children with disability.
- 2.39. The Australian Government and NDIA have also committed that all NDIS participants will have a single point of contact with the NDIS, and the ability to have a plan review date of up to 3 years from when their plan is approved, if their disability is stable. This work is expected to improve participant's experiences with the NDIA, as they will not have to tell their story multiple times to different people. It is also expected to support participants who are ready to develop longer-term goals to achieve better outcomes, as longer plans will provide certainty for them and their chosen providers delivering their supports.
- 2.40. This review understands that as at 30 September 2019, 93 per cent of participants now have a "MyNDIAContact". Although it should be noted that the single point of contact results in participants being provided a contact name but generally not a direct phone number or email.

Future focus

- 2.41. 1 July 2020 is an important milestone for the rollout of the NDIS across Australia. It reflects a change of focus from transitioning state and territory disability service systems towards an environment focused on resolving outstanding implementation issues and working towards a mature NDIS, with around 500,000 participants expected to benefit from the scheme by 2023 ([Table 1 refers](#)).

Table 1: Projected increase in NDIS population to 2023

	Population by Projection Year (30 June)				
	2019	2020	2021	2022	2023

	Population by Projection Year (30 June)				
Total	286,015	369,118	423,889	470,615	501,491
Change		+83,103	+54,771	+46,726	+30,873

- 2.42. A 2014 review stated the NDIS was *“like a plane that took off before it had been fully built and is being completed while it is in the air”*⁵. Five years on, it is clear that the NDIS is still being built. In order to ensure the NDIA is able to deliver an efficient and effective scheme, this review considers the next phase of NDIS implementation will need to have a focus on:
- building the trust of participants, their families and their carers when engaging with NDIS processes;
 - activities to support new people with disability to access the NDIS; and
 - expediting access to funded supports and reducing the number of unnecessary steps in the participant pathway.
- 2.43. While substantial efforts are underway to make improvements in these areas, the NDIS is already a large and complex system, meaning improvements will take time to embed within NDIA operations, including making the required changes to ICT systems. It is therefore reasonable to expect it will take several years before the NDIS is operating efficiently.
- 2.44. In addition, there are many policy and practice challenges that will need to be addressed to ensure the NDIA can deliver on its promise to people with disability, particularly in respect to:
- Fully overcoming delays across all decision-making processes, to ensure timely access to supports when people with disability actually need them;
 - resolving ambiguity in the construction of supports so plans meet participant expectations and always have a clear link to the participant’s goals and aspirations;
 - actively supporting people with disability to build their capacity to identify their support needs, goals and aspirations, self-advocate and navigate the market;
 - improving the capability and capacity of the NDIA workforce, including Partners in the Community; and
 - supporting the development of a robust marketplace of disability service providers that keeps pace with demand.

Other Issues

⁵ Whelan, J., Acton, P. and Harmer, J. (2014). *A Review of the Capabilities of the National Disability Insurance Agency*. Geelong, VIC, p.7.

- 2.45. This report does not consider all aspects of the NDIA's service delivery. This is because I was specifically asked to evaluate the particular legislative changes that would be required to improve participant experiences with the scheme. Nevertheless, one of the intentions of this report is suggest areas where operational changes would support legislative changes that impose timeframes or other requirements as part of the Guarantee.
- 2.46. In addition, I have not considered the effectiveness of the NDIA's current approach to ILC investment as the Terms of Reference are focused on the experience of NDIS participants with the administration of NDIA decision-making. I do, however, acknowledge ILC is a fundamental aspect of the NDIS that seeks to build the capacity of mainstream services and community programs to create connections between all people with disability and the communities in which they live, encouraging inclusion and participation, while also building a more inclusive, diverse and accessible Australia.
- 2.47. I acknowledge feedback calling into question the scope of the NDIS, as set out in the NDIS Act, and feedback suggesting the role of the NDIS, and the NDIA in delivering it, is not well understood. For example:
- a. the principles of 'choice' and 'control' were seen by participants as reinforcing a view that they, as experts in their own lives and needs, would be able to receive funded supports through the NDIS of the type and at the level they felt was appropriate, without the NDIA having authority to make decisions to that end;
 - b. there is confusion around who the NDIA 'speaks for', acts 'on behalf of' or ultimately, 'serves' - is it people with disability or government interests?; and
 - c. there is confusion about the role of the NDIA in managing, advising and reporting on, the financial sustainability of the NDIS.
- 2.48. I also acknowledge there is a tension between the role of the NDIS in supporting the functional impact of impairments that arise due to a chronic health condition and confusion around the respective roles and responsibilities of, and how the NDIS works alongside, the health system. I note this issue was mentioned in the 2015 Review of the NDIS Act but is yet to be resolved. In reviewing this issue I consider that, at this point, more significant and detailed policy work needs to be undertaken before this issue can be appropriately considered.
- 2.49. Consultation feedback also suggests the role of governments in providing policy stewardship of the NDIS is not clear, including its ability to influence NDIA decision-making. Some submissions referred to policy announcements by governments or stated objectives in Intergovernmental Agreements and considered them binding upon the NDIA. Others indicated they felt the NDIA had "broken their promises" when the NDIA acted in ways they perceived was inconsistent with political undertakings, such as they "would not be disadvantaged" in the transition from state and territory disability systems.

- 2.50. Some of these frustrations will be addressed by effective implementation of the proposed Guarantee as outlined in [Chapter 10](#). However, I consider they are outside the remit of this review as they ultimately regard the role and function of the NDIS itself, and of the NDIA in delivering it. Accordingly, I do not make any recommendations on these issues, and instead suggest the most appropriate vehicle for such consideration is the next review of the NDIS Act, currently scheduled for 2021.
- 2.51. Lastly, I acknowledge feedback suggesting there is a need to review the nominee provisions of the NDIS Act in relation to their intersection with guardianship and administration legislation in states and territories. As a matter of reviewing the NDIS Act, this issue is unlikely to be resolvable in isolation. Accordingly, I do not make any recommendations on this issue but consider it appropriate for governments, through DRC, to commission a review of the interoperability between Commonwealth and state and territory legislation as it applies to nominee and guardianship provisions. This review would have the intent of identifying opportunities to ensure a nationally consistent approach to nominee and supported-decision making arrangements for people with disability.

CHAPTER 3 – ENGAGEMENT AND NAVIGATION

KEY FINDINGS

- ✓ Improvements to the participant experience could occur by ensuring all planning is done with a person who can make the decision to approve a plan.
- ✓ There is no clear understanding of the term ‘reasonable and necessary’, which is leading to varying interpretations and driving confusion for participants and the NDIA.
- ✓ Effective implementation of the scheme is being undermined by a lack of freely available and accessible information, inconsistency and a lack of transparency over NDIA decision-making.
- ✓ People with disability have the right to understand the reasons on which the NDIA makes decisions regarding their eligibility for, and the supports provided to them under, the NDIS. The legislative framework and NDIA administrative practices needs to support this outcome for participants.

- 3.1. The NDIS is having a positive impact for many participants. These outcomes become particularly evident the longer a person is in the scheme, as they continue to develop their confidence in navigating the provider market and implementing their plan. However, this review has heard that the complexity of the NDIS system is causing significant confusion and frustration.
- 3.2. Consultation feedback suggests that participants find it difficult to navigate through “the bureaucracy of the NDIA” and that they are feeling increasingly disempowered by how the NDIA engages with them. The vast majority of people with disability who participated in the public workshops or completed the online survey reported that finding information, applying for the scheme and talking to the NDIA is ‘confusing and frustrating’.
- 3.3. Feedback also suggests that people with disability do not understand how the NDIA makes decisions about their eligibility for the NDIS and the supports provided in their plan, including when a support is reasonable and necessary. This review also noted feedback describing a disconnect between the person working with them to test their eligibility for supports or develop their plan and the person who has the delegation to approve it.

Joint Planning

- 3.4. Under current arrangements, once a person with disability becomes an NDIS participant they are assigned a planner. In the majority of cases, the planner will be

one of the NDIA's Partners in the Community - that is, a LAC or an ECEI partner. However, where a participant's needs are more complex, the planner will be an employee of the NDIA. [Query for NDIA: can you provide stats on what proportion of participants are assigned a Partner for planning?]

- 3.5. Where the planner is a LAC or ECEI partner, the partner will work with the participant and their representatives, including their families and carers to develop a draft plan. This involves discussing the participants support needs, goals and aspirations and the informal supports available in their community. Once the LAC or ECEI partner has prepared a draft plan containing the reasonable and necessary supports proposed to be funded by the NDIA, it is then sent to an NDIA delegate for approval. As currently set out in the NDIS Act, only an NDIA employee has the delegation to approve a plan.
- 3.6. In approving the plan the NDIA delegate may make amendments to the plan, based on NDIA operational procedures or other considerations as required to be satisfied that the supports in the plan are reasonable and necessary. This review has heard feedback that suggests that, in at least some cases, the NDIA delegate may not have met the participant or discussed any changes prior to the plan being approved and sent to the participant.
- 3.7. It appears that a truncated planning and plan approval process has created a clear disconnect between the NDIA and participants, and has resulted in plans that do not reflect planning discussions. In addition, it has driven complexity for participants with many citing anxiety and frustration in having to repeat their story unnecessarily and request plan reviews to have consideration of the supports asked for, but not funded.

“LAC just seems to be a conduit for information with no contact with planner by person with disability, information becomes second hand and there seems to be little communication between LAC and planner.”

Family member and Carer of NDIS Participant, Metropolitan New South Wales

“Completely inadequate plan and absolute shambles of a planning process. Information presented was not read or considered. Erroneous assumptions were made. The Chinese whispers from the LAC to the planner did not come through clearly - another major flaw with the planning process: LACs gathering information which is then passed on to someone who does not meet the person with disability or have the conversation with them-absolutely disastrous.”

Family member and Carer of NDIS Participant, Regional New South Wales

“LACs have too many clients and cannot do their jobs properly, one LAC told me that their caseloads aren't even capped. How can they support people adequately if they are so time poor that they can't return phone calls or answer emails within a day or so - that Participant is likely to have an extremely serious problem such as lack of access or if the plan isn't spent they will lose money in the next plan.”

Carer of NDIS Participant, Regional Victoria

- 3.8. In its 2011 report, the Productivity Commission conceived the role of partner organisations as helping people with disability connect to services in their community and build the capacity of the community for such interactions. That is, the original conception of the NDIS always envisaged that it might be more appropriate for some NDIS functions to be outsourced.
- 3.9. However, as the NDIS has been rolled out, and as this role has been expanded to include planning functions, LAC's and ECEI Partners are now being asked to undertake dual roles of planning and coordination for the majority of the NDIS eligible population, and there are indications that a focus on planning has been at the expense of their coordination roles.
- 3.10. With an ongoing focus on increasing the number of participants to 500,000 by 2023 (the majority of whom will be children), there will be an ongoing tension between the Partner's two roles, and therefore it is important that the balance is right and that the interface with NDIA delegates is as effective and streamlined as possible.
- 3.11. In response to feedback from participants about the disconnect between the processes of planning and plan approval, the NDIA have commenced rolling out “joint planning meetings”.
- 3.12. Joint planning meetings involve the planner, the participant and/or their representative and the NDIA delegate who can approve the plan. These meetings are designed to give participants the opportunity to ask questions to both the

planner and the NDIA delegate, so they understand the supports to be funded in the plan, and why other supports will not. Importantly, a key goal of the meeting is to promote transparency in the way information flows between the planner and the NDIA and to be able to provide an approved plan to the participant during the meeting.

- 3.13. Feedback from an early trial of the Joint Planning Approach in Victoria during 2018 suggests that it delivers multiple benefits, including:
 - a. the planner and NDIA have a better understanding of the participant and their needs, which translated to better explanations of reasonable and necessary supports and other elements of the plan to the participant;
 - b. in the majority of cases (85.4 per cent), the plan was able to be approved at the planning meeting and provided to the participant, with a further 10.9 per cent of plans approved within five working days;
 - c. participants and their representatives reported that they felt more involved in the process; and
 - d. participants who were unable to have their plan approved at the meeting understood the reason why, and in most instances that did not impact their overall satisfaction with the process.
- 3.14. In November 2019, the Australian Government announced the NDIA will expand the pilot and roll out joint planning meetings across Australia from April 2020, along with the provision of draft plan summaries. Providing a draft plan summary will enable them to review and amend their personal details, goals, living arrangements, informal community supports and other community supports, and social and economic participation prior to a plan being approved.
- 3.15. Importantly, these strategies will ensure NDIA planning decisions are consistent with participant expectations because the participant, the planner and the NDIA Planner will collectively discuss a working version of the plan and supports to be included before it is approved.
- 3.16. However, it seems reasonable to question whether the addition of a joint planning meeting is simply adding additional complexity and time for both the participant experience and the NDIA's administrative burden, and whether there are other more structural approaches that could be undertaken to improve the participant experience and deliver administrative efficiencies.
- 3.17. One option could be to remove the need for joint planning meetings entirely by brining all planning functions into the NDIA, such that the person a participant plans with is the person who can approve their plan. This would reflect a fundamental shift in the way the NDIS is currently implemented, and move the administration of the NDIS towards the model originally envisaged by the Productivity Commission - that is LAC and ECEI partners focusing on coordination and plan implementation functions.

- 3.18. A second option, as raised in some submissions to this review could be to provide LAC and ECEI partners with delegation to make plan approval decisions, however this approach would only be addressing the symptom, as opposed to driving operational processes towards the most effective balance of NDIA staff and its partners.
- 3.19. Moving to a system where the all planning is done by NDIA staff would require a significant adjustment to their operational planning footprint and require a well-developed workforce strategy between the NDIA and its partners.
- 3.20. Given the significance of such a change to current operational arrangements, any change to the planning process needs to be thoroughly tested against current arrangements to ensure that participant experience is maximised. Otherwise, rushing to amend the NDIA's operational footprint and formally changing the role of partners may create perverse outcomes on the participant experience.
- 3.21. Therefore, this review considers that there is merit in the NDIA trialing an arrangement where NDIA delegates undertake all planning functions. This could be done in a particular location or state, in areas where the LAC and ECEI partner approach is least mature.
- 3.22. Subject to an evaluation of the participant experience, the NDIA should then proceed to implement the model that, based on the evidence, achieves the best outcome for participants. This review notes, however, that any trial may have a requisite impact on the NDIS average staffing limit.

Recommendation 1: The NDIA undertake a trial where all planning functions are undertaken by NDIA delegates, to compare the benefits of that approach with current operational reforms underway.

Navigation support

- 3.23. If current operational arrangements remain, however, including the existing NDIA reform program, this review considers that a mature NDIS may not see a material improvement in the overall complexity, or bureaucracy of the scheme.
- 3.24. Consultation feedback suggests those who have support to navigate the NDIS from initial entry to being able to fully and access and implement their plans tend to achieve better outcomes than those who do not have the help they need to navigate the system by themselves. This review has heard that this is driving a higher demand for advocacy support, both to navigate the NDIS and to deliver capacity-building supports that were intended to be delivered by the Partners in Community, but may have been lost due to a focus on planning.

- 3.25. Consequently, there may likely be an ongoing need to provide some participants with additional support to navigate the NDIS, exercise informed choice and control, understand and implement their plans and to have their voice heard in matters that affect them - or more commonly referred to as supported decision-making. This is particularly important for people with limited capacity to make decisions or self-advocate, and should still enable core NDIS principles, such as independence, choice and control, community inclusion and linkages to other service systems.
- 3.26. However, in keeping with the principles of the NDIS, this review considers it may not always be the responsibility of, or appropriate for, the NDIA or NDIS service providers to provide supported-decision making. Rather, if LAC and ECEI partners continue to have a role in planning, the Australian Government could consider providing additional funding to third parties, who are sufficiently independent from the NDIA, to undertake these functions.
- 3.27. This review has also heard from participants who argue the funding of support coordination in their plan would help them use and reduce the burden of managing their plan and the NDIA should fund this support more generally for NDIS participants.
- 3.28. This review considers that this feedback is likely to be another symptom of Partners in the Community having dual coordination and planning roles. As a result, and whilst likely to be the least effective of the options to address the effect of current operational arrangements, the NDIA could be more generous in its interpretation of when it is reasonable and necessary to provide funded support coordination, noting that currently 39 per cent of active participants have funded support coordination in their plans⁶.
- 3.29. This review notes, however, that the market for support coordination is not well established and there are locations where the market is thin and the quality of service provision an issue. As such, any move to increase the use of funded support coordination in participant plans would need to be accompanied with a comprehensive market development strategy to ensure service providers were able to effectively assist participants to get the best outcomes from their NDIS funding and make the transition from being passive recipients of supports to informed consumers. This is further discussed in [Chapter 7](#).

Reasonable and Necessary

- 3.30. Reasonable and necessary is one of the first terms people hear about when they start to engage with the NDIS. However, despite being the most important term, as it defines the supports that are funded under the NDIS, there is no clear notion of what it actually means.

⁶ COAG Disability Reform Council Quarterly Report 30 September 2019, p.103.

- 3.31. The legislative concept of reasonable and necessary is not unique to the NDIS, with similar constructs being legislated in other compensation scheme in Australia, for instance state and territory motor accident lifetime care and support schemes⁷.
- 3.32. However, in its application under the NDIS Act, it is clear from the NDIS rollout that there is yet to be a consistent understanding between NDIS participants and the NDIA as to what constitutes reasonable and necessary. Consultation feedback indicates there is significant confusion around how decisions on the reasonable and necessary supports funded by the NDIS are made in respect to an individual's plan.

"I felt the 'reasonable and necessary' test was very subjective and my planner couldn't under how it was necessary or reasonable that I have a bag for my wheelchair even though my occupational therapist had stipulated that as I have limited mobility, it was necessary to achieve my goals of independence"

NDIS Participant, Regional Queensland

"Reasonable and necessary is not the easiest to understand and navigate, which I also suspect if leaving people out on a limb because they do not understand this term clearly and what is included"

Family member and Carer of NDIS Participant, Metropolitan Victoria

"Interpretation of the criteria is too subjective. What is fair and reasonable and necessary?"

NDIS Participant, Regional Queensland

"Better clarify 'reasonable and necessary'. For someone like me, this is a very vague term, implying a compromise between goals and supports"

NDIS Participant, Regional Victoria

- 3.33. Fundamentally, this is because reasonable and necessary is defined in the NDIS Act and Rules through high-level principles around what constitutes a support in-scope for NDIS funding and those supports more appropriately funded by another service system or through a participant's ordinary income (including income support).
- 3.34. Combined with limited (or at least not easily accessible) information on the NDIS website on how a NDIA delegate makes a reasonable and necessary decision, there is significant scope for NDIA delegates and people with disability to

⁷ See, for example: the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (South Australia), *Motor Accidents (Lifetime Care and Support) Act 2006* (New South Wales) and *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (Australian Capital Territory)

misinterpret what supports were intended to be funded when all governments established the NDIS Act.

- 3.35. However, what is clear is that legislative responsibility for determining what is reasonable and necessary, within the established principles, is vested solely with NDIA delegates.
- 3.36. Confusion around when a support is reasonable and necessary and poor planning decisions (in some instances) made by delegates are driving people with disability to seek formal reviews of their plan and, in some cases, escalating issues to the AAT for resolution.
- 3.37. In considering the facts of the matter before it, the AAT is also making determinations as to what is, or is not, reasonable and necessary. While the Tribunal is not a Court, and its decisions are not binding, it does set precedent for the types of support that could be funded by the NDIS. This review also notes that the AAT's decisions, while having regard to the objects and principles of the NDIS Act, may, or may not be making decisions in the interest of the scheme as was intended when the legislation was drafted.
- 3.38. However, this review does not consider that the AAT is making incorrect decisions. Rather, this review considers that all governments need to take a greater role in resolving the definition of reasonable and necessary. In particular, this review considers five key actions are required to provide clarity to participants and NDIA delegates about what is reasonable and necessary.
- 3.39. Firstly, the NDIA should provide clearer advice on how it decides whether a support is reasonable and necessary, including practical examples, such as case studies or cameos. These should be readily available on the NDIS website and other platforms in accessible formats. Currently, reasonable and necessary is described in vague terms, often simply replicating the legislative criteria. Case studies should address key areas of confusion for participants, for instance, ordinary living costs and health.
- 3.40. Secondly, the *National Disability Insurance Scheme (Supports for Participants) Rules 2016* (Supports for Participants Rules) should be updated to provide greater legislative guidance for NDIA decision makers in determining when a support is reasonable and necessary. This update should have regard to the recent and anticipated decisions made by the DRC in respect of the interface between the NDIS and mainstream service systems. Notwithstanding that the NDIA should have regard for the decisions of the DRC, those decisions do not have formal standing in the context of NDIA delegate decisions.
- 3.41. Thirdly, DRC should clarify the interface between the NDIS and a participant's ordinary living costs, in order to provide further direction to NDIA delegates in funding supports in circumstances where it is not clear whether a support is directly

attributable to a participant's functional impairment. This can occur where a support provides outcomes that are not solely related to a participant's functional impairment, or where a support would be considered an ordinary living cost for the wider Australian population, but it is not clear if a participant would have purchased that support if not for their functional impairment.

- 3.42. Fourthly, the NDIS Act should be amended to provide clarity to NDIA delegates that, while they must decide that each support in a participant's plan is reasonable and necessary, it is also the function of the reasonable and necessary test to consider how each support interacts with the other reasonable and necessary supports in a participant plan. While this is already inferred through the concept of a NDIS plan in the NDIS Act, this review considers that it is worth providing this clarification more explicitly to NDIA delegates.
- 3.43. Finally, the NDIS Act should be amended to clarify that the absence of a support being provided by another service system, where that service system is considered to be the appropriate service delivery mechanism for that support, does not infer a responsibility for the NDIS to fund that support. On face value, this would appear to be a negative for people with disability as it could potentially enforce, or exacerbate, service gaps for participants. However, this review considers that this clarification would provide further certainty to participants and all governments over the role of the NDIS, driving the debate more appropriately towards the reason why the support is not being provided by the other service system.
- 3.44. Importantly, these actions are not intended to narrow the intended scope of the NDIS. Rather, these actions are intended to ensure there is a strong understanding of the NDIS' boundaries by participants and governments. If implemented appropriately, the debate around the role of the NDIS and what is reasonable and necessary can be elevated from individual participant experiences toward more structural systemic debates between governments and people with disability.

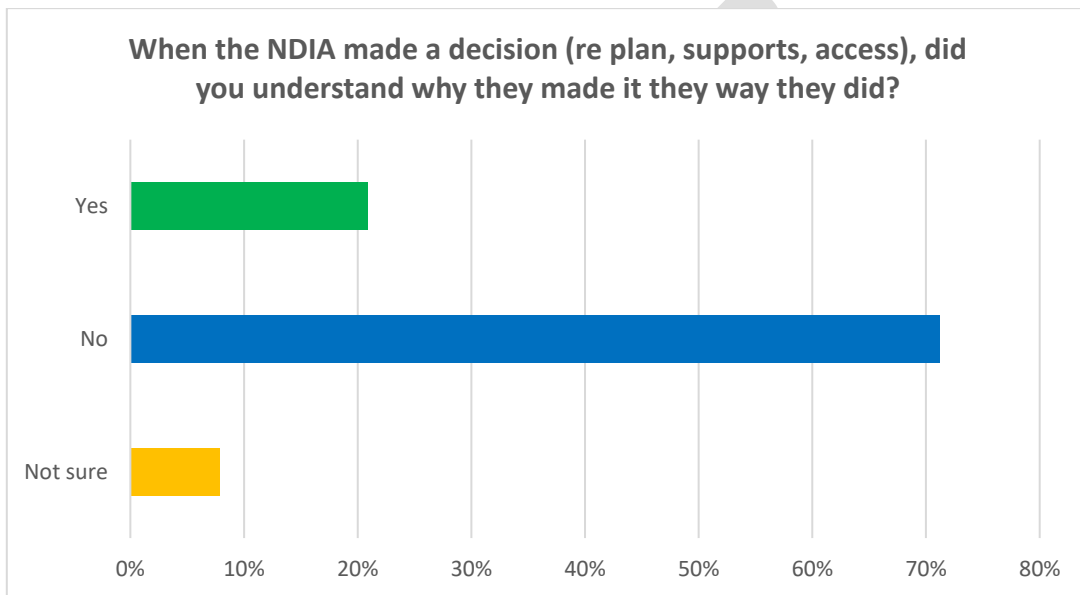
Recommendation 2: That more certainty is provided to NDIA delegates and NDIS participants when considering the concept of reasonable and necessary, with:

- a. the NDIA to provide clearer guidance on how it makes reasonable and necessary decisions;
- b. the NDIS Rules be updated to reflect recent and upcoming decisions by the DRC in relation to the interface between the NDIS and other service systems;
- c. DRC adding, to its forward work program, resolving the interface between the NDIS and ordinary living costs;
- d. the NDIS Act to be amended to clarify the interaction among individual supports within a plan; and
- e. the NDIS Act to be amended to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

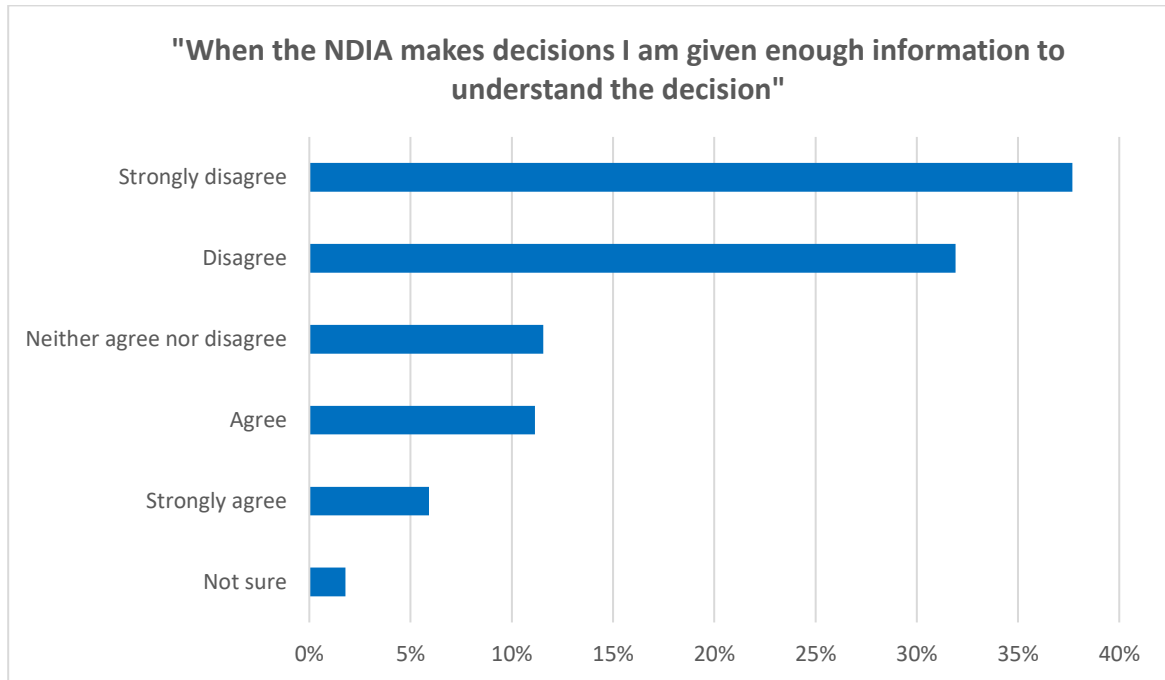
Transparency

Understanding the reasons for NDIA decisions

3.45. Further to issues around the interpretation of reasonable and necessary supports, feedback to this review suggests that the NDIA is not effectively explaining its decisions to participants and that this is leading to participants requesting plan reviews to seek explanations, correct errors or otherwise results in lack of trust in NDIA processes. More than 71 per cent of the 930 survey respondents who gave a specific response to this question did not understand why the NDIA made certain decisions, even if those decisions were legitimate.



3.46. This finding was consistent with feedback in response to another question in the survey, which asked participants whether they agreed with the statement: “When the NDIA makes decisions I am given enough information to understand the decision” with 70 per cent of the 1,274 survey respondents who provided a specific response disagreeing or strongly disagreeing.



- 3.47. Qualitative feedback from the survey also indicates that participants want explanations of why access was not granted, supports not funded or why funding levels were reduced from previous plans.

"The decisions made during plan reviews need to be explained to the participant. We need to know why services, equipment or home modifications are denied."

NDIS Participant, Regional Victoria

"They [NDIA] should be required to explain the plan - e.g. give a breakdown of what has been agreed to be funded; to be accountable & provide explanation of why they say 'no' to things."

Carer of NDIS participant, Regional Victoria

"Actually explain why supports were not included, or hours of support were reduced, then listen and offer advice or next steps."

Carer of NDIS participant, Metropolitan Victoria

- 3.48. There would appear to be a link between participants' reported experience of NDIA decision-making and the rapid scale up of participants entering the scheme. A number of participants reported that planners 'quickly moved on' to the next person and that planners did not work with them to ensure they understood why certain supports were included in the plan, or not. To the extent that pressure to meet participant intake targets has influenced the NDIA workforce, it appears this has influenced the quality of NDIA decision-making.

“When we did get a rushed new plan instead of including all of our daughter’s new goals and changes of circumstances, they copied and pasted her original plan from 2017 onto her new 2019 plan! No changes, no updates.”

Carer of NDIS participant, Regional New South Wales

“We were rushed in our planning process this time because our plan was due to expire and we had not been called up for a review - I had to chase it up. We did not have all the people at the meeting we wanted because of the late notice.”

Carer of NDIS participant, Metropolitan Western Australia

“We believed that in the planning meeting the LAC would listen to our needs and goals and create a plan to reflect these things. That did not happen.”

Carer of NDIS participant, Remote Victoria

- 3.49. It should be noted, however, that the NDIA Quarterly Report for the period ending September 2019 indicates that 85 per cent of people who entered the scheme in that quarter reported that their plans were clearly explained. This discrepancy is, in part, reflective of when the participant completing the survey entered the scheme. This review notes that survey respondents who reported they entered the scheme more recently were more likely to respond “Not Sure” or “Yes” to this question.
- 3.50. The NDIS is still evolving. As the NDIA and Partners in the Community workforce continue to mature and NDIA processes are further embedded, it is reasonable to expect the NDIA’s processes in explaining how they made their decision will also improve. This Review expects that this would include how the supports in the plan relates to both the participant’s functional impairment/s as well as their individual goals and aspirations, in a way that is accessible for the participant.
- 3.51. However, this Review also considers that a requirement for the NDIA to explain its decisions would reinforce more robust planning practices, reduces duplication and ensure the scheme remain accountable to the people it is designed to support. Understanding the reasons why a particular decision was made (and how it was made, including what information was taken into account in making that decision) is important to enable participants to decide whether or not to exercise their right of review or appeal if they disagree with an NDIA decision, and if they do, that they can do so in an informed manner.
- 3.52. Failing to provide explanation of its decisions disempowers participants and impacts their capacity to exercise informed choice and control. While this review understands the NDIA is currently providing formal statements of reasons for participant’s who have requested an internal (merits) review of an NDIA decision, it would be consistent with best practice administrative decision making principles and the intent of the scheme that a participant should have the right to seek an

explanation of NDIA decisions without needing to progress to internal (merits) review.

- 3.53. While a person affected by a decision made under the NDIS Act has a right to request reasons for decision pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, this review considers that this is not the most accessible way for a person to obtain evidence of a NDIA decision.
- 3.54. Rather, an explanation to people with disability should be a routine operational process for the NDIA when making access, planning and plan review decisions. However, in the event this does not occur, the Guarantee should empower the participant to require the NDIA provide this information in a manner that is accessible to the participant (Chapter 10 refers).

Accessible information

- 3.55. A significant number of people with disability who participated in the consultations indicated that the information they could access about the NDIS was not disability-friendly or available in alternative formats, such as easy read, AUSLAN, braille or in languages other than English. Others stated that the NDIA assumed participants had a high degree of digital literacy and that planners would point them to find the information on the NDIS website, but they could not find the information they needed, sending them on a loop.

“The website has so much stuff on there and it is simply too overwhelming, it needs to be written in layman’s terms and less of it. I gave up because I couldn’t figure it out.”

A person with disability, Remote South Australia

“The [NDIA] website does not have an easy to use search function that locates information people really need to see. Search for a term and you receive a dump of everything that features that word. The engine does not prioritise most frequently accessed documents or participant fact sheets and booklets which are most likely to be helpful .”

Every Australian Counts

- 3.56. This review understands that currently, a prospective participant is required to complete a Verbal Access Request (VAR) or an Access Request Form (ARF). Prospective participants who choose to complete the VAR will be sent a Supporting Evidence Form to assist with the evidence collection. The prospective participant or an authority acting on their behalf will be asked to confirm their identity including age and residency details.
- 3.57. Many respondents asked for an improved online experience, with the ability to download and print forms and any other documentation they may need to apply for the NDIS, including an option to upload required evidence to support NDIA

decision-making. While it cannot be assumed that all people have access to the internet and/or will be digitally literate, there is merit in the NDIA making better use of information technology and digital transformation to provide a service delivery platform that enables more readily available information and referrals online for those who prefer to use such technologies.

- 3.58. As a first step, this could mean that a copy of the form a person needs to complete to apply for access to the scheme should be freely available on the NDIS website, along with detailed information about what they will need to provide to support an access decision. This would serve to empower the person and allow them to understand and commence the access processes in their own time, and at the pace in which they feel comfortable.
- 3.59. This review understands that, moving forward, NDIA is exploring new options to make it easier for people to apply for the scheme online, while mitigating risks that people apply on a person's behalf without consent or misunderstand the requirements that are needed to support decision-making. This review understands that an online access request option is expected to roll out in 2020 - 2021 financial year.
- 3.60. However, feedback to this review indicates that providing more information upfront about the NDIS will not solve participants greater concerns - i.e. that they were not kept informed of NDIA decision-making after the submission of their access request or the process of developing, approving or reviewing their plan. Some indicated the NDIA should have a service like a mobile app that kept them informed of where their request was "up to in the queue", and that longer timeframes for decision-making would be tolerable if they knew when the decision was likely to be made.

"A visual tracking option [to track requests] at the beginning of the portal page could improve communication between the Agency and the participants, their carers/families and support network (including advocates). This will also reduce the time they spend calling the NDIA directly."

Advocacy for Inclusion

- 3.61. Clear, consistent, easy to understand and accessible information is critical to allow people with disability to make informed decisions about their supports. Notwithstanding the NDIA's work to date in improving its communication and engagement practices ([Appendix C refers](#)), consultation feedback indicates that many people with disability either:
- don't know about those improvements;
 - still consider them to be inaccessible;
 - don't know where to find, or rely on social and online peer groups to obtain, information about the scheme; or

- d. find that their experience does not reflect the process as set out in the information they have been able to find.
- 3.62. Some participants also reported that they could not obtain accessible information at all stages in their NDIS journey. For example, some cited that while pre-planning information was available in easy read, their plan and information to help them implement their plan were not.
 - 3.63. Neither changing the NDIS Act to remove red-tape or legislating the Guarantee will be effective in improving participant experiences with the scheme unless the NDIA equips participants to become informed consumers.
 - 3.64. On this basis, the Guarantee should commit the NDIA to ensure all participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, in formats that meet their needs and is easy to understand. The proposed form of this requirement is further discussed in [Chapter 10](#).
 - 3.65. In addition, this review recognises the ability to introduce a tracking systems for both prospective participants and participants to track their requests would require a significant expansion of the NDIA's workflow management tools. There is merit in considering such features as part of the NDIA's existing efforts to upgrade its ICT functionality.
 - 3.66. There is also merit in the Commonwealth government and the NDIA exploring opportunities to provide accessible and alternative formats of the NDIS Act and NDIS rules, similar to the online Social Security Guide that provides a simple interpretation of key provisions underpinning social security legislation. This would assist all people with disability to exercise an informed understanding of the legislative provisions that inform the administration of the scheme and the basis on which the NDIA makes decisions about a person's eligibility for the scheme and the supports provided in their plans.

Recommendation 3: The Commonwealth and NDIA produce accessible versions of the NDIS Act and NDIS Rules.

CHAPTER 4 – EVIDENCE TO SUPPORT DECISION-MAKING

KEY FINDINGS

- ✓ Strengthening the use of standardised functional assessments at the point of access would improve participant's experiences at all stages as they progress through the NDIS, by improving the quality and consistency of NDIA decisions.
- ✓ The financial impact on both prospective participants and participants to provide evidence of functional capacity should be minimised and greater clarity provided on the form and type of information required to support decision-making.

- 4.1. Scheme experience has shown that evidence, and the quality of evidence, provided by prospective participants and participants is diverse, and at times does not assist the NDIA to make clear or consistent decisions. To improve the quality of decision-making, the NDIA must have access to the best and most relevant evidence related to a person's functional impairment. This will assist the NDIA in properly discharging its functions where the statutory criteria requires it to be satisfied of certain matters - for example, whether or not a person meets the eligibility criteria or that the supports in their plan are reasonable and necessary.
- 4.2. This review has heard there is significant confusion as to what evidence is required to support the NDIA to make decisions. Therefore, there is merit in providing greater clarity in the operational and legislative architecture surrounding the requirement and use of evidentiary material. This review also supports mitigating the current administrative and financial burdens felt by prospective participants and participants in providing information required to support NDIA decision-making.

Strengthening the use of functional assessments

- 4.3. Functional assessments support processes that ensure people who would be eligible for the scheme become participants and get the right level of support in their plan. If done properly, an appropriate functional assessment that is evidence based and meets the NDIA's needs at the point of access will reduce future administrative burden participants during the planning process. It will also result in plans being developed and approved faster and help ensure that access and planning decisions are made consistently and directed towards improving functional capacity.
- 4.4. As there is no actively promoted standardised format to support assessors in providing evidence to support decisions, the quality of evidentiary material varies in quality and consistency. Many pieces of evidence are not fit for purpose, requiring a

back-and-forth process to obtain the required information, or have resulted in a large number of participants requesting reviews of access and funding decisions. Ultimately, this can drive disengagement for people with disability and those involved in assessment and planning.

- 4.5. The reliance on operational guidelines to streamline access decisions ([Chapter 5 refers](#)) has also led to downstream problems for some participants because the NDIA does not have enough evidence of their functional capacity to make planning decisions. Some participants reported that they needed to provide the NDIA with more information and/or undergo examinations or assessments when developing their plan in order to ensure they got all the supports they needed. Understandably, those participants found this process frustrating because they didn't understand why further information was required when the NDIA had already decided they had met the access criteria.
- 4.6. In addition, this review has heard that some participants who had already had a first plan were required to provide further information about their functional capacity in order to develop and approve their second plan, even if their circumstances had not changed and it was not apparent that their needs had neither improved nor deteriorated.

“Why does the NDIS require participants or their advocates to prove annually why they or their children require the support they need. This causes huge amounts of stress and anxiety to both participant or parent and is not necessary especially when the nature of the participant's disability mean that their condition will not improve and in most cases will worsen with age.”

Carer of NDIS participant, Regional New South Wales

“It was embarrassing to have to keep proving disability, when evidence was already provided during the initial application, particularly in relation to my psycho-social disability.”

Carer of NDIS participant, Regional New South Wales

“All information had already been supplied with the original application. Having to provide more evidence just so the original information could be confirmed was both unnecessary and stressful, not to mention, costly”

Carer of NDIS participant, Metropolitan South Australia

- 4.7. Taken in the context of pressure to meet intake targets, this is not a surprising outcome. Indeed, it is likely to continue until the impact of streamlined access decisions, and the provision of inconsistent evidence formats wash through the system. It is at this point that planning processes for all participants will be simpler, and that NDIA decisions makers have increased confidence in regularly setting plan review dates for a period longer than 12 months from when the plan is approved.

- 4.8. A contributing factor is the loose and discretionary way an “assessment” is defined in the NDIS Act. It is not clear that the purpose of any information a person with disability must produce or any assessment or examination they must undergo for the purpose of access or planning processes, is to demonstrate the functional impact and permanency of their impairment.
- 4.9. In addition, the existing legislative framework does not expressly allow for information collected for the purposes of one decision point to be used for another. For example, allowing information collected for the purposes of deciding whether a person meets the access criteria to also be used for the purposes of preparing, approving and reviewing their statement of participant supports.
- 4.10. When combined, these issues create significant confusion as to what evidence is required to support NDIA decision making and when additional evidence is required. There is merit in reinforcing the purpose of assessments in the legislation, and what they can be used for, noting it is a reasonable expectation that all participants must undertake further assessments from time to time, to ensure their plans remain fit for purpose.
- 4.11. To improve the participant experience and make it more streamlined, it would also be logical to allow the NDIA to use information, assessments and reports collected about the person to be used for various purposes throughout the NDIS pathway.
- 4.12. However, in reinforcing the importance of functional assessments, the NDIA need to appropriately consider and make decisions guided by the outcomes of those assessments. Evidence from some consultation feedback indicates that some planners are either not fully considering the reports participants provided or are not taking into account the recommendations of experts.

“In my experience, while the NDIA requests supporting documentation from various disability/healthcare professionals to determine whether a service or piece of equipment is necessary, it does not appear to listen to the professional opinions of these individuals, but prefers to leave the decision making process wholly up to its delegates and other associated NDIA individuals.”

NDIS Participant, Metropolitan Victoria

“If the NDIA actually looked at the information we provided with access request and the conditions and what they do to someone’s body they would’ve realised there was no need for putting me or someone like me through and extremely tedious, stressful and complex situation of gathering supporting documentation and evidence”

NDIS Participant, Regional Victoria

“There are many frustrating examples of LACs and planners not reading material provided by participants, their families or the professionals that support them.”

Every Australian Counts

“People with disability and their families and carers go to considerable effort and expense to obtain professional or specialist reports - only to find they are not read or dismissed in preparation of plans.”

National Disability and Carers Alliance

“Carers have reported that costly assessments and subsequent recommendations from medical or allied health professionals have not been considered or included in the participant’s NDIS plan.”

Carers NSW

- 4.13. Planners need to recognise that they are not the experts on a person’s functional capacity. Planners must always carefully consider any information that a person provides when making a decision and should not fill gaps in assessments with their own judgements. While planners may bring expertise and evidence about appropriate supports that could be funded by the NDIS to help the person overcome the functional impact of their impairment, planners should not make decisions about a person’s functional capacity without supporting evidence.
- 4.14. More generally, understanding and appreciating that the person with disability and the people providing functional assessments on their behalf are the experts in their disability needs to be embedded throughout the culture of the NDIA and Partners in Community workforce. This would be in keeping with the general principles guiding actions of the NDIA in implementing the NDIS, as set out in section 4 of the NDIS Act.
- 4.15. It also needs to be appreciated that many people with disability rely on a shared sense of identity and need that has emerged from their diagnosis. For example, this is particularly relevant for the Deaf community and people with autism. In strengthening the use of functional assessments to support decision-making, the NDIA will need to recognise the significance of this shift for some people with disability.

Individualised planning

- 4.16. The general principles of the NDIS Act reinforce the objectives of the NDIS is to place individualisation at the heart of planning and maximise participant’s ability to exercise choice and control over the disability supports they need to achieve their goals and aspirations. The principles also reinforce that people with disability should be supported in all their dealings and communications with the NDIA to ensure their capacity to exercise informed choice and control is maximised.

- 4.17. Notwithstanding this intention, this review has heard that participants do not feel that the NDIA is taking an individualised approach to planning and the development of their plan. Some participants reported they felt like the NDIA was using a “formula” based on pre-existing criteria or their diagnosis to determine their supports. Others indicated that what was put in their plan did not reflect what was discussed in their meeting with the planner and that the planner disregarded the information they had provided.
- 4.18. Others stated that the plan they received did not link to their goals and aspirations, looked like a stock plan for a person with a certain type of disability, or contained errors, such as misspelt names or old addresses.

“I felt that I was not listened to at all, it was not an individual experience and I was given a horrible plan. It had nothing about my disability in it and ignored all my requests. It included information about my family when I didn't mention them as they do not support me and are not in my life.”

NDIS Participant, Regional Victoria

“In my current plan they couldn't even spell my surname right!”

NDIS Participant, Regional Victoria

“My needs aren't being met and I'm not being seen as an individual or taken seriously, I also did not get asked about my personal problems.”

NDIS Participant, Metropolitan Western Australia

“Every plan meeting is very different. You never know what is going to happen in each planning meeting, which is stressful as it makes you unsure of whether you're ready. The last few planning meetings we have had I feel the planners don't listen to us and in some cases have not read reports or evidence we or therapist have given. Sometimes what we have spoken about does not reflect the plan that's been approved and there is absolutely no feedback to why this happens.”

Carer of NDIS Participant, Metropolitan Western Australia

- 4.19. The way plans are developed was one of the main complaints heard throughout this review and is driving many participants to call for plan reviews. Feedback indicates that as a result, some participants are feeling betrayed and misled by a scheme intended to give them choice and control over their disability support needs.

Consistency of decision making

- 4.20. Consultation feedback suggests that NDIA decision-making about what is a reasonable and necessary support is not consistent, with participants with similar disability support needs receiving very different levels and types of supports in their plans, where the differences do not appear to be linked to goals and aspirations.
- 4.21. However, it should be noted that an individual's goal and aspirations are not intended to have a significant bearing on the level of funding provided in a participant's plan. When comparing two participants with the same, or very similar, functional capacity, of the same age and living in the same area, the NDIS is not designed to provide more funding for one participant over the other, on the basis that their goals and aspirations are, fundamentally more expensive.

“Complete inconsistency in plans and planners for people with the same needs and goals. Makes it very hard and confusing.”

“Many carers have reported that the information or assurances provided by LACs that supports would be included in the plan have not been reflected in the plans they have received from the NDIA, resulting in significant distress on receiving plans that do not fund many of the agreed supports. The lack of direct contact with NDIS planners in many cases limits communication between the planner and the participant and their carer, creating confusion and frustration for participants and carers as they do not understand why some decisions have been made or been able to discuss alternatives or providing further evidence.”

Carers NSW

Feedback suggests a disconnect between the participant and the planner. Many feel they have not been heard or understood by the planner and this can translate into a plan that they are unhappy with.

Legal Services Commission of South Australia

- 4.22. This is a clear demonstration of the tension between consistency of decision-making and the individualised planning approach, and that more work needs to be done by the NDIA to find appropriate operational responses.
- 4.23. The NDIA is doing work in this regard by reforming the use of “typical support packages” during planning, which uses input from guided questions to help determine what kinds of support a participant would ordinarily need to meet their disability support needs, and then adjusting for their goals and aspirations, and other relevant factors.
- 4.24. This work is appropriate to the extent it provides more powerful tools for the consistent construction of plans and baseline comparisons, but only to the extent

that it remains sufficiently flexible to the specific needs and circumstances of the individual. It is also important to recognise that these tools will never replace the need for appropriately trained planners who are able to recognise that participants are the experts in their own disability.

Mitigating cost as a barrier to producing information

- 4.25. During consultations, concerns were raised about the financial capacity of both prospective participants and participants to pay for the cost of assessments/examinations the NDIA may require they produce or undergo to support decision making.
- 4.26. Stakeholders maintained that this cost is beyond the financial capacity of many and, as a result, there is a significant number of people with disability who would otherwise be eligible, but are being priced out of the scheme. Anecdotal evidence suggests a participant and their family may incur out-of-pocket costs of several thousand dollars, with no surety they will be found eligible for the scheme, or that they will have sufficient funding in their NDIS plan to offset the impact of those costs.
- 4.27. This review notes that in some instances the costs of obtaining further information to support a planning decision could be drawn from the participant's NDIS package, assuming there was sufficient funds available to be drawn from their other supports, although this would seem to be a perverse outcome in the circumstances that the information was requested by the NDIA.

“We were told we needed to have more than one professional write a report to say my son needed services. However, we could not afford to see another professional (we saw an OT through the public system). We were stuck, we had no money to see a therapist but we needed a therapist to help us get access to NDIS funding.”

Carer of NDIS Participant, Metropolitan Australian Capital Territory

“I supplied information personally but they didn’t accept it. I provided the same information to an OT who wrote it in a report at a personal cost of \$2,000 out of pocket and the information was then believed.”

NDIS Participant, Regional New South Wales

“My daughter was already diagnosed with disabilities that were on the automatic accepted list. It cost me money to get reports, which placed me under financial duress. All therapist now charge NDIS rates even if you don’t have funding so suddenly the therapy I was funding privately I could no longer afford.”

Carer of NDIS Participant, Metropolitan South Australia

“Many of our clients struggle with the everyday reality of living in poverty and cannot afford to pay for the detailed reports and support evidence the NDIA typically requests.”

National Legal Aid

- 4.28. Several submissions suggested amending the NDIS Act to require the NDIA to have regard to the financial impact on the prospective participant of producing information to support NDIA decision making. Some submissions also considered that a participant should not be disadvantaged by being forced to draw down on funds provided for their other NDIS supports in order to provide that information.
- 4.29. This review notes that section 6 of the NDIS Act already provides broad powers for the NDIA to provide support and assistance (*including financial assistance*) to prospective participants and participants in relation to doing things or meeting obligations, or for the purposes of the NDIS Act (emphasis added). Increased use of this power is recommended to offset the reasonable costs of obtaining assessments and would go some way to removing cost as a barrier to the NDIS, noting the intersecting role of the Health system - i.e. Medicare.

Recognising the impact of secondary impairments

- 4.30. The existing legislation does not explicitly set out how assessment and planning decisions should or should not be made if a person has multiple impairments. The NDIS eligibility criteria is clear that a person meets the disability criteria if they have an impairment or impairments that are, or likely to be, permanent, and where the impairment or impairments result in substantially reduced functional capacity in undertaking one or more of the six activities in section 24(1)(c) of the NDIS Act.

- 4.31. The NDIA captures information relating to secondary disabilities or impairments but this has currently has limited use in assessment and planning processes. Consultation feedback suggests that both prospective participants and participants are asked during the access and planning process to choose their “primary” disability and that the NDIS will not provide supports for any other disability they may have. This review also heard of instances where participants reported they had to re-undergo an access request, as their planner indicated they could not include supports in a plan for a secondary impairment unless that secondary impairment also met the access criteria - which would be an entirely erroneous application of the NDIS Act.
- 4.32. This review notes that the combination of multiple disabilities cannot be considered in isolation and to the extent that a person has a secondary disability, the impact of that disability should be taken into account in access and planning decisions.
- 4.33. Importantly, the legislative architecture does not distinguish that a prospective participant or participant has a “primary” disability and that supports funded in the plan should be limited to that “primary” disability. Furthermore, this review notes feedback from participants that they cannot separate themselves into parts, and that it is impossible for many to consider the impact of one of their disabilities independent of another they may have. This was particularly pertinent for people with both physical and psychosocial disabilities.

“The scheme was never intended to be based on diagnosis but always on functional impairment. Requiring participants to identify a primary disability not only goes against scheme intent but also has a number of practical consequences. The first is that it forces people to choose - many participants have more than one disability. Which one is primary depends on many factors including timing, circumstances, environment. The ones that has a greater impact may vary from data to day, or from circumstance to circumstance. Identification of a primary disability also takes no account of the way multiple disabilities interact. As a result, the decision to commit to a primary disability means people are missing out on vital supports.”

Every Australian Counts

“It was difficult to label varying disabilities as primary and secondary as they all impact function. So many reports required!”

Carer of NDIS Participant, Regional South Australia

“The NDIS when making their decision should consider the applicant as a whole, not just their primary disability. All of the person’s disabilities go to making the person as a whole not just the degree of their primary disability.”

Carer of NDIS Participant, Regional Queensland

“The reliance on primary diagnosis does not reflect the reality of many people’s lives.”

National Disability and Carers Alliance

- 4.34. Irrespective of how many or which disabilities satisfied the access criteria, the planning process, as set out in Part 2 of Chapter 3 of the NDIS Act, provides that a participant’s plan will provide reasonable and necessary supports to assist them to pursue their goals and aspirations and undertake activities to facilitate social and economic participation. Therefore, the legislation already supports a view that a holistic approach should be taken to planning and where a person has multiple disabilities that these will be considered in regard to their support needs and what can reasonably be funded by the NDIS.
- 4.35. The NDIA have advised that in circumstances where a prospective participant or participant has multiple disabilities, the disability causing the greatest impact on functioning will be listed as the primary disability. The NDIA have also indicated that where it is unclear which listed disability results in greater functional impact, further advice may be sought from the treating health professional where consent is provided or from the participant to determine which should be listed first. The NDIA have also indicated that setting of a plan budget occurs independently of how “disability type” is recorded and it is a holistic assessment of the impact of the person’s functional impairment that drives all planning decisions.

A new model – independent sourcing of functional assessments

- 4.36. In its 2011 Inquiry, the Productivity Commission recommended that functional assessments should be drawn from independent health professionals to promote independent outcomes and provide national consistency in assessment approaches.
- 4.37. In late 2018, the NDIA undertook a pilot project to demonstrate whether sourcing independent functional assessments improved consistency, accuracy and reliability of NDIA decisions. The pilot was deployed in nine metropolitan service delivery areas in NSW. Assessments were offered to 500 people who had applied for Access but needed more evidence, participants who had received an “Access Met” decision but planning had not commenced, and participants who were approaching a scheduled plan review. A single service provider, the Benevolent Society, was engaged to conduct the assessments and the NDIA funded the cost of functional assessments for those individuals participating in the pilot.
- 4.38. Pilot evidence indicated that sourcing standardised functional assessments resulted in higher quality and more consistent decisions by the NDIA and more equitable plan outcomes for participants with similar characteristics. NDIA staff and partners reported the information contained in the assessments informed their conversations with participants, which in turn increased their levels of confidence in developing plans. They also found the assessments gave helpful insights and more detailed information about the participant’s disability and functioning in different areas of life.
- 4.39. The benefits that have arisen from this pilot indicate that it is worth implementing on a national basis for every person with disability who would like to test their access for the scheme or who require further evidence to support decision-making about the supports in their plan. This would, if scaled up, be expected to significantly mitigate the current financial barriers that exist for people with disability seeking to navigate the NDIS. It would also decrease the likelihood that a participant would need to undergo further assessments and produce additional information at the plan development and review stage, unless their circumstances had changed.
- 4.40. The Australian Government recently announced the pilot will re-commence in the Nepean Blue Mountains area of NSW in December 2019, with a view to establishing a national panel of independent and appropriately skilled and qualified assessors and roll the program out across Australia from July 2020, using a panel of NDIA-approved providers. As with the original pilot, this review understands that assessments will be offered free of charge and will help to inform a person’s eligibility for, and the supports included in their plan.
- 4.41. The functional assessment tools that would be used by independent assessors would also ensure that all relevant information is captured independently of disability type, such that access and planning decisions do not require the identification of a primary disability.

- 4.42. The roll out of this program will constitute a significant role change for NDIA Partners in the Community and is expected to increase their ability to focus on linkages with community and mainstream supports and support access for prospective participants. It will also represent a change of role for planners, allowing them to focus on goal planning and implementation.
- 4.43. This change in approach by the NDIA will require extensive consultation with participants, the disability sector, staff and service providers. Fundamentally, however, the success of this approach will be largely dependent on:
- a. the willingness of participants and prospective participants to engage with NDIA approved functional assessors; and
 - b. assessors providing truly independent functional assessments, and are not perceived as agents of the NDIA, or a tool designed to cut NDIS supports from participants.
- 4.44. While this review supports strengthening the NDIS Act to support the use of consistent functional assessments, this review also considers that there are a number of key protections that need to be built into the system as this approach is embedded into the scheme, including:
- a. participants having the right to choose which NDIA approved provider undertakes the functional assessment;
 - b. participants having the right to challenge the results of the functional assessment, including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment;
 - c. that NDIA-approved providers are subject to a national accreditation or auditing scheme, that is designed and implemented jointly by the NDIA, appropriate disability representative organisations and experts in the design and use of functional assessments; and
 - d. that the NDIA provide clear and accessible publically available information, including on the NDIS website, on the functional assessment's being used by the NDIA and the available panel of providers.
- 4.45. However, this review considers that the biggest risk in implementing the new functional assessment process is disengagement - that is people with disability refusing to interact with the NDIS because the NDIA will dictate to whom they must tell their story. This will be a particular risk for Aboriginal and Torres Strait Islanders, those from CALD backgrounds, and those with psychosocial disability.
- 4.46. Given these risks, and for the functional assessment process to work as intended, the depth of the NDIA-approved panel of assessors must be sufficient to address the engagement of these cohorts and other issues relevant in specific locations, communities, or disability types. Evidence from pilot processes undertaken to date are insufficient to assess this risk.

- 4.47. Therefore, this review considers that it is premature to amend the NDIS Act to allow the NDIA to specify the provider that is to undertake a functional assessment. For the time being, the use of NDIA-approved providers should remain a discretionary opt-in approach for participants, noting that participants who do not choose to opt-in may be required to pay for the cost of providing a functional assessment undertaken by a third party.
- 4.48. This review also considers that a decision on mandating a provider is better considered in the context of the next review of the NDIS Act currently scheduled for 2021.

Recommendation 4: That the NDIS Act be amended to strengthen the emphasis on functional assessments to support high quality and consistent decision-making, by:

- a. clarifying the purpose of an “assessment” under the NDIS Act is to provide evidence of functional capacity;
- b. allowing evidence of functional capacity able to be used for multiple purposes under the NDIS Act; and
- c. providing that the NDIA may require a participant undertake a functional assessment for the purposes of decision-making under the NDIS Act.

CHAPTER 5 – BECOMING A PARTICIPANT

KEY FINDINGS

- ✓ There is significant confusion about the NDIS eligibility criteria, particularly the criterion of “permanency” for people with psychosocial disability and what evidence is needed to demonstrate the “functional impact” of a person’s impairment/s.
- ✓ The legislative framework should be amended to provide clarity on the intended scope and timings of access decisions to enhance the responsiveness of the NDIS to people with disability.
- ✓ The first point of contact with the NDIA is critical as it shapes the confidence and trust that many people with disability, particularly those who face other barriers in engaging with government service systems, have in the scheme.
- ✓ More concerted efforts are needed to engage with people with disability who may be eligible for, but have not yet connected with the NDIA. This is particularly important for Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial disability

- 5.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans, which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans), Part 1 (Becoming a participant) and Part 2 (Participants’ plans).
- 5.2. I centered my analysis of Part 1 of Chapter 3 in terms of issues relating to the access criteria and issues relating to the process of making an access request. I also considered the requirements set out in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules) to the extent they could be amended to remove blockages to access and confusion about eligibility requirements.
- 5.3. There are a number of people with disability in Australia who were anticipated to benefit from the NDIS but have not yet become participants. As at 30 September 2019, there are around 310,000 receiving supports through the scheme, but over 190,000 will still need to come into the scheme over the next few years in order to meet the estimate of 500,000 Australians by 2023. To this end, I considered ways to effectively outreach to people with disability who have not previously accessed disability support, or may be reluctant to engage.

Eligibility criteria

- 5.4. To become a participant in the NDIS, a person may make an access request to the NDIA. On receiving an access request, the NDIA will then determine whether or not the person meets certain access criteria. These criteria include: the person was under the age of 65 when the access request was made, residence requirements and either the disability or early intervention requirements, as set out in sections 21 to 25 of the NDIS Act.
- 5.5. A small number of respondents indicated the NDIS should be available to people with disability who were older than 65 after the NDIS rolled out in their area or who acquire their disability after the age of 65 years. A small number also questioned the appropriateness of the residence requirements. However, the question of who should (or should not be eligible) to become a participant is one relating to the broader parameters and design of the scheme. Accordingly, I do not make any findings or recommendations in relation to the age or residency requirements.
- 5.6. However, considerable feedback was provided on the disability requirements and the criteria that a person's *'impairment or impairments are, or are likely to be permanent'* (section 24(1)(b)) and *'result in substantially reduced functional capacity'* (section 24(1)(c)).
- 5.7. Key issues raised in this regard were the application of "permanency" for people with psychosocial disability and confusion around whether the presence of a medical diagnosis or condition is (or if it should be) considered a proxy for evidence of functional capacity.

Permanency

- 5.8. In the Becoming a Participant Rules, paragraph 5.4 states (in relation to section 24(1)(b) of the NDIS Act) *'an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.'* Likewise, clause 5.6 states:

'An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).'

- 5.9. The current legislated requirements in relation to permanency have created particular challenges in relation to access to the scheme for people with disabilities

arising from psychosocial conditions. Specifically, there is confusion about the episodic nature of severe and persistent mental health issues and the nature of 'available' and 'medical' treatment. There is some evidence indicating health professionals who are engaged in assisting prospective participants to make an access application have reported varying experiences and inconsistency in the assessment of the person's eligibility for the NDIS, and people with similar clinical and psychosocial disability needs and situations have received different outcomes. In many cases, this is due to the lack of information available to health professionals and varying information provided in support of a person's application for access.

"The forms were not really appropriate for my disability as it is mental health not physical or intellectual disabilities. Both my GP and Psychiatrist filled the forms out to the best of their ability and returned them to the NDIA, which I was then told I was not successful in my application."

NDIS Participant, Metropolitan South Australia

"The measure of permanency may be adequate for some other disabilities, it does not recognise that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery, potentially (sometimes episodically) over the course of their lives. It fundamentally fails to acknowledge the episodic nature of psychosocial disability."

Mental Health Australia

- 5.10. Stakeholders also reported the NDIS eligibility criteria are unclear for health professionals supporting people with mental illness. A lack of a working definition and clear guidelines for assessing the permanency of mental health issues in the context of treatment was noted as being problematic for a number of reasons, including:
- a. many people with or supporting people with mental health conditions do not consider their situation as resulting in a 'psychosocial disability that is permanent and ongoing';
 - b. the impact of psychosocial disability can fluctuate, both as a consequence of the condition and in response to factors in the individuals life;
 - c. people with mental health conditions may have limited or sporadic engagement with mental health services making it difficult to provide adequate evidence of treatment history;
 - d. some impacts primarily relate to the mental health condition, but others may be related to co-existing physical disabilities or health issues;
 - e. the outcomes of clinical treatments on functional capacity or in isolation of other factors that contribute to poor mental health is unpredictable and not well-supported by a significant body of evidence; and
 - f. it has led to a practice of heavy reliance and focus on formal diagnosis and treatment rather than a more holistic approach that considers the person's

functional capacity at a point in time and how to respond more flexibly to changes over time.

- 5.11. It needs to be appreciated that for people with severe and persistent mental health issues, functional capacity can be cumulative and variable, even when the symptoms of the psychiatric condition appear not to be ongoing or permanent. That is, their disability can continue even when the symptoms of the condition are not apparently active or present. Greater weight should be given to functional capacity assessments than diagnoses in determining permanency for people with psychosocial disability.
- 5.12. Best practice approaches to coordinated mental health and psychosocial care and support seek to emphasise the person's strengths and abilities and recovery journey. This is to be expected given the relationship between the person, their supporters and mental health teams is strengths-based and directed towards supporting recovery and improved health and wellbeing. However, anecdotal evidence suggests the provision of strengths-based evidence may adversely affect the outcome of a person's application to access the NDIS as it makes it difficult to demonstrate 'permanency' of functional impairment in the context of the disability access requirements.
- 5.13. In some instances, participants indicated they were encouraged to present "on their worst day" in order to improve their chances of being deemed eligible for supports. This practice undermines the capacity of an individual, the long-term work of the mental health sector in driving systemic reform towards recovery-focused approaches and the intent of the NDIS in supporting people to build their capacity to achieve their goals and aspirations.

"Since introduction of the NDIS Legislation and Rules, the mental health sector has raised concerns about the use of the term 'permanent' to describe an impairment related to a psychiatric condition. This terminology is opposed to recovery-oriented practice, widely accepted as good practice in psychosocial disability work."

Mental Health Australia

"In order to be eligible for the NDIS, an individual must demonstrate that they have a permanent impairment or an impairment that is likely to be permanent. This criteria is inconsistent with the recovery focus of mental illness or the episodic nature of psychosocial disability - a condition that fluctuates in severity and impact over time in different ways for different people."

National Mental Health Commission

- 5.14. There is merit in amending the Becoming a Participant Rules to provide further and more specific clarification of the criteria that should apply, and the evidence that must be provided, when determining the permanency, or likely permanency, of

psychosocial disabilities. Such clarification should seek to align with emerging bodies of evidence and best-practice mental health care approaches which emphasise the language of empowerment and capacity building, recovery and ability over that of disability, impairment and illness. It should also seek to differentiate between what is considered when assessing the permanency and related functional impacts of a physical disability in the context of recovery and treatment, noting the current existing legislated criteria does not take into account the reasons why a person might be able or unable to do certain things.

- 5.15. Furthermore, it should be appreciated that the episodic nature of psychosocial disabilities will mean that some people will have fluctuating capacity and support needs. The use of functional assessments tools need to take into account the episodic nature of psychosocial disability and planning for people with psychosocial disability, once they become participants, should seek to accommodate fluctuating support needs and recognise that utilisation of funded supports may fluctuate over time.

“I can be extremely unwell mentally and still appear to be quite ‘functional’ according to the NDIS. Someone like me who is intelligent, well educated and who has knowledge and insight into their mental illness can appear to be far more functional than they actually are. The realist is that most of the time, I am so depressed and distress that I am suicidal yet I am still pushing myself through each day just to exist.”

Written submission - no state or locality proved

“Services for people with psychosocial disability need to be responsive to people’s actual needs to lead an ordinary life, including a recognition in NDIS plans of the importance of psychosocial and peer support for people experience mental health issues to re-engage in the community.”

National Legal Aid

- 5.16. This review also notes the NDIS Act currently includes references to a psychiatric condition when determining whether a person is eligible of the NDIS, which is an artefact of a medicalised, rather than recovery based model. Therefore, this review recommends the words ‘psychiatric condition’ be replaced with the more commonly used phrase of ‘psychosocial disability’.

Recommendation 5: The NDIS Act and Rules be amended to:

- a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent;
- b. remove references to psychiatric conditions when determining eligibility

Resolving confusion between functional impairment and diagnosis

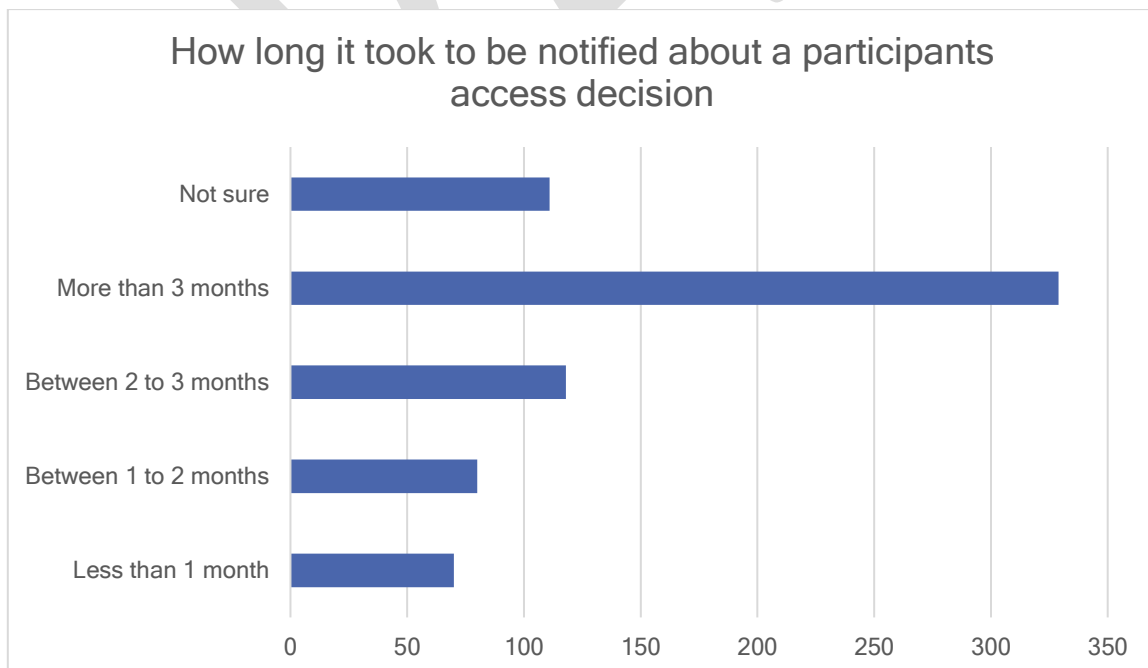
- 5.17. Section 24(1)(c) of the NDIS Act states one of the disability requirements to access the NDIS is that a person's impairment or impairments result in *'substantially-reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication; social interaction; learning; mobility; self-care; self-management.'*
- 5.18. There is significant public confusion on what evidence is required to support NDIA decision making in regard to this requirement. This is not helped by the NDIS Act being silent on the nature of the information required in a relevant assessment for determining whether or not a person meets the eligibility criteria (Chapter 4 refers).
- 5.19. Confusion has arisen particularly with respect to the operational guidelines the NDIA used in the trial and transition period to manage the scale of people transitioning from state systems. These guidelines relied on a medical model and the presence of a diagnosis to help streamline a decision about a person's eligibility for the scheme.
- The "List A" operational guidelines set out conditions/diagnosis likely to meet the disability requirements in terms of permanency and functional impact. In the vast majority of cases, if a person had a condition/diagnosis on "List A", they would go on to meet access.
 - The "List B" operational guidelines set out permanent conditions/diagnosis for which functional impact is variable and where further assessment of functional capacity would generally be required before the access decision could be made.
- 5.20. As a consequence, there is a widespread assumption that diagnosis correlates to functional capacity, and that if a person has a diagnosis on either of these lists, they will be eligible for the scheme. There is also an assumption that if a person has a diagnosis not on either list, they will not be eligible for the scheme. Neither of these statements is true. In all cases, any person can test their eligibility for the scheme by providing the NDIA with evidence of their functional capacity, irrespective of any diagnosis they may or may not have.
- 5.21. The NDIA need to recognise and make access processes easier to address the confusion around what the NDIA is looking for from functional assessments, and to explain why the presence of a diagnosis alone is not a proxy for eligibility. This information should be freely available on the NDIS website for prospective participants to access.

Timeframes for making an access decision

- 5.22. Under section 20 of the NDIS Act, if a person makes an access request, the NDIA must, within 21 days of receiving it, decide whether or not the prospective

participant meets the access criteria or request they provide further information under section 26(1). If further information is requested from the prospective participant, the NDIA must, within 14 days of receiving that information, decide whether or not the prospective participant meets the access criteria.

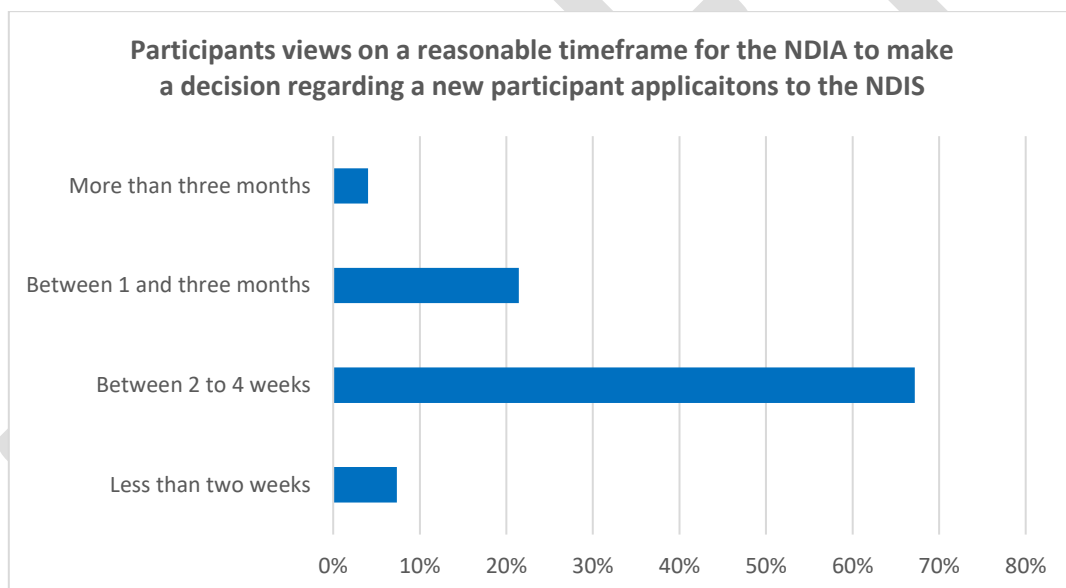
- 5.23. During the transition period, the NDIS Rules prescribed the NDIA could double the length of these periods during the first 12 months of a region's rollout - i.e. the NDIA had 42 days to make the access decision or request further information from the prospective participant, and 28 days to make the access decision upon the receipt of that information.
- these rules are no longer enforceable in most parts of Australia as the rollout of the NDIS across all states and territories (except Western Australia) is now complete.
 - the NDIA only has the power to double the length of the period to make an access decision in certain parts of Western Australia and the Christmas and Cocos (Keeling) Islands. This is because some areas of Western Australia only began transitioning to the NDIS on 1 July 2019 and the Christmas and Cocos (Keeling) Islands will not transition until 1 July 2020.
- 5.24. During face-to-face consultations, considerable feedback was provided about delays between applying for the NDIS and having the outcome of their access decision. **Of the 845 respondents who provided a specific response in the survey, 55 per cent indicated (n=462) it took more than three months for the NDIA to make a decision about their eligibility for the scheme.**



- 5.25. Survey data indicates there did not appear to be a significant correlation between reported delays of decision-making and the prospective participant needing to provide additional information to support the access decision. Rather, even when factoring in the time taken for a participant to produce additional information, all

participants, even those who did not need to produce additional information, reported waiting longer than 3 months to know the outcome of their access request.

- 5.26. The NDIA has provided data to this review, which indicates the national average timeframe for an access decision to be made in the 2018-19 financial year was 15 days, with only 10 per cent of applications requiring further information from the participant in order to make the decision. The NDIA has also provided data indicating the national average for an access decisions to be made following the receipt of the last period of required evidence was 17 days.
- 5.27. In order to inform the timeframes for access decisions to be set out in the Guarantee, this review asked participants what they considered would be a reasonable period if the NDIA had all the information required to make the decision. Of the 1,008 who provided a specific response to this question, 48 per cent felt a decision should be provided within four weeks, 33 per cent felt a decision should be provided between four to eight weeks and 19 per cent felt it was reasonable to expect a decision would take over eight weeks.



- 5.28. Taking into account survey data, and current NDIA performance, there is no significant reason to amend the current requirement that the NDIA make a decision about a person's eligibility (or request further information from the person) within 21 days of receiving the access request.
- 5.29. There also does not appear to be a case to amend the requirement that the NDIA make a decision about a person's eligibility within 14 days of the participant providing any additional information that had been requested. Rather, such timeframes are already in keeping with participant expectations and are reasonable to expect the NDIA to continue delivering upon. The Guarantee should reaffirm these timeframes (Chapter 10 refers).

Determining when a person does not meet access

- 5.30. In certain circumstances, the NDIA may require a prospective participant to provide further information, or undergo an assessment or examination and provide a report, to decide whether or not they meet the access criteria.
- 5.31. Currently, the NDIS Act provides that, should the NDIA request the prospective participant provide additional information to support an access request, the prospective participant must provide the requested information within 28 days. If they do not provide the information within 28 days they are taken to have withdrawn their access request, unless the NDIA is satisfied it was reasonable for the prospective participant not to have complied with the request. However, the CEO does have the ability to prescribe the participant has a longer period to provide the information.
- 5.32. Consultation feedback indicates the 28 period for the prospective participant to provide the requested information was inadequate. Some submissions stated it took between two to three months to provide the requested information, owing to lengthy wait times for appointments to see their health professional or to save enough money to pay for the cost of the assessment - and that was without factoring in the time lost in mailing documents through the post. In these instances, respondents felt their access request should not be withdrawn because they were still actively trying to provide the information the NDIA had asked for, or had actually already sent it to the NDIA but it had not yet been received or registered.

“The current 28 day timeframe that people have to apply is not currently very fair if you need pediatricians to fill out access request forms. It often take a lot longer than the 28 days to get an appointment and have the forms filled out and returned. I was really worried and needed to ask for an extension but wasn't sure I could do this or that it was possible. Trying to get the information in in 28 days when not everyone has it to hand is stressful.”

Carer of NDIS Participant, Metropolitan Queensland

“When given forms to fill in and submit, you [NDIA] only give us 28 days, after that, it gets rejected. However, the NDIA can take 6 to 8 or more months to reply to us. In my case, my Doctor had to go overseas for a family emergency and was gone for a month so I could not get the form filled in by the allocated timeframe, so my application was rejected. Circumstances beyond my control meant I had to wait longer, but there was no way I could get an extension on the 28 day time period.”

NDIS Participant, Regional New South Wales

- 5.33. This review understands the NDIA doubles the 28 day timeframe to 56 days for the prospective participant to return requested information to support their access request. This is in recognition that many difficulties in obtaining the information are

not in the prospective participant's direct control. However, given the doubling relies on the NDIA determining when a longer period may be appropriate, this review considers prospective participants are currently not provided with sufficient assurance they will be given an appropriate amount of time to provide the requested information.

- 5.34. As such, and notwithstanding efforts to streamline functional assessments ([Chapter 4 refers](#)), there is merit in extending the legislated 28 day timeframe to 90 days as part of the Guarantee when factoring in drivers of the time delays participants have reported ([Chapter 10 refers](#)).
- 5.35. This review also considers that, should the prospective participant not provide the information within the specified 90 day period, their access request should not be automatically deemed to have been withdrawn. Rather, it should only be withdrawn after the 90 day period has lapsed and the NDIA has taken all reasonable efforts to contact the participant and confirm if they are still trying to get the information they need to support an access decision. Importantly, a prospective participant's access request should only be withdrawn if the prospective participant indicates they do not wish to be a NDIS participant and/or cannot be contacted after all reasonable measures have been made.
- 5.36. The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed people with disability have the capacity to navigate the access process without help, and not responding or providing the information within a stated period indicates they no longer wish, or do not need to, access supports under the NDIS.

Recommendation 6: The NDIS Act be amended to extend the timeframe for a prospective participant to provide information requested by the NDIA to support an access decision.

Assertive Outreach

- 5.37. With the transition of people who previously received support from Commonwealth and state and territory programs almost complete, an increasingly important focus is reaching out to people with disability who have not previously accessed disability support services, or are reluctant to engage. The NDIA cannot rely on people willingly approaching the scheme.
- 5.38. It also cannot be assumed people with disability have the capacity or confidence to know how to navigate the NDIS by themselves. It needs to be acknowledged there is a significant number of people with disability in the Australian community who may fear or distrust government, stemming from a history of trauma, social

discrimination and isolation, either because they have a disability or because of their cultural background.

- 5.39. Outreach activities needs to build the capacity of vulnerable people with disability to engage with the NDIS, particularly those who are at risk of falling through the gaps because their needs are complex, challenging or who may be resistant to asking for support. Outreach activities should include a dedicated focus on Aboriginal and Torres Strait Islander people, people from CALD backgrounds and those with psychosocial disability.
- 5.40. The NDIA has implemented a large program of work to support these priority cohorts to engage with the NDIS. This has included publically releasing a number of strategies - including the Aboriginal and Torres Strait Islander Engagement Strategy, Cultural and Linguistic Diversity Strategy, and Rural and Remote Strategy. These strategies were developed in consultation with external stakeholders including people with disability and peak sector organisations and identify key priority and action areas for these specific population groups.
- 5.41. The Australian Government also recently announced new initiatives to assist people in diverse hard to reach communities to navigate the access, planning and plan implementation process ([Appendix C refers](#)).
- 5.42. Notwithstanding this work, there is merit in considering if the NDIA's activities should be underpinned by a holistic outreach and engagement strategy. Such a strategy would set out how prospective participants will receive the support they require to access the NDIS and navigate its processes, and how the NDIA will work alongside partner agencies and mainstream services to ensure no person with disability falls through the cracks. It could also include dedicated outreach teams to assist hard-to-reach communities to increase engagement and accessibility, with consideration given to ongoing reporting of outcomes at both participant and community levels.
- 5.43. Such a strategy would complement the goal of supporting the NDIS to benefit around 500,000 Australians by 2022-23, recognizing those people with disability not already in the scheme are some of the most vulnerable and hardest to engage.
- 5.44. The remainder of this chapter discusses key themes arising from consultations that would assist in informing future efforts in this area.

Aboriginal and Torres Strait Islander people

- 5.45. While awareness of the NDIS has grown over time, knowledge of the NDIS and the function of the NDIA remains limited for people with disability in regional and remote communities, particularly those communities include a higher proportion of Aboriginal and Torres Strait Islander peoples.

- 5.46. The proportion of Aboriginal and Torres Strait Islander participants in the NDIS at 30 September 2019 was 5.9 per cent or 18,252 people⁸. However, the targeted consultations for Aboriginal and Torres Strait Islander communities provided evidence that the NDIA's existing outreach and engagement strategies are not effectively embedded within rural and remote communities, and that many people with disability in those communities, who would likely be found eligible for the scheme do not know how, or are choosing not to engage with the NDIA.
- 5.47. Anecdotal feedback also suggests the NDIS is clouded in an atmosphere of uncertainty for many Aboriginal and Torres Strait Islander people and they are worried they will be disadvantaged under the NDIS compared to previous systems of support. The importance of these perceptions cannot be overstated in remote community contexts.

“There is a sizeable group who may not even realise the NDIS exists and they may be eligible for support. They are likely to have other forms of social disadvantage and may have limited interaction with other government systems. They may be people who have good reasons to fear government bureaucracies.”

National Disability and Carers Alliance

- 5.48. Culture was reported as being more significant than disability in terms identity for Aboriginal and Torres Strait Islander people. That is, they firstly identified as a member of the Aboriginal community, rather than a person with disability. Stakeholders stated current assessment tools were culturally inappropriate in this regard and highlighted the importance of the NDIA incorporating Indigenous definitions and perspectives of health and disability and framing engagement around core cultural values, such as family, culture and country.

“Greater promotion by the NDIA of flexible application processes for potential participant's who are transient and itinerant is required. In order to progress and NDIS application, the standard process by NDIA requires evidence of address which are not applicable to itinerant represented persons with significant mental health issues and who may also be Indigenous. These people may be very easily disadvantaged by the process with the outcome being that they do not pursue NDIS applications because it is too difficult.”

Western Australian Office of the Public Advocate

“Unfortunately, many Aboriginal and Torres Strait Islander people's engagement with the NDIA is inflexible, inaccessible and not culturally safe. Engaging in the “proper way” with Aboriginal and Torres Strait Islander participants requires respectful, sensitive and participant led relationships.”

National Legal Aid

⁸ COAG Disability Reform Council Quarterly Report 30 September 2019, p.78.

- 5.49. Indeed, engaging with Aboriginal and Torres Strait Islander people in the “proper way” is critical to supporting them to navigate NDIS processes. Consultation feedback reinforced any engagement and work with Aboriginal and Torres Strait Islander communities needs to begin with a process of establishing trust within the community and acknowledging there are diverse understandings and levels of awareness of disability among Aboriginal and Torres Strait Islander peoples.
- 5.50. Further, consultation feedback highlights different issues are present in urban, rural, remote and very remote populations and these communities cannot be homogenised. Indeed, given the diversity existing across Aboriginal nations Australia wide, there will not be a single model that works or is culturally appropriate. These findings reinforce the importance of building an outreach and engagement model from the ground up and placing those whom the service will impact at the center to ensure it is fit-for-purpose for that community.
- 5.51. Notwithstanding the benefits of bottom up engagement approaches, one of the most immediate barriers to inclusion and access for Aboriginal and Torres Strait Islander people is the absence of information in their primary spoken language. For many people living in remote Australia, particularly in the Northern Territory and Cape York Peninsula, English was reported as being their third or fourth learned spoken language. Even when English is spoken, they reported it was difficult to read, as literacy rates among the general population are variable, and so too for people with disability.
- 5.52. Consultation feedback also suggested because both Aboriginal and Torres Strait Islander cultures have stronger oral traditions than written traditions, people with disability are more likely to find out about the NDIS from speaking to someone. This suggests the best prospects of a Aboriginal and Torres Strait Islander person engaging with the NDIS will be if the information is provided by a trusted member of their own community, in the language spoken within that community.
- 5.53. Though not specific to the NDIS, Aboriginal and Torres Strait Islander people may also have a rational fear or mistrust of government agencies and service providers, resulting from racially based intergenerational and historical mistreatment, social exclusion and discrimination. In delivering outreach activities, it must be recognized that discussions about disability may not be easy for Aboriginal and Torres Strait Islander people and historical perceptions, past experiences and beliefs may hinder engagement.
- 5.54. It is apparent that for Aboriginal and Torres Strait Islander people who face significant levels of social disadvantage, language and the barrier that language poses to stakeholders in understanding the NDIS and what it might offer them, is a fundamental barrier to increased engagement. The task ahead for the NDIA in overcoming these issues is significant.

“Participants who have experienced trauma may be acutely aware of power-relations and susceptible to influence. This may case them to request different supports depending on who they are talking to. In this way, participants may present inconsistent goals and support requests, and ultimately have their requests dismissed. This behavior is not uncommon in the planning process and can be a significant barrier to the articulation of goals and request, particularly if the planner is not sensitive to the participant’s behaviors needs.”

Advocacy for Inclusion

People from culturally and linguistically diverse background

- 5.55. Historically, Australians from culturally diverse backgrounds have been underrepresented in the disability sector and face additional challenges in terms of inclusion in their communities. This extends to their ability to access and navigate the NDIS.
- 5.56. The various ways CALD communities understand and approach disability can influence whether or not individuals access the NDIS, or see the need for it in their lives. The availability of easily understood information in a person’s preferred language, medium and format has a significant impact on their confidence in engaging with the NDIS, and then in turn, drawing down on the supports in their plan.
- 5.57. Once the NDIS is fully rolled out, it is expected around 20 per cent of NDIS participants across Australia will be from a CALD background. The proportion of participants with a CALD background in the NDIS at 30 September 2019 was **8.7** per cent or **27,030** people⁹. While the proportion of participants from a CALD background is growing, evidence suggests current participation rates are significantly below what was anticipated.
- 5.58. In this regard, a number of submissions recommended increasing assertive outreach programs to help locate and connect people from CALD backgrounds with the NDIS, particularly those experiencing isolation or disadvantage.

⁹ COAG Disability Reform Council Quarterly Report 30 September 2019, p.79.

“People from Aboriginal and Torres Strait Islander and CALD backgrounds and people who live in remote and very remote communities will not necessarily access the scheme through engagement processes that rely on them to initiate access through a phone call to a 1800 number.”

Queenslanders with Disability Network

“Assertive outreach should be prioritise, funded and implemented to identify and connect with isolated people and communities who cannot otherwise engage in the NDIS.”

Victorian Council of Social Services

- 5.59. The targeted consultations for CALD communities reinforced the need for more accessible, less complex and translated information and communications. Some participants noted the process for accessing the NDIS is difficult if they don't speak English and that information about the NDIS was not available in their first language. Almost all stakeholders stressed the importance of independent face-to-face interpreter services so that everybody in the room hears 'the same thing at the same time', and questioned whether current interpretation arrangements were relying their story as they told it.
- 5.60. As with Aboriginal Torres Strait Islander people, people from CALD backgrounds outlined there can be distrust of authorities and that more time is needed to build trusting and collaborative relationships, particularly with local CALD organisations, leaders and role models, before moving on to more formal discussions around access and planning process. Indeed, a key theme of discussions was the primacy of respecting and valuing cultural needs of CALD communities and the importance of the NDIS being responsive to language and cultural needs, supported by a culturally competent workforce.

“The NDIS relies heavily on people finding their own way to the door. That is not easy for a whole range of people - people who have multiple forms of disadvantage, people who come from CALD backgrounds, people who come from an Aboriginal or Torres Strait Islander background. Then there are those who have a very good reason to fear government services. We need to use trusted networks and organisations to reach these people.”

Every Australian Counts

“Increasing awareness of the NDIS among new migrants and providing interpreting services may increase participation rates for people with diverse backgrounds.”

Queensland Government

- 5.61. Consultation feedback also reinforced that engagement with people with disability from CALD backgrounds need to recognise the critical role of family-centered

practice, particularly in those communities where collectivist notions of identity are more prevalent and value. In this regard, stakeholders reinforced that notions of culture and community must be at the forefront of discussions, with extra support provided in order to support people with disability from CALD backgrounds and their families to engage with the NDIS. Here, many stated that they did not know what they need, what supports could benefit from, nor what the NDIS and other service systems might be able to provide.

- 5.62. It is evident that, despite the work currently underway by the NDIA to strengthen its engagement with the CALD community, more effort is needed to embrace a higher level of cultural responsiveness. Otherwise, the current barriers and challenges that exist for people with disability from CALD communities will continue to prevent them from utilising NDIS services to the extent they are entitled to, or even at all.

People with psychosocial disability

- 5.63. Australians living with severe mental health conditions and psychosocial disability are among the most disadvantaged people in our community. Many experience challenges with communication and social inclusion, finding suitable housing and employment and maintaining their physical health. The lack of community awareness and support can have major bearing upon their lives. This extends to their understanding of, and their ability to access, the NDIS.
- 5.64. The Productivity Commission estimated that approximately 64,000 of the 600,000 Australians living with severe and persistent mental health conditions will be eligible to access the NDIS once it is fully rolled out. While the proportion of participants with psychosocial disability is growing, there were still fewer than **27,864 (9 per cent)** participants with a primary psychosocial disability at 30 September 2019¹⁰. This indicates there is still a long way to go in reaching out to this cohort.
- 5.65. Feedback and practice in clinical mental health services suggests people with psychosocial disability require higher levels of support to engage with support services and face some specific challenges understanding and accessing the Scheme. These include:
- e. information and marketing programs are not well targeted to people with mental health issues as they do not associate with the disability community;
 - f. participant's mental health circumstances can limit their capacity to understand their need for additional support;
 - g. the requirements of putting together the evidence to navigate the scheme is seen as too burdensome or beyond the skills and abilities of some people living with psychosocial disability, particularly for people who do not have support from an existing service provider or informal supports;
 - h. many people with severe mental health issues do not identify as having a lifetime disability associated with their mental health issues. The language of

¹⁰ COAG Disability Reform Council Quarterly Report 30 September 2019, p.81.

disability and permanency is unfamiliar to many people with mental health issues, is different to the recovery language used by mental health professionals and does not reflect the episodic nature of some conditions;

- i. many submissions stated it can be very expensive and time consuming to obtain the required information to demonstrate their eligibility from health professionals, with professionals indicating it can take up to 20 hours to prepare the required documentation; and
- j. many health professionals are reluctant to determine permanency with their clients, due to uncertainties of the outcomes of medication or treatments and lack of NDIS or academic guidance on criteria for permanency. Many health professionals see themselves as working in a strengths recovery-based rather than a deficit model.

- 5.66. These issues result in many people with disability not engaging with the NDIS, when they would benefit from such engagement. Indeed, a small number of submissions indicated some people, who would otherwise likely be found eligible, are choosing to withdraw or defer their application for these reasons.

“Many people accessing Missions Australia’s mental health services feel overwhelmed by the NDIS application process. Concerning, a significant number of people with complex needs are not applying for NDIS due to the complexity of the application process, despite their access workers opinion that the clients are likely to meet the eligibility criteria and offering to support them throughout the application process.”

Mission Australia

- 5.67. There is a clear need for assertive outreach strategies to support people with psychosocial disability to access the NDIS. This may include strengthening existing relationships and networks with community mental health and other support providers. This is not a new idea - it has been well documented for many years that more concerted and targeted efforts need to be applied to the management of pre-access and access processes to successfully engage people with psychosocial disability. Ensuring the NDIS targets all Australians with psychosocial disability will require effective partnerships and coordination with mainstream service systems and engagement and investment from all Australian governments.

Recommendation 7: The NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS.

CHAPTER 6 – DEVELOPING A PLAN

KEY FINDINGS

- ✓ Delays in commencing the planning process are frustrating participants and preventing access to vital supports aimed to improve quality of life and wellbeing.
- ✓ Engaging participants, their families and carers in the planning process is critical to ensure that they get the right supports funded in their NDIS plan and that they get those supports when they are needed.
- ✓ There is legal ambiguity around what supports the NDIS should fund, and what is the responsibility of other service systems. There is merit in providing greater clarity for NDIA decision makers about the responsibility for the delivery of supports.
- ✓ Participants will not get the best outcomes if there is a disconnect between the supports funded in their plan and their goals and aspirations and if plans do not consider the broader supports families and carers need to maintain their caring roles.
- ✓ From 1 July 2020, most new entrants to the NDIS are expected to be young children. Enabling quick access to early intervention supports is critical for their development and the schemes insurance approach.

- 6.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans), Part 1 (Becoming a participant) and Part 2 (Participants' plans).
- 6.2. I centered my analysis of Parts 1A and 2 on three key issues:
 - a. what would be reasonable timeframes for developing and approving plans; and
 - b. what should be considered as part of determining the supports to be funded in participant plans - including supports for people with psychosocial disability and the role of families and carers; and
 - c. opportunities to maximize the benefits of early intervention for young children with disability.
- 6.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Supports for Participants Rules), to the extent they could be amended to provide greater clarity on when a support is reasonable and necessary.

Background to planning

- 6.4. A participant's NDIS plan is comprised of two elements:
 - a. the participant's statement of goals and aspirations, which is prepared by the participant, or by the NDIA on behalf of the participant, and specifies the participant's goals, objectives, aspirations and circumstances; and
 - b. the statement of participant supports, which is prepared with the participant and approved by the NDIA, and sets out, among other matters, the reasonable and necessary supports that will be funded by the NDIS.

- 6.5. In deciding whether to approve a statement of participant supports, the NDIA must have regard to the participant's statement of goals and aspirations. The NDIA also needs to be satisfied of a number of other matters, including:
 - a. the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
 - b. the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
 - c. the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
 - d. the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide; and
 - e. the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems.

- 6.6. NDIA decisions about what supports are reasonable and necessary are guided by the NDIS Act, the rules made under the NDIS Act, relevant operational guidelines, and the COAG agreement on the roles and responsibilities of the NDIS and other service systems.

- 6.7. There are five steps involved for a participant in developing their plan:
 - a. thinking about and deciding on their needs, goals and aspirations;
 - b. meeting with their planner to discuss the goals, activities and tasks they want to achieve and what supports they need.
 - c. considering how to manage their NDIS supports, including deciding whether or not they want to manage their own budget;
 - d. implementing and using their funded supports and choosing service providers; and
 - e. reviewing and updating their plan.

- 6.8. The NDIA has published a number of documents to help participants prepare for their planning meeting, including checklists and ideas for thinking about their immediate support needs and their current and future goals. For example, following the Pathways review, the NDIA released three new participant booklets on the

NDIS website. These booklets provide practical information for participants and prospective participants, as well as their families, carers and the wider community, to learn more about the NDIS, prepare for a planning meeting and to implement their plan. These booklets are intended for use throughout a person's NDIS journey to record key information, write questions and collect thoughts.

- 6.9. The NDIA has also published a number of other fact sheets and tools on the NDIS website to provide guidance on the process of developing and implementing a plan and identifying opportunities to connect with mainstream and community based services.

Timeframes for commencing planning

- 6.10. The NDIS currently does not set a fixed timeframe for how long it should take to develop and approve a participants plan. While this review understands internal operational guidelines provide some advice on the priority of plan development for particular cohorts, the current legislative requirement is that the NDIA commence facilitating the preparation of a participant's plan "as soon as reasonable practicable".
- 6.11. Consultation feedback demonstrates participants are seeking more certainty around timeframes for planning, including when they will have their first meeting with a planner and how long it will take to approve their plan. Stakeholders reported planning processes are taking too long to commence and too long to complete and this is disempowering, frustrating and delaying access to vital supports.

“It took more than six weeks for the NDIA to contact me to book in my first planning meeting following receiving notification that I had been granted access to the NDIS. I thought that there might have been a mistake in granting me access because it took so long!”

NDIS Participant, Regional Queensland

“We received a letter on the 2nd January 2018 saying we were approved [for the NDIS], and we would be contacted for our first planning meeting. I walked into an NDIS office in late May 2018 and we didn’t even have a worker assisted to out requested at that point. Almost five months and nothing. It was only when I personally asked questions that we were then contacted to set up a planning meeting.”

Carer of NDIS Participant, Regional Queensland

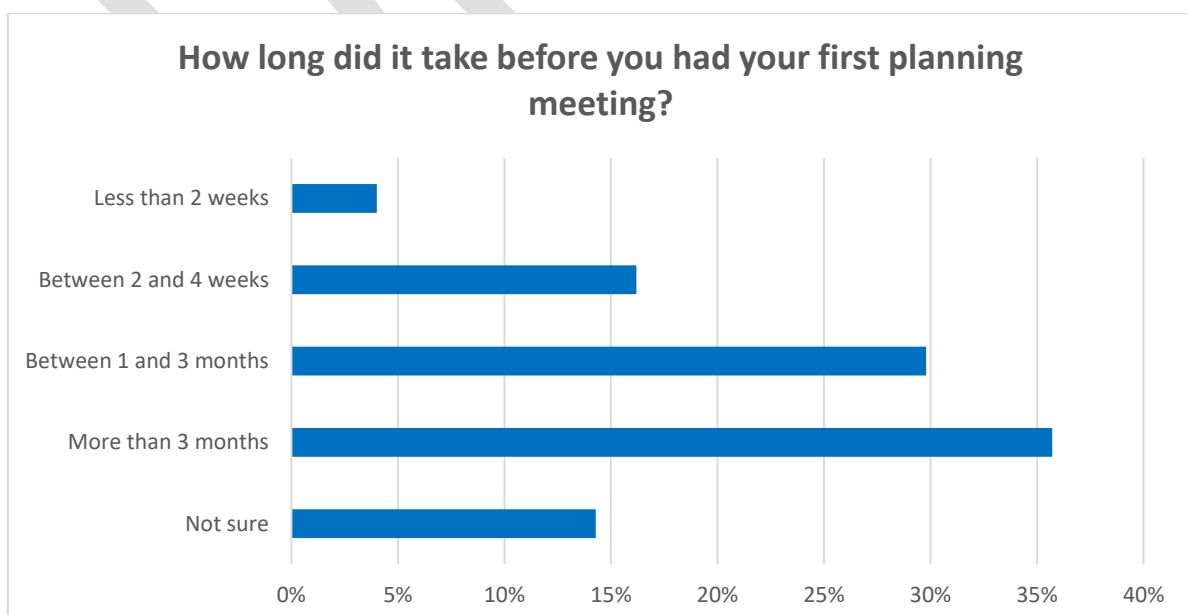
“My NDIS eligibility was approved quickly then I waited 13 months for my first planning meeting which only happened due to direct intervention my by Local MP to the Minister.”

NDIS Participant, Regional Victoria

“People in rural and remote areas face additional challenges in participating in the planning process. They may be located a long distance from the base where planners are located, and transport options may be limited.”

Queensland Government

- 6.12. Survey responses indicated over 32 per cent of participants had to wait between one and three months to meet with their planner after receiving access decision. Of concern, over 37 per cent of survey respondents had to wait more than three months, while only 15 per cent said it took less than four weeks to have their first planning meeting.



- 6.13. Unsurprisingly, the delays reported by participants in starting to develop their plan correlate with the ambitious scale and speed of the NDIS transition period. As has been noted previously, it is reasonable to expect that as the scheme matures, the volume of participants requiring their first planning meeting will reduce and therefore the NDIA should become quicker in commencing planning after a positive access decision.
- 6.14. A close look at survey respondents indicates the NDIA is getting quicker at commencing planning following a successful access decision. Over X per cent of survey respondents who indicated their access decision was made in 2018 indicated their first planning meeting was held between 1 to 3 months of their access decision, compared to less than X for those whose access decisions were made in 2016.
- 6.15. The NDIA has also provided data to this review which demonstrates the national average for the first planning meeting to be held following the date of an access decision was 66 days, based on 2018-19 data as at 30 September 2019, compared to XX for access decisions made in 2016.
- 6.16. Notwithstanding the NDIA getting faster in scheduling a planning meeting, there is merit in providing further clarity in the NDIS Act about when and how planning will commence. In this regard, section 32 of the NDIS Act, which sets out the NDIA must “*facilitate the preparation of a participant’s plan as soon as reasonably practicable*”, should be clarified to state “facilitation” means the commencement of planning and the approval of a plan, with the Guarantee prescribing a timeframe for that process to occur (Chapter 10 refers).
- 6.17. There is also merit in prescribing the NDIA should offer a first planning meeting within a soft timeframe, noting it would have to be at a mutually agreeable time for both the participant and the NDIA. For example, it needs to be appreciated the participant may not be available to undertake the planning meeting at the offered time, so the NDIA must be flexible to accommodate the availability of the participant, and to hold the planning meeting at the first available opportunity.
- 6.18. When combined, this would provide important surety to new participants that the NDIA will be responsive to developing a plan that is fully individualised and tailored to the participant’s goals and aspirations.

Recommendation 8: The NDIS Act be amended to reflect that a plan must be facilitated and approved in accordance with the rules made for the purpose of the Guarantee.

Timeframes for plan approval

- 6.19. Currently, the NDIA is not required to approve a plan within a set time. Rather, the plan is only approved once the NDIA has received the participant's statement of goals and aspirations from the participant and when they are satisfied the supports in the participants' statement of participant supports are reasonable and necessary. In some cases, the NDIA may require the participant, or another person, provide information for the purpose of making the decision.
- 6.20. This Review heard participants, their families and carers have experienced lengthy delays in getting their plan approved, often with no communication from the NDIA as to why or when they can expect it. Over 43 per cent of respondents to the online survey said it took between one and three months for the NDIA to approve their plan following their first planning meeting and 21 per cent of survey respondents said it took longer than three months to get their first plan approved.
- 6.21. This feedback is broadly consistent with data from the NDIA which indicates the average time for a plan to be approved following the first planning meeting was 51 days, or 117 days following the date of their access decision, in the 2018/19 financial year, based on data at 30 September 2019.

Quotes

- 6.22. This Review recognises one driver of delays in approving a plan is whether the NDIA has requested additional information from the participant, such as a quote for Assistive Technology or home modifications, or they undergo an assessment to provide further evidence of their functional capacity. The latter has been an issue for a significant number of participants who transitioned from state and territory disability systems, where the streamlined access arrangements meant the NDIA did not have sufficient evidence of the functional impact of their disability to make planning decisions.
- 6.23. It is therefore reasonable to expect the NDIA will become more efficient in developing plans and participants who have been in the scheme for some time will become more experienced in understanding what supports have been effective in helping them overcome social and economic barriers resulting from the functional impact of their impairment. When partnered with stronger use of standardised functional assessments and joint planning approaches, which are already proving successful in approving the majority of plans at the planning meeting, this would be expected to expedite the current delays participants have reported.
- 6.24. However, notwithstanding these efforts to expedite plan approval, as a first principle, this review notes participant's ability to access NDIS supports should not

be delayed while they obtain any additional information for a support (such as a piece of equipment that can be considered in isolation from the rest of their plan). For example, a participant who needs a wheelchair should not have to wait to access their other NDIS supports while they work with the NDIA to obtain and approve a quote for the wheelchair.

- 6.25. Rather, participants can and should expect to have certainty about when they will be able to access their NDIS supports, even if all of the supports cannot be funded initially due to the need to produce further information. Therefore, this review considers the Guarantee should specify a timeframe for a plan to approved rather than the current 'as soon as reasonably practicable (Chapter 10 refers).

The interface between NDIS and other service systems

- 6.26. The interactions between the NDIS and mainstream services are guided by the Principles to Determine the Responsibilities of the NDIS and Other Service Systems (the Principles) agreed by COAG in April 2013 and updated in November 2015. The Principles give effect to the intention that the NDIS is not expected to provide for all the supports a participant may need to fully and effectively participate in society on an equal basis as people without disability.
- 6.27. At the operational level, this review heard there is a lack of clarity about the respective lines of responsibility between the NDIS and mainstream systems. This is resulting in boundary issues and funding disputes, which is leading to service gaps and confusion for NDIS participants, poor quality planning and inconsistency of decision-making.

“When plans are implemented, there any often be confusion as to what is covered and why. There does not appear to be sufficient regards to the fact that the NDIA is often deal with an adult participant with a disability, or the exhausted family member of a disabled child.”

Legal Services Commission of South Australia

“The complexity of the client’s support needs and life circumstances may be exacerbated by intersecting with mainstream interfaces. Planning is particularly challenging when the planner is required to interact with the justice system, mental health system or child protection system to facilitate the clients transition to the NDIS.”

Office of Public Guardian Queensland

“Some plans are inconsistent with the agreed roles and responsibilities of the NDIS and other service systems as defined in the Applied Principles and Tables of Services (APTOS) and are therefore not including all the appropriate reasonable and necessary supports.”

Queensland Government

“It is widely recognised that there remains a tension between mainstream services and the NDIA where cost shifting occurs, especially where in-kind contributions still exist in mainstream systems and responsibilities are blurred.”

Amaze

- 6.28. At the start, it needs to be recognized that as long as people with disability can access supports across a number of service systems, there will be interface issues. The key issue is that service systems work well together so people receive the right services and achieve the best possible outcomes. In this regard, this Review recognises the significant work undertaken by all governments through the DRC to clarify between the boundaries between the NDIS and other service systems, resolving funding and service delivery issues for the priority areas of: Health, Justice, Mental Health, Child Protection and Family Support, Personal Care in Schools and School Transport.
- 6.29. The most significant outcome to date was the agreement of the Council in June 2019 to how the NDIS interacts with the health system and how the NDIS will support families with children who are unable to live in the family home because of their complex support needs. Further progress was also made at the Council’s October 2019 meeting in regard to improving the provision of transport supports under the NDIS and interface issues with mainstream mental health systems. **Box 5** summarises DRC’s key agreements in relation to these priority areas:

Box 5: Summary of DRC 2019 Decisions

Health

- Agreed the NDIS will fund specific disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability
 - This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports (this is a non-exhaustive list).
- Health supports to be excluded from being provided / funded through the NDIS are:
 - Consistent with the APTOS, items and services provided as part of diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions, and which are not part of the everyday life of a person with disability and / or resulting from the disability.
 - Medically prescribed care, treatment or surgery for an acute illness or injury including post acute care, convalescent care and rehabilitation.
 - Sub-acute care including palliative care, end of life care and geriatric care, as set out in the APTOS.
 - Items and services covered by the Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Scheme (PBS).
 - Treatment, services or supports delivered by a doctor or medical specialist, including diagnosis and assessment of a health

Child Protection and Family Support

- Agreed to clarify roles and responsibilities relating to children and young people who are unable to live in the family home because of their complex disability support needs.
- Memorandums of understanding (MOUs) subsequently agreed centre on achieving the best outcome for the child/young person.
- From 1 September 2019, the NDIA commenced funding 24/7 staffing for children in accommodation outside of the family home, as well as disability supports. States and territories are responsible for board and lodging for children in these arrangements, as well as coordinating mainstream services as needed. NDIA is continuing to work with families to ensure NDIS-related supports are in place to help keep families together.

Transport

- Agreed to interim measures to increase transport funding for NDIS participants who are significant users of taxi subsidy schemes, and the full reimbursement of states and territories for the continuation of their schemes for NDIS participants until longer-term transport support policy and funding is resolved.

Mental Health

- Committed to improving access to the NDIS for people with psychosocial disability through a range of strategies, and priority areas for improvement to the access process, building a stronger focus on 'recovery' in the NDIS, and to better respond to the episodic nature of psychosocial disability.
- Agreed to strengthen information sharing, transparency and collaboration between Commonwealth, state and territory governments funded mental health services and the NDIA.
- Agreed to the establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs, noting that this would be developed in consultation with states and territories.

- 6.30. The Council's momentum needs to be maintained and the respective roles and responsibilities of the NDIS and other service systems for the other priority interface areas resolved as quickly as possible to ensure participants receive the services they need and do not fall through the gaps as the NDIS transitions to maturity.
- 6.31. Having better clarity will help, but only if the NDIS and other service systems are held to account to deliver them. An important consideration for this Review is the extent to which DRC's commitment to specific roles and responsibilities are legally binding. This Review recognises DRC's decisions, while being made within the context of the current rules are not, in their specificity, binding. Rather the NDIA, under section 12 of the NDIS Act only has to have regard the decisions of the Council.
- 6.32. Therefore, as discussed, this review considers the legislation should be amended to be more in line with the recent DRC decisions, so as to remove legal ambiguity for NDIA decision makers about the responsibility for the delivery of supports. On this basis, this review considers the Supports for Participants Rules, which currently provide an abridged form of the Principles, need to be updated as DRC finalises its position on each interface area, and further clarification is provided on when a support is reasonable and necessary, in line with DRC decisions ([Chapter 3 refers](#)).

Family centered approaches

- 6.33. The NDIS Act recognises the role of families and carers in supporting their loved one with disability, including children. For example, one of the guiding principles of the NDIS is to strengthen, preserve and promote positive relations between children and their parents, family members and other people who are significant in their life. The NDIS principles also set out children's plans where possible, should strengthen and build the capacity of their families and the carers who support them.
- 6.34. When determining the supports that will be funded by the NDIS, the NDIA is required to take into account what is "reasonable" to expect families, carers,

informal networks and the community to provide. The Supports for Participant Rules provide further advice to help the NDIA decide what is 'reasonable'.

- 6.35. In the case of children, the Supports for Participants Rules, amongst others, state the NDIA needs to consider what is "normal" for parents to provide in terms of substantial care and support for children and the suitability of family members to provide the supports the child requires, including because of factors such as age and capacity of family members, and the child's support needs. The NDIA is also required to consider the extent of any risks to the wellbeing of the participant's family members or carers as well as any risks to the child's wellbeing.
- 6.36. Some submissions indicated in making this decision the NDIA does not appreciate that caring for a child with a disability can be a very challenging and demanding experience that impacts both the physical and emotional capacities of the caregiver, whether this is a parent, informal or paid carer. These impacts can also adversely affect the whole family and their capacity to provide a stable and supportive home environment.
- 6.37. Other submissions indicate NDIS operational policies place an overreliance on the informal supports provided by family members, including siblings, and further supports should be provided in the child's plan to maintain consistency and stability in the home environment, including relieving caregivers from any stress they may be experiencing.

“[The NDIS should] recognise family burnout exists and establish protocols for prevention, diagnosis and associated treatment options. The whole family suffers from the child's disability, including siblings.”

Carer of NDIS Participant, Regional Victoria

“The NDIS needs to recognise that an only child does not mean they should give that child less funding for social and community activities. Like all children, they need opportunities for socialization. We [carers] deserve to have a life and part of the reasonable and necessary supports for the participant needs to factor in what is reasonable and necessary for the carer!”

Carer of NDIS Participant, Remote Victoria

“Support families. For children there needs to be a family centred practice to build the capacity of the parents and you support the child with disability. Many of the group funded or block funded supports for families and siblings have gone. Supporting siblings and families will help prevent future issues and therefore long term costs.”

Carer of NDIS Participant, Metropolitan Victoria

“I would like NDIS to take the time to really understand myself and my family's needs and my goals. Help me manage my disability so I can reach my goals and live a normal life. To help support and understand that my siblings need support as well to reach their goals. That my disability impedes all my family members especially my siblings as they miss out on so much emotionally, their education and social activities because my family (informal supports) are always supporting me.”

Carer of NDIS Participant, Regional Queensland

“Families report that they are offered clinically based therapy services in their plans which are based on traditional models of one-on-one support for the child with disability, as opposed to building the capacity of the family to support the development of the child, and to participate in universal services like preschool, education and other community environments.”

Children and Young People with Disability Australia

- 6.38. This review acknowledges that before the NDIS was introduced families and carers were able to access supports through a number of national and state and territory programs. These supports provided through these programs was commonly called “respite” but the lexicon of “respite” has not been consistently used under the NDIS. This is in keeping with a philosophy that the word “respite” can be perceived as promoting the incorrect, but unfortunately prevalent, notion that people with disability are a burden on their families and loved ones. However, notwithstanding the word used to describe such supports, this review considers improving the capacity of families and carers is critical to supporting them to provide quality care and capacity building support to their loved one with disability.
- 6.39. Evidence suggests planning outcomes directly relate to the ability of the participant and their family or carer to ‘speak NDIS’. This review has heard if a family asks for

“respite” in a plan that request is denied on the basis the plan is intended to improve the capacity of the person with disability and the family will get sufficient rest periods because the plan will provide for sufficient services to meet the participant’s needs. On the other hand, if they ask for additional paid care support in the family home or “short term accommodation”, they will often receive supports which have a similar effect.

- 6.40. The other significant challenge faced by families with children and young people with disability is being unable to work because of their care giving requirements. Some submissions to this review indicated parents and carers would like to work, but are unable to, because caring for the person is seen by the NDIA as their “parental” responsibility. To this extent, there appears to be little understanding of the higher-level support families are required to provide to meet their child’s everyday needs, when compared to families or parents of children without disability.

“[There is] no understanding of the intersecting issues of other family members with disabilities and the extra demands on informal supports.”

Carer of NDIS Participant, Regional New South Wales

“Expecting carers, who provide huge amounts of unpaid support to participants, to manage a separate program is an unrealistic burden that doesn’t take into consideration everyday family life. It also means that carers are forced to take more administrative time away for what their core role should be, caring for the participant, to navigate support provisions to the detriment of the participant.”

South Australian Government

“There is no understanding or consideration given to the impact of informal carers. There is no provision to help - even in cases where a person with disability requires 24 hour support and the carer may not have left the house in years, been able to seek medical attention or been able to cook dinner.”

Carer of NDIS Participant, Metropolitan Victoria

- 6.41. To deny the right of families and carers to support, either in the home or not, works against the broader intent of the NDIS in strengthening the capacity of informal supports to provide a stable and supportive environment for their loved one with disability. The NDIA should seek to ensure participants and their families and carers are informed about what supports can be used to promote and sustain informal care, recognizing failure to provide adequate support proportionately increases the risk of families being stretched to breaking point, being unable to dedicate the time needed to build the capacity and skills of the child in the home and in extreme circumstances, relinquishing care of their children.
- 6.42. To this end, there is merit in amending the Supports for Participants Rules to reinforce the determination of reasonable and necessary supports for a child with

disability will take into account the role and capacity of families and carers is critical to maximize the benefits of early intervention.

- 6.43. Submissions also highlighted the importance of supporting families by providing for supports under the NDIS including social and community support, family capacity building, and peer-group learning and support. The experience of having a child with an intellectual or developmental disability almost inevitably has a significant impact on the family, including siblings, and they need support. The Review heard these activities are not typically funded within the NDIS for young children.
- 6.44. The Review also heard the planning principles in section 31 of the NDIS Act read well for adults, however is not always directed towards strengthening and building the capacity of families and carers to support young children. For example, supports being directed by the participant (section 31(b)) and being underpinned by the right of the participant to exercise control over his or her life (section 31(g)). Here, feedback indicates planners are focusing on individual therapy when developing plans for children, rather than considering what other family and community-based supports or activities would be beneficial for the child's development.

“The lack of integration between NDIS and education/care services with young children acts to segregate children. Despite the NDIS aiming to increase participation, it acts to increase exclusion, by being segregated from education and other community based services, and by using a “therapy” medical model.”

Early Childhood Intervention Australia

“Families are denied support and services considered “parental responsibilities”, as there is a push to medicalize the supports in the plan rather than consider the natural environments and supports in the community which promote the wellbeing and development of children and young people.”

Children and Young People with Disability Australia

- 6.45. This review considers individual therapy should not be the sole focus of planning for children or young people with disability and acknowledges what drives development is children's meaningful participation in everyday activities and social and community-based environments.¹¹ In addition, the importance of a supportive home environment also needs to be taken into account in the context of planning for young children.
- 6.46. On this basis, there is substantial merit in amending the Supports for Participants Rules to reinforce that the NDIS will provide for the supports that are needed to

¹¹ Centre for Community Child Health (2011). DEECD Early Childhood Intervention Reform Project: Revised Literature Review. Melbourne, Victoria: Department of Education and Early Childhood Development. <https://www.education.vic.gov.au/Documents/childhood/providers/needs/ecislitreviewrevised.pdf>

build the capacity and capability of the family in supporting their child with disability underscoring the importance of supportive home environments.

Recommendation 9: The NDIS Rules be amended to:

- a. to strengthen the role of families in early intervention and parental or carers rights to reasonable supports in the home and other forms of respite; and
- b. recognise the importance of family centred planning for children to support them in their natural environment and everyday experiences and activities.

Maximising the benefits of early intervention for children

- 6.47. Early intervention aims to improve a child's functional capacity by providing support at the earliest possible stage. It is generally accepted that, the earlier supports are delivered reduces the likelihood the child will require long-term support. Early identification and intervention are critical in the context of the schemes insurance approach.
- 6.48. Evidenced based early childhood intervention focuses on two key areas, capacity building in the child's life including parents and key interventions including evidence-based therapies for the child. These interventions need to be imbedded into the child's every day routines and activities to provide the maximum benefit. Where ever possible this should be delivered in natural settings, so the child can grow and develop with other children and their families.
- 6.49. As at 30 September 2019, 46 per cent of NDIS participants are under the age of 18 years old, and 13 per cent of participants are less than 6 years old¹². For many parents of these children, the NDIS will be their first engagement with the disability support system. In many cases, and like parents of children without disability, they may be reliant on the support of family members and friends to help adjust to their new lives as parents, and will not necessarily have existing ties with disability support providers.
- 6.50. Formal evidence suggests despite having a plan approved, many families of a child with disability do not know what to do with it, or know which services or types of therapies would be best for their child's development¹³¹⁴. Other submissions made to this review suggested the NDIS legislation (and the very design of the scheme itself) focuses on an adult paradigm that inappropriately posits key decisions made in relation to a very young child's early intervention needs as a simple exercising of

¹² COAG Disability Reform Council Quarterly Report 30 September 2019, p.83.

¹³ Centre for Community Health (2019). Realising the Potential: Early Childhood Intervention under the NDIS. Prepared for the Victorian Department of Education and Training. Parkville, Victoria: Centre for Community Child Health, Murdoch Children's Institute.

¹⁴ Purcal, C., Hill, T. Meltzer, A, Boden, N, Fisher, K (2018). Implementation of the NDIS in the early childhood intervention sector in NSW - Final report . (SPRC Report 2/18). Sydney: Social Policy Research Centre, UNSW Sydney.

choice in a market of service providers. This feedback makes it clear more support is needed for families to provide the conditions to enable them to exercise informed choice and control.

“The NDIS has a responsibility, as does early childhood intervention, to support families as whole entities, as this provides the best opportunity to support children’s learning and development. The planning and assessment process needs to reflect this responsibility”
Early Childhood Intervention Australia

- 6.51. This review considers the NDIS can help to support the best outcomes for children with disability through quality planning, information, referral and advice. This involves working with families at the pace they feel comfortable and ensuring parents and carers are engaged and well supported through this process. Early childhood intervention best practice evidence show using strengths-based family centered approaches is a very strong component for successful outcomes and building trust and collaboration takes time and requires trial and testing to ensure the child and their family circumstance is well understood¹⁵.
- 6.52. This review also acknowledges there are many factors that impact on a family or carer’s capability and capacity to support a child and it is critical they understand they make the biggest difference to their child’s development. Other factors such as the family’s ability to implement strategies and support the child can in many cases, take some time to build; and it is important to understand families all have varied resources and capability they bring to this process.
- 6.53. As such, this review considers further attention must be given to developing a model of planning that is more streamlined and provides more structured support for families in the early on in their experience with the NDIS, in a way that prepares them for taking full control later in their NDIS journey. While the long-term aims of the NDIS are clear, more efforts needs to be made to support parents and children on the journey from initial inexperience, stress and disempowerment to being able to exercise informed choice and control.
- 6.54. As discussed in **Chapters 4 and 10**, this review considers the Guarantee should prescribe a timeframe of eight weeks for a plan to be developed following an access decision. However, the development of an early intervention plan for a child with disability is multifaceted and on many occasions requires a team approach, and a system imposed timeframe under the Guarantee may drive perverse outcomes. Quality plans for children need to be informed by other early childhood professionals, health professionals, specialists and other family members.

¹⁵ Early Childhood Intervention Australia (2017). Protecting Best Practice: An evaluation of the transition to the ECEI Approach under the National Disability Insurance Scheme in NSW.

- 6.55. On this basis, this review considers the Guarantee should provide inherent flexibility in the timeframes for plans to be approved. To rush the first plan process for a family with a young child with disability could work against what benefits the NDIS could provide in both the short and longer term.
- 6.56. However, the sooner the child and family has access to quality information and best practice interventions, the better their long term outcomes. Therefore, this Review considers another model is needed to ensure early intervention supports flow as soon as practical even where the family is not ready, or confident to, to exercise informed choice and control.
- 6.57. It should be noted the Australian Government recently announced the introduction of interim plans for children who were unlikely to have a plan in place within 50 days, in order to address the backlog of children who had been deemed eligible but were waiting for a plan. This was a necessary response in light of the circumstances, and is an effective short-term solution to ensure early intervention supports commence within a reasonable timeframe. However, interim plans do not directly address the capacity building of families, and therefore may not be a sustainable long-term solution.
- 6.58. Therefore, this review considers the approach should be taken further and the NDIS Act amended to introduce a new concept of an interim early intervention budget, which would be immediately available to the family upon an access decision for their child. An interim budget would not be considered as part of, or attached to a plan, in order to ensure the integrity of an individualised planning process is maintained.
- 6.59. In working closely with their ECEI providers, an interim budget would allow the family to start accessing approved early intervention supports while building their readiness to go through the planning process and develop capacity to make informed choices about their child's support needs and goals and aspirations, in line with best practice approaches rather than traditional therapy based medicalised approaches.
- 6.60. It would also refocus the efforts of ECEI providers in building family capacity, rather than delivering light touch ECEI supports to a family while their plan is being developed, reducing the amount of red tape a family needs to go through to start receiving funding, and in turn improve the overall participant experience.
- 6.61. It would, however, be expected the family would commence formal planning processes once they were ready, including choosing whether to receive an interim early intervention budget immediately following a positive access decision, or to start the usual planning process.
- 6.62. Further consideration will need to be given to the types of supports and services that could be accessed with the interim budget, and the value of an interim budget

noting services for young children with disability should be managed in a context which values specialisation in early childhood and can deliver best practice and evidence-informed service response.

Recommendation 10: The NDIS Act be amended to provide for an early intervention payment following an access decision, in order to support the develop the capacity of families new to disability, including their ability to exercised informed choice and control.

Supported Independent Living

- 6.63. SIL is a type of NDIS support that provides funded assistance with and/or supervision of daily tasks with the aim of developing a participant's capacity to live as independently as possible. In most instances, SIL funding is utilised to provide supports in shared or individual living arrangements, but does not cover the cost of the accommodation itself, such as the cost of the capital asset, rent, board or other daily living expenses.
- 6.64. As at 30 September 2019, 21,654 participants (or 6.9 per cent of all NDIS participants) received committed SIL supports in their plan, however SIL funding accounts for 32 per cent of all NDIS funding. Importantly, the way SIL is funded in a plan differs from most other NDIS supports - it is not based on individual assessment of the supports a person needs in the home environment - rather, the value provided in the plan is determined via a quotation provided by a service provider who has a suitable vacancy in a dwelling.
- 6.65. This review has heard that the process of obtaining SIL supports in plans is disempowering participants and working against the scheme's overarching principles of choice and control.
- 6.66. In this regard, submissions to this review indicated the SIL quoting process is not including participants, their families and carers in the decision making process. This is because the value of the plan is determined between the NDIA and the provider, with participants having little or no insight regarding what information is or is not included in the quote.
- [Query for NDIA - can you provide more information about why SIL is based on quotes - what is considered as part of this process - participant involvement etc.]
- 6.67. While this review understands that some supports can only be included in plans through a quoting process, in all cases such processes should be transparent and maximize the ability of participants to drive decisions that impact their daily lives. In line with the principles underpinning the NDIS Act, the process of quoting for SIL

should not impede participants choice and control, including the choice of alternative support arrangements in their home.

- 6.68. Therefore, this review suggests that the NDIA should undertake a comprehensive review of its operational procedures for SIL, noting the current review into SIL being undertaken by the Parliamentary Joint Standing Committee into the NDIS.

DRAFT

CHAPTER 7 – PURCHASING NDIS SUPPORTS

KEY FINDINGS

- ✓ A key tenet of the NDIS is the participant having flexibility, choice and control over the implementation of their disability supports. Plan budgets are quite rigid and prevent participants from utilising the full value of their NDIS supports.
- ✓ Understanding, managing and implementing a plan is highly complex and confusing, particularly for new participants who have not previously accessed disability supports. Participants need more help, particularly in the early years of a plan, to maximize the benefits of their NDIS funding.
- ✓ Funded support connection and coordination could be more effectively utilised to build participant readiness and capability, increase plan utilisation and lift or sustain participant outcomes.
- ✓ There is merit in providing more defined power for the NDIA to commission flexible service models in areas where choice and control is constrained by a lack of market supply or other regulatory restrictions.

- 7.1. Division 3 of Part 2 of the NDIS Act sets out how a participant can manage the funding for supports in their plan and how NDIS amounts are paid to a participant, or to a person who is managing the funding for supports under the plan on the participant's behalf.
- 7.2. I centered my analysis of this aspect on three key issues:
- a. how participant's can use their plan budget to help them achieve their goals and aspirations and
 - b. what additional supports could be provided to help participants get the best outcomes out of their NDIS funding; and
 - c. safeguards to ensure participants are protected when accessing funded supports from the market.
- 7.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules) to the extent they could be amended to provide greater clarity on how the NDIA can support participants to access the services they need, when, how and in the way they need them.

Background to plan implementation

- 7.4. A participant's plan sets out, amongst others, the reasonable and necessary supports that will be funded by the NDIA and identifies how the participant wishes to manage their plan. A participant has three options for managing the supports in their plan (refer **Box 6**).

Box 3: Options for managing the supports in a participant's plan

Self-management:

- The NDIA provides the participant with funding so they can buy supports that will best help them meet their plan goals.
- The participant's support providers may or may not be registered with the NDIS.
- The participant can negotiate the price they pay for a support, provided the cost can be met within the plan funding for the duration of their plan.
- The participant does not need a service booking for their self-managed supports as they pay their providers directly.

Plan-management:

- The NDIA pays the participant's plan manager, who will pay their providers on the participant's behalf.
- The participant's plan manager must be registered with the NDIS.
- The participant's support providers may or may not be registered with the NDIS.
- The plan manager cannot pay more than the NDIA set price limit for specific supports.

NDIA-managed funding:

- The NDIA pays the participant's providers on the participant's behalf.
- The NDIA can only pay providers that are registered with the NDIS and cannot pay more than the NDIA set price limits.

Note: Chapter 2, Part 2, Division 3 of the NDIS Act and Plan Management Rules provide for matters and risks to be assessed in deciding whether a participant may self-manage. These considerations go to whether self-managing their plan would present an unreasonable risk to the participant.

- 7.5. Overtime there has been a clear trend towards greater plan-management and self-management. As at **30 September 2019**, 17 per cent of participants chose to fully self-manage their supports, 12 per cent chose to partly self-manage, 32 per cent chose to use a plan manager, and 39 per cent chose to have the NDIA manage the funding in their plan on their behalf¹⁶.

¹⁶ COAG Disability Reform Council Quarterly Report 30 September 2019, p.78.

- 7.6. The NDIA currently assign the funding for the participants reasonable and necessary supports into one of three budgets:
- a. Core budget - funded supports that help the participant with everyday activities;
 - b. Capacity Building budget - funded supports that help participant to build their independence and skills to help reach their long term goals; and
 - c. Capital Budget - funded supports for higher cost pieces of Assistive Technology (aids, equipment and vehicle modifications) and home modifications.
- 7.7. Within these three separate budgets, a participants' funding is further broken down into a number of sub-categories (**Box 7**). While participants have flexibility to spend their funds freely across each sub-category within the same budget, participants currently have limited flexibility to move funds across the budget categories.
- a. the core supports budget is the most flexible and participants can use their funding across all the sub-categories, other than the transport subcategory.
 - b. funding in the capacity-building support budget can only be spent for services and supports within the sub-categories in which the funding is allocated.
 - c. funding in the capital supports budget is a specific purpose allocation and cannot be used to pay for any other supports or services.
- 7.8. However, it is important to note the current practice of segregating funding described in plans into core, capital and capacity building budgets is overlaid through NDIA policy and the business systems. There is no documented legislative rationale for the three budget categories, or that they necessarily translate to restrictions in purchasing NDIS supports.

Box 4: Current budget construction of participants plans

Core Supports	Capacity Building Supports	Capital Supports
1. Assistance with Daily Life	1. Support Coordination	1. Assistive Technology
2. Consumables	2. Improved Living Arrangements	2. Home Modifications
3. Assistance with Social & Community Participation	3. Increased Social & Community Participation	
4. Transport	4. Finding and Keeping a Job	
	5. Improved Relationships	
	6. Improved Health and Wellbeing	
	7. Improved Learning	
	8. Improved Life Choices	
	9. Improved Daily Living	

- 7.9. Depending on the participant's situation, there a range of people who can help them implement their plan and support them to start receiving supports. For example, the participant can start by themselves if they are self-managing or already have a good idea about what supports they need and which service providers they would like to access. Alternatively, the participant can received funded support coordination in their plan or receive support from their local LAC or ECEI Partner who will assist them to:
- a. understand their plan and the supports and services that can be purchased with their NDIS funding;
 - b. find service providers and enter into service agreements and create service bookings with their chosen providers;
 - c. connect with other informal, community and funded supports in their community; and
 - d. answer any questions if participants have any challenges in using the funded supports in their plan.
- 7.10. The NDIA has published a number of documents to help participant's understand and implement their plan, including how they can manage the funding in their plan across the three budget categories. This includes guides to using the portal to create service bookings, understanding how prices for supports in the plan are set, and understanding a participants responsibilities should they wish to self-manage all or some of their NDIS funded supports.
- 7.11. A number of other fact sheets and tools are also published on the NDIS website to provide guidance on how to ask for help in accessing funded supports, choosing service providers and identifying opportunities to connect with mainstream and community based services.

Plan support flexibility

- 7.12. Consultation feedback suggests the way a participant's plan is constructed is restricting participant choice and control and takes away from an emphasis on participant goals and outcomes. Whether there are specific pain points relating to particular budget categories is less clear, but the need for more flexibility, particularly being able to move funds between budget categories, was highlighted as a prominent theme.

“The siloing of funds into categories is maddening. A participant (or their carer/delegate) knows what supports are most optimal.”

Carer of NDIS Participant, Regional South Australia

“Make the budget more flexible. If I run out of core but have heaps left in capacity building, I should be able to use that money as it has already been budgeted. At least have the option to reallocate funds across the budget in consultation with the agency.”

NDIS Participant, Metropolitan Victoria

“Give participants flexibility to move funding within your plan into different categories when needed. More choice and control and flexibility for the participants to use funding in there plan. NDIS needs to accept that if you can’t find supports within certain plan categories because of the shortage of community supports workers and allied health professionals you should not lose that funding in your next plan.”

Carer of NDIS Participant, Metropolitan New South Wales

“The fundamental principle of choice and control is being undermined by poor policies and processes, and inflexible rules that just don’t make sense to people. There are too many stories of people running out of funds in one area, having funds remaining in another area, and no capacity to move things around.”

Every Australian Counts

“The principles of choice and control are fundamental to the scheme. They are supported to be central pillars, inherent in the very DNA of the scheme. And yet the way participant plans are currently constructed undermines these two core principles.”

National Disability and Carer Alliance

- 7.13. This review acknowledges the NDIA recently announced a program of work to simplify plan budget arrangements to give participants more flexibility in using their NDIS funding. This will involve collapsing the existing budget categories of core and capacity building from 1 July 2020. The NDIA is also seeking to describe more supports generally, so participants have a greater degree of flexibility over their implementation, and being clearer in its communication with participants to provide greater transparency around how plan support budgets are developed.
- 7.14. The NDIA’s work to reform how plan budgets are constructed is welcomed to the extent the participant knows which supports were intended to be funded and the outcomes those supports were intended to achieve. However, consultation feedback suggests participants already do not know what supports have been funded in their plan or how they can use their NDIS funding across budget categories. Therefore, any move to collapsing budget categories, while enabling more flexibility, may also make it less clear about what supports the participant was actually funded for, and may weaken the ability for the NDIA to ensure the funds are spent on the intended purpose.

- 7.15. Therefore, in order to ensure participants have a clearer understanding of how their plan budget was constructed, and how their funding should be used, Part 6 of the Plan Management Rules should be amended. This Part currently sets out that some supports in the participant's plan may be described generally, whether by reference to a specified purpose or otherwise, or a support may also be specifically identified. For generally described supports, the Plan Management Rules set out the participant will have a high degree of flexibility over their implementation. For specifically identified supports, the Plan Management Rules set out those supports must only be purchased or provided in the way described in the participant's plan.
- 7.16. The amendment to the rule would reinforce that, as a first principle, a participant's reasonable and necessary supports should always be described generally, but with sufficient detail included in the plan so a participant understands what outcome was intended to be achieved with that funding. Importantly, a participant's plan should not provide for a lump sum amount with no clarity on what support was funded (or not funded) and why. Such clarity is needed to ensure the participant understands what the NDIS funding was provided for, irrespective of having greater flexibility in how it can be used.
- 7.17. There is also merit in amending the Plan Management Rules to prescribe that certain supports (in certain circumstances) will generally always be described specifically in plans and to provide reasons for this. This review would expect quotable items, such as assistive technology, home modifications and specialist disability accommodation would be described specifically, and other supports encouraged to be described specifically, such as plan management, support coordination and behavioural intervention support.

Recommendation 11: The NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they should only be prescribed specifically in limited circumstances.

Accessing funded supports

- 7.18. Consultation feedback indicates some participants were not provided with information and guidance on how to implement their plan, including how to find out about the service providers in their community, and what 'quality indicators' they should be looking for in a providers service offering. As set out earlier, this experience may be linked to the rapid scale up of participants entering the scheme, with planners seeking to push through plan approvals in response to pressure to meet the transition intake targets.

“In the whole eight plans we have never had an implementation meeting or support to implement the plan, no clarification on what the responsibility of self-management are, what we can spend our money on and what we can’t.”

Family member and carer of NDIS Participant, Metropolitan South Australia

“At the 12 month mark I had no idea how to use my plan properly and the review was easy compared to my initial planning meeting”

NDIS Participant, Metropolitan Queensland

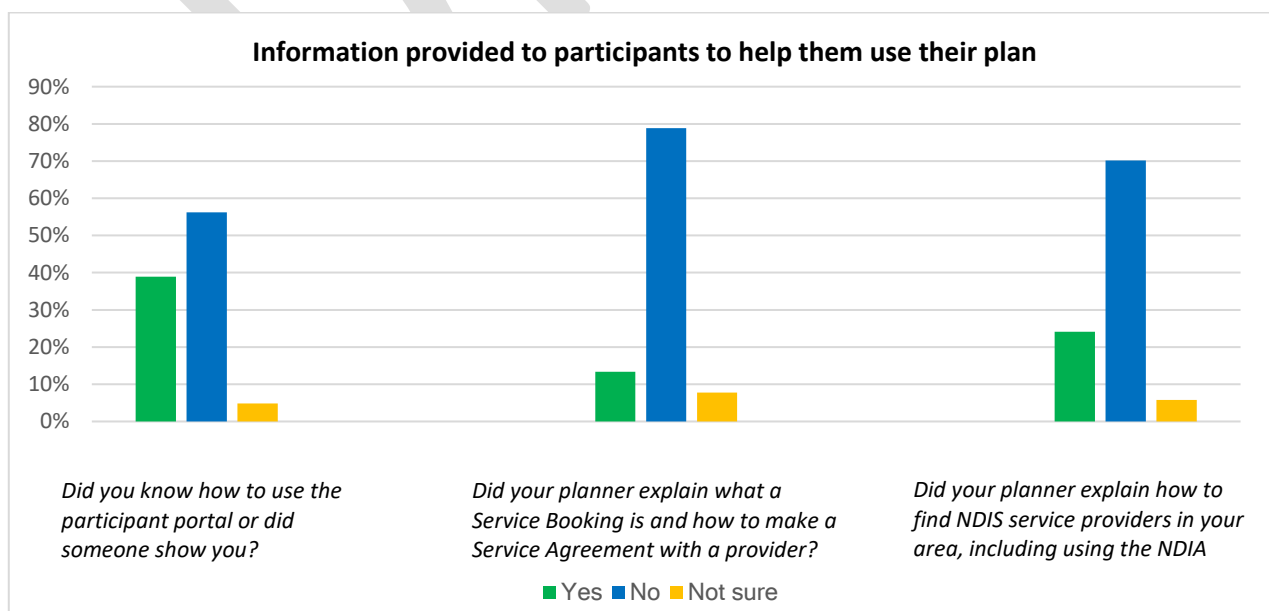
“There is confusion about how the participant can or should implement their approved NDIS plan and access supports, particular regarding their first plan, or where there is a need for urgent equipment or accommodation. Once an NDIS plan has been approved, the participant often need assistance to ‘get started’.”

Western Australian Government

“Families reported that once is approved don’t know what is the next step, how to use the funds or to find and compare providers and resulted in underspending and underutilisation of plans.”

Children and Young People with Disability Australia

- 7.19. Stakeholders also reported, despite the volume of information and guidance available on the NDIS website, their planner did not tell them it was there, they could not find what they needed, or what they could find was not accessible. This is supported by strong survey feedback which suggests participants do not know how to implement their plan, find providers, or create service bookings and agreements.



- 7.20. If participants are not provided with accessible information to assist them to understand and implement their plan, this will be reflected in the underutilisation of their funded supports. Utilisation is the proportion of expenditure (both planned and used) against the total plan budget.
- 7.21. At 30 September 2019, utilisation across all participant plans was just 69 per cent¹⁷. However, when looking over the lifecycle of a participant's NDIS plan, it is evident utilisation grows the longer the participant stays in the scheme, suggesting utilisation improves as a consequence of participant's building their confidence in exercising choice and control.

[DRC REPORT]

- 7.22. While this data also shows participants become more experience and confident in understanding, managing and using their plan over time, there remains a need for the NDIA to better support participants, especially new entrants to the Scheme, to implement their plan and optimise the benefits of their funded supports. Participants should not be penalised in the early years of a plan because they are not properly informed.
- 7.23. However, low utilisation is not necessarily solely indicative of the participant not being provided with information on how they can use the funding in their plan. It can also be attributed to a range of other reasons, including the inability to connect with providers, more supports than expected being provided informally through family, friends or the community, the late activation of plans, or to thin markets. Indeed, survey feedback indicates the top five reasons why participants reported they were not likely to spend all their money in their plan relate to:
- a. their preferred service provider being too busy;
 - b. they are still looking for a provider in their area;
 - c. they want to, but right now it's too hard;
 - d. the providers in their area don't deliver the supports or services they need;
and
 - e. they need more help from their LAC or Support Coordinator.

¹⁷ COAG Disability Reform Council Quarterly Report 30 September 2019, p.113.

“Thin markets, inflexible supports in NDIS plans, crisis situations or transiency have also contributed to difficulties in accessing supports”

Western Australia Government

“Sometimes people can’t find services because there just aren’t services to find. Or when they finally do find a service, they are confronted with closed books and long wait lists. People with disability and their families report lack of services in all areas, but particular in rural and remote areas. This scarcity of support is also true for particular population groups in metropolitan areas. Families with a son or daughter with complex needs, for example, frequently report that there are limited services available just equipped to deal with the complexity of the participant’s life”

Every Australian Counts

“For people with complex needs, access to and the availability of supports, particularly accommodation, is extremely difficult. Service providers will often pick and choose the participants who they are willing to provide support to.”

ACT Human Rights Commission

“Low utilisation may be due to participants and their families having difficulty identifying and negotiating with providers, and providers being unavailable in some geographic areas or for some types of supports.”

Queensland Government

“The process of finding and connecting to services can be overwhelming for participants, particularly those who are new to receiving supports.”

Victorian Council of Social Services

- 7.24. Following the approval of a plan, the NDIS Act does not require the NDIA to assist the participant to implement it. In keeping with the intent of the Guarantee, there is merit in requiring planners to offer a plan implementation meeting following the approval of a participant’s plan and this be included as a requirement under the Guarantee (Chapter 10 refers).
- 7.25. This meeting would provide new NDIS participants with a detailed overview on how to use their plan, including how they can spend the funded supports in their plan, how to find NDIS service providers, make service agreements with providers and how to use the participant portal.
- 7.26. Plan implementation meetings could also be offered to existing participants to provide further information about how they can continue to best maximise their supports within their plan budget and consider alternative service delivery arrangements if they aren’t satisfied with the current outcomes they are getting.

- 7.27. The offer of a plan implementation meeting would align with feedback that participants are finding it overwhelming when they receive their NDIS plan, and they don't understand what their plan means or how they can use it. Despite there being a lot of information on the website to help people understand and implement their needs, this review considers that sometimes the participant needs to talk it through with someone.
- 7.28. Such an approach would build on the NDIA's current plan to roll out joint planning approaches nationally, which includes a follow-up meeting with the participant and their planner that takes place no later than three weeks after the planning meeting.

Support coordination

- 7.29. A significant number of participants have "Support Coordination" funded in their plan. This is a capacity building support to assist the participant to build the skills they need to understand, implement and use their plan. A support coordinator is responsible for working with the participant to connect with informal, community and funded supports, and increase their capacity to maintain relationships, manage service delivery tasks, live more independently and be included in their community.
- 7.30. As at 30 September 2019, 39 per cent of all NDIS participants have funded support coordination in their plans¹⁸. The remainder of participants receive some assistance with plan implementation from their LAC or ECEI Provider to guide the participant through how to use their plan and search for and connect with service providers. This review understands that ten hours annually is intended to be provided to participants for this purpose.
- 7.31. Feedback to this review indicates the presence of a funded support coordinator has been critical for participants in getting the best outcomes from their NDIS funding and that participants without it need more support to understand their plan, identify and connect with providers and use their plan funding. In particular, the Review heard that funded support coordination reduced the level of administrative effort required to manage a plan, which otherwise could place significant burden on participants or their informal networks.

¹⁸ COAG Disability Reform Council Quarterly Report 30 September 2019, p.103.

“We need more support to utilise the plan. We can only do so much organizing and vetting organisations. It’s an emotionally draining process and we really do not have the right skills. We feel overburden and pressured to ensure dad’s plan is utilised fully. We asked for support coordination, but the LAC said we wouldn’t get it.”

Family member and Carer of NDIS Participant, Regional Queensland.

“Support coordination is the only way to help me understand what NDIA means for me and my family”.

Family member and Carer of NDIS Participant, Regional Victoria.

“As a support worker, I believe support coordination and plan management should already be arranged by the NDIA as a requisite service and be in place once access is approved. Clients, and support workers, NGOs and government mental health services don’t have the ability, or time, to understand how to coordinate or manage all this”

Carer of NDIS Participant, Metropolitan Victoria

- 7.32. The NDIA has provided advice indicating participants who have higher and more complex needs are provided with funded support coordination, particularly those who face immediate and significant barriers to plan implementation, such as people with:
- a. severe and multifaceted disability requirements requiring multiple supports;
 - b. conditions of a degenerative nature and those with supports requiring active management and ongoing adjustment due to changing needs;
 - c. psychosocial disability;
 - d. the involvement of multiple service systems, such as health, justice, child protection; and
 - e. those with a history of changing and challenging service provision.
- 7.33. Funded support coordination is not intended to be the principal method to support participants to utilise their plan. One of the principle functions of LAC and ECEI partners is to assist participants to navigate the market and implement their plan. As discussed in Chapter 3, the additional burden on Partners of planning functions is having a distorting effect, and potentially driving up the demand for funded support coordination. (noting reforms through the increase used of functional assessment are anticipated to contribute to easing these issues).
- 7.34. However, and notwithstanding that the support coordination market is immature, submissions provided to this review suggest that support coordination is viewed as essential tool by many participants to utilise funding in their plan. Therefore, this review considers that its function as a reasonable and necessary support warrants more scrutiny and oversight by all governments, and in turn, that the principles for determining when funded support coordination is reasonable and necessary be elevated from NDIA’s operational guidance into the NDIS Rules.

7.35. This review considers that this approach would provide a stronger, participant focused, signal to the NDIA about the importance of participant being supported to utilise funding in their plan.

7.36. While this approach would not mean that some level of support coordination must be included in all participant' plans, as that would remain a reasonable and necessary decision on an individualised basis, it would formalise critical considerations when determining what is reasonable and necessary in this context. As such, elevating principles into the NDIS Rules would reinforce support coordination being actively considered in the planning process. Principles could include:

[Question for NDIA - what are the appropriate boundaries noting balance of R&N and sustainability?]

- a. whether the participant is a new entrant to the Scheme or has a newly acquired disability;
- b. the level of complexity of the participant's disability or disabilities and what this means for the range of supports to be managed;
- c. whether the participant's circumstances mean there are one or more intersections with other service systems to manage (e.g. justice, health, child protection, voluntary out of home care, housing)
- d. the stability of the participant's living arrangements
- e. the participant's location, and any cultural consideration;
- f. the extent, stability and capacity of a participant's informal support network; and
- g. the extent of the participant's social and economic participant and engagement.

7.37. However, the market for support coordination is not well established (Chapter 3 refers). Therefore, in increasing the use of funded support coordination, the NDIA should continue to build the depth and capacity of the provider market and implement strategies to ensure participants choice and control is not restricted. This is especially important in thin markets or where the support coordinator's organisation also offers an array of other NDIS services - in these cases, conflict of interests may arise.

7.38. Anecdotal evidence suggests particular conflicts of interests have arisen when a participant is receiving SIL supports and support coordination from the same provider. In at least some cases, it appears that these participants have been held "captive" and prevented from exercising free choice and control over their other funded supports, with their support coordinator only directing them to options provided within their organisation.

7.39. This review considers that, like any other support, participants receiving support coordination should not be limited to access supports offered by their support

coordination provider. In all cases, participants should not be held or forced to choose from a limited service offering. In one case, this review heard that a participant was evicted from their home on the basis that they did not want to have that provider provide all their other NDIS supports.

- 7.40. There may be a case in requiring support coordination to be independent from other service provision, in order to prevent conflicts of interest arising and maximizing opportunities for participants to access their supports from a wide variety of providers. However, this would not be appropriate in all cases, such as circumstances where there is only one provider in a community, or where the participant has specific cultural safety needs. Importantly, support coordination should not be provided independently of other service provision if that separation would mean the participant could no longer live in their community.
- 7.41. It should also be noted that support coordinators, like any other NDIS support, is subject to the provider registration and practice standards rules enforced by the NDIS Quality and Safeguards Commission. This includes ensuring participants receive transparent and factual advice about the support options available in their community and to have respect for the participant's rights to freedom of expression, self-determination and decision-making.
- 7.42. This review does not consider that legislative amendment should restrict, in any way, participant choice and control over their NDIS supports. On this basis, this review does not recommend requiring support coordination to be independent from other service provision. A participant should always have the choice of who their support coordination provider is.
- 7.43. However, there may be a case to strengthen the legislation to mitigate risk of conflicts of interests arising. This could be achieved by requiring the NDIA to actively assist participants to choose their support coordination provider, having regard to their other NDIS supports. This would not be limited to participants receiving SIL, but would be of particular importance for this cohort.
- 7.44. The review also considers further work should be undertaken by the NDIA to consider the role of providers performing dual functions to participants and opportunities to build market capacity such that this practice can be minimized.

Recommendation 12: The NDIS Rules be amended to outline the considerations the NDIA will have regard to in providing funded support coordination in a participant's plan.

Alternative commissioning

- 7.45. The intent of the NDIS is that participants will be supported to purchase the supports they need from an open market. For this to work effectively, there is a natural assumption the provider market will expand supply in high-demand services and respond to participant demands for high quality services that meet their needs. To the extent these adjustments can't or do not occur, or occur too slowly, the market is not able to respond in a timely manner to participant needs.
- 7.46. The primacy of participant's exercising full choice and control over their NDIS supports, including who they receive their supports from, is a key tenet of the NDIS. However, it has been broadly acknowledged some participants are not able to purchase the supports they need through individually approaching the market. This occurs for a range of reasons, including:
- gaps between the supply and demand of services ("thin markets");
 - difficulties in serving a participant's complex needs;
 - location factors (e.g. lack of providers in rural and remote communities);
 - regulatory constraints of certain settings; and
 - where the scale of existing efficiencies and service delivery arrangements, as administered by states and territory disability systems, may not be able to be replicated on an individualised funding basis under the NDIS.

The key issues with the NDIS in my experience is that regional areas are poorly serviced by a market-based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service."

NDIS Participant, Regional New South Wales

"The NDIA needs to ensure that officers and planners are available for participants in remote areas or with accessibility needs"

Western Australia Government

"Participants have stated one of the biggest challenges with utilizing the supports in their plan, depending on where they are located, is finding a service provider in their local area"

Stroke Foundation

- 7.47. Rigid adherence to individualisation can have a negative effect, particularly when it is clear some participants cannot access the supports they need. To this end, the NDIA does not have a clear legislated power to intervene to ensure the participant does not go without vital supports.
- 7.48. The Plan Management Rules already provides some limited powers for the NDIA to respond flexibly in cases where a participant cannot access the supports by

approaching the market on an individualised basis. This includes through enabling the NDIA to enter into funding arrangements with particular providers or entities to deliver the supports in a participant's plan, if the NDIA is satisfied the support would be more efficiently and effectively provided by that provider.

- 7.49. However, it appears exercising this provision relies on the NDIA being satisfied the alternative arrangement represents value-for-money. The NDIS Act and Supports for Participants Rules also do not provide guidance on when it would be appropriate to exercise that power, without diminishing from the primary of the participant's right to choose who they will receive their disability supports from.
- 7.50. On this basis, there is merit in amending the NDIS legislation to enable the NDIA, in limited circumstances, to enter into alternative funding arrangements in cases where it is clear the participant cannot access the services identified in their plan.
- 7.51. This is particularly important in regional and remote communities where market supply may be absent or thin and where it is evident community-led service delivery responses would yield greater social and economic outcomes for the NDIS participant. In these instances, alternative commissioning arrangements could work hand-in-hand with community-based outreach programs to mitigate the risk of market capture by larger providers.
- 7.52. Market intervention could also extend to include for the delivery of NDIS supports in settings where regulatory or other controls prevent the delivery of a free market, for instance within schools.
- 7.53. Providing a more defined power for market intervention is intended to enable the NDIA to act quickly to fill service gaps and encourage positive market behavior. Importantly, it is not intended to be a proxy or diminish participant's ability to exercise choice and control over who provides their NDIS supports.

Recommendation 13: The NDIS rules be amended to clarify the ability for the NDIA to undertake more appropriate market intervention through flexible commissioning models on behalf of participants.

Informed Choice and Control and Best Practice Service Provision

- 7.54. 'Choice and control' is a fundamental design principle of the scheme. However, the effective use of NDIS funding can be dependent on information/marketing and the particular service or therapy chosen. Notwithstanding the role of support coordination, participants may not be aware of what are evidence based practice approaches when exercising choice and control, and can feel uncertain when navigating the marketplace. In some cases, this review has heard that, upon

approving a plan, a participant was simply given a list of available providers in particular categories of support.

“Many families don’t know what they can apply for and what resources will assist their child/young person.”

Support worker and Carer of NDIS Participants, Metropolitan Victoria

“I get yes and no answers about what supports we can purchase all day long!”

Family member and Carer of NDIS Participant, Regional New South Wales

“Most clients indicated they felt they did not adequately understand what funded supports were possible under the NDIS, and reported that they had received inadequate, inconsistent or incorrect information from NDIA representatives in this regard.”

Advocacy Tasmania

- 7.55. Under section 118(1)(a)(iv) of the NDIS Act, a function of the NDIA in delivering the NDIS to promote the provision of high quality and innovative supports that enable people with disability to maximize independent lifestyles and inclusion in the community.
- 7.56. In addition, under section 118(1)(c) of the NDIS Act, it is also a function of the NDIA to develop and enhance the disability sector, including by facilitating innovation, research and contemporary best practice in the sector.
- 7.1. As an insurance scheme, the NDIS should always seek to promote services that aim to maximize the benefit of funded supports for each participant, that are supported through a robust research and evidence base. This can be achieved through appropriate education of the kinds of supports that can be most effective and beneficial to achieve goals and aspirations, such that NDIS participants can exercise informed choice and control. This issue is also discussed in relation to the benefits of early intervention ([Chapter 6 refers](#)).
- 7.2. This kind of information education enhances the participant experience and provides appropriate protections from providers seeking to deliver supports with questionable benefits or which may expose a participant to harm, notwithstanding that they may have met the quality assurance process through registration with the NDIS Quality and Safeguards Commission.
- 7.3. Therefore, this review considers that the NDIA should take a more active role in supporting positive participant experiences by working with researchers and experts in the provision of disability support to develop a repository of information that contains accessible information and advice on the kinds of supports that are supported by evidence to achieve positive outcomes for participants.

- 7.4. This repository, while not necessarily needing to be hosted by the NDIA, would work to direct the market to these kinds of supports, but should not be designed to limit the development of new kinds of supports, and therefore must be dynamic and responsive to the evolution of research and development.
- 7.5. However, building market capacity is critical for participants to draw the benefits from their NDIS funding. The ability to exercise informed choice first relies on their being a sufficiently robust market offering that is responsive to participant needs and preferences. To this extent, this review acknowledges the work currently underway by governments to strengthen and build market responsiveness, including through initiatives such as the Commonwealth Boosting the Local Care Workforce Program and new work in developing an NDIS Capability Framework that sets out the behaviors and core capabilities to be demonstrated by providers and workers when delivering services.
- 7.6. This review also acknowledges work currently being undertaken to develop a new e-Marketplace to help link participants to providers, providing the market/sector with information about unmet demand, which will help encourage a greater diversity of services. Momentum on these initiatives should be continued and is vital to ensuring participants receive the benefits of what the NDIS can offer.

Recommendation 14: The NDIA work with governments, researchers and experts in the provision of disability support to establish a dynamic repository of information about evidence based best practice approaches, to assist participant exercise informed choice and control.

Choice of plan management

- 7.7. All NDIS participants are able to choose their providers of supports. Some participants may ask someone else to do it for them (a plan nominee), decide to manage the supports in their plan for themselves (self-manage), or use a registered plan manager. This contrasts with the situation where the NDIA and the participant have agreed the NDIA will be responsible for purchasing and managing the funding in their plan.
- 7.8. People who choose to have the NDIA manage their plans for them have the protection of only being able to use registered service providers. The registration process administered by the NDIS Quality and Safeguards Commission includes an assessment of the suitability of a provider and its key personnel to provide NDIS services. It also involves the use of third party auditors in some cases to independently assess the claims made by providers on their capacity to deliver quality NDIS supports and services. Registered NDIS providers are required to ensure workers with more than incidental contact with a person with disability undergo worker screening.

- 7.9. Registered NDIS providers are subject to mandatory incident reporting requirements and must implement additional policies, procedures and practices that assist in identifying and minimising risk of harm to people with disability. This includes promoting positive organisational cultures that do not tolerate abuse, neglect or exploitation; ensuring quality recruitment, selection and screening; and maintaining a focus on education and training.
- 7.10. On the other hand, self-managing participants or those who use a plan manager can choose to receive their supports from anyone they wish, whether or not they are a registered. The only exclusion to this ability is supports which are subject to mandatory registration under section 73B of the NDIS Act - that is specialized disability accommodation under a participant's plan, specialist behaviour support services and supports involving the use of a regulated restrictive practice.
- 7.11. Unlike self-management for which the NDIS Act and Plan Management Rules provides for matters and risks to be assessed in deciding whether a participant may self-manage, the legislation does not apply any such limitations or risk assessment for deciding whether a support can be plan managed. The rationale for this may in part be that under section 42 of the NDIS Act plan managers must be registered NDIS providers and meet the quality and standards set by the NDIS Quality and Safeguards Commission.
- 7.12. The Review has heard feedback that there are potential risks for participants engaging unregistered providers through plan management without the same risk assessment and guidance that is currently available to self-managing participants. These concerns were raised on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or exploitation - particularly as the additional protections put in place for registered providers are not required of unregistered providers.

“Participants [are] choosing an unsuitable plan management model due to a lack of understanding”

Neurosciences Unit

- 7.13. This review appreciates there are a number of key benefits to plan management in regard to improving participant outcomes. This includes plan management services being enablers to choice and control, capacity building, self-direction and quality outcomes. For example, plan management services assist participants and the NDIS by:
- a. offering the participant increased control over plan implementation and utilisation through additional financial guidance;

- b. managing and monitoring funded support budgets over a participant's plan duration, including prompt notification to relevant parties about over-utilisation or under-utilisation or potential misuse of funds;
 - c. managing payment requests to NDIA and dispersing payments to providers for delivered services;
 - d. supporting payment integrity through evidence based claiming;
 - e. maintaining records and producing regular statements showing the balance of plan managed funded supports in the plan to assist participants plan ongoing or future supports and also prevent the over utilisation or misuse of NDIS funds;
 - f. enabling access to a wider range of service providers, including non-registered providers while ensuring payments remain in line with the price limits contained within the price guide;
 - g. providing advice on processes when engaging non-registered providers; and
 - h. maximise plan utilisation and work towards achieving participant's goals and outcomes.
- 7.14. However, it is unclear, as an alternative to NDIA managed, why plan management is an option in its own right, rather than a subset under self-management, given it provides for the same level of choice and access to unregistered providers as self-managing participants. This review also notes plan managers are not responsible for assisting a participant to choose and connect with providers. This is the role of a support coordinator.
- 7.15. This review considers the NDIA has a responsibility to protect participants who are using plan management options, particularly those with limited decision-making capacity, from procuring unregulated/risky supports and to ensure they have the capacity to make informed decisions about the most appropriate supports or services that would meet their needs.
- 7.16. On this basis, this review considers plan management should be abridged as a subset of self-management. This would require a request for plan management to be subject to the same safeguards and risk assessment as self-managing participants, as set out in section 44 of the NDIS Act. It would also have the potential to simplify and provide clarity to providers and the market that any agreement/commercial arrangement is with the participant (i.e. not the plan manager).
- 7.17. However, while this review considers additional protections are required, this should not result in an overall reduction in the proportion of participants being able to self-manage their plans. Therefore, this review also considers the NDIA should undertake additional actions to support participants choose self-management as their preferred plan management option.

Recommendation 15: The NDIS Act be amended to redefine the 'plan-managed' management type as a form of 'self-management'.

DRAFT

CHAPTER 8 – REVIEWING AND AMENDING A PLAN

KEY FINDINGS

- ✓ A robust, transparent and accountable review mechanism provides an essential safety net for participants. There are a number of areas in which the NDIA can, and should, improve its administration of reviews to deliver a better experience for NDIS participants.
- ✓ The legislative requirements for varying and reviewing plans are overly prescriptive and drives additional complexity, time and considerable stress and anxiety for participants. This has the flow on effect of removing the ability of providers to respond swiftly when a participant has had a change of circumstances.
- ✓ There is merit in amending the legislation to provide additional guidance on the factors that should be considered by the NDIA when undertaking or initiating unscheduled reviews of a participant's plan.
- ✓ Plans should be able to be amended without requiring a full plan review in certain (limited) circumstances where it is clear the support to be added, or the change to be made, is reasonable and necessary. This ability would be particularly relevant for participants who require Assistive Technology or Home Modifications.

- 8.1. Division 4 of Chapter 3 of the NDIS Act sets out a participants plan cannot be varied or amended once it has been approved by the NDIA. It can only be changed or replaced in two circumstances:
- a. when the participant changes their statement of goals and aspirations - in this instance, a new plan is created comprising the new statement of goals and aspirations and the statement of participant supports in the existing plan; or
 - b. where it is replaced by a new plan, resulting from:
 - i. the participant requesting an unscheduled plan review (under section 48(2));
 - ii. the NDIA initiating an unscheduled plan review (under section 48(4)); or
 - iii. as part of a scheduled plan review - in which the NDIA must conduct a review of the plan by the date in which, and the circumstances in which, are specified in the plan (under section 48(5)).
- 8.2. As the NDIS continues to mature, a greater proportion of the NDIA's workload will move towards supporting participants to review their plan, ensuring their funded supports are working and helping them work towards, and achieve their goals and aspirations.

- 8.3. I centered my analysis of Division 4 on options to streamline the barriers currently in the NDIS Act that are driving large numbers of participants to request unscheduled reviews of their plans.
- 8.4. I also considered opportunities to streamline the process for making changes to a plan without requiring a full review of the participant's plan, such as adding new supports following the receipt of a quote, and the efforts required to improve the timeliness of the NDIA's approach and its communication with participants. Without significant efforts in these areas, there remains a risk participants' right to review will be undermined and the review process will continue to be a driver of substantial numbers of complaints.

Unscheduled and Scheduled reviews

- 8.5. The NDIA's handling of plan reviews has been a consistent theme in consultation feedback. It is evident poor quality or rushed planning decisions, or where the planner has not provided reasons for why certain supports have or have not been included in their plan, have led many participants to request unscheduled reviews of their plan.

"I requested full self-management and they incorrectly made core funding agency managed. I had to submit a review request which was never addressed or rectified."

Carer of NDIS Participant, Metropolitan Victoria

"At the planning meeting for first plan, it was agreed that support coordination would be included in my plan - but when plan was issues later that day, no support coordination was included. I spent the next 7 months trying to get a review to have support coordination included."

NDIS Participant, Metropolitan Western Australia

"A mistake was made at planning where paperwork was lost by the planner so plan was approved without funding for transport and home modifications for a participant with cerebral palsy. The participant is still waiting for a review 10 months later."

Carer of NDIS Participant, Regional New South Wales

- 8.6. Consultation feedback indicates participants have three major concerns with NDIA's administration of plan reviews:
- a. the NDIA did not acknowledge their requests for an unscheduled review;
 - b. they were not kept informed about the status or progress of the review; and
 - c. the review process took too long, delaying access to much needed supports.
- 8.7. The NDIA has acknowledged the bilateral targets for access requests, plan approvals and scheduled plan reviews were often prioritised over unscheduled

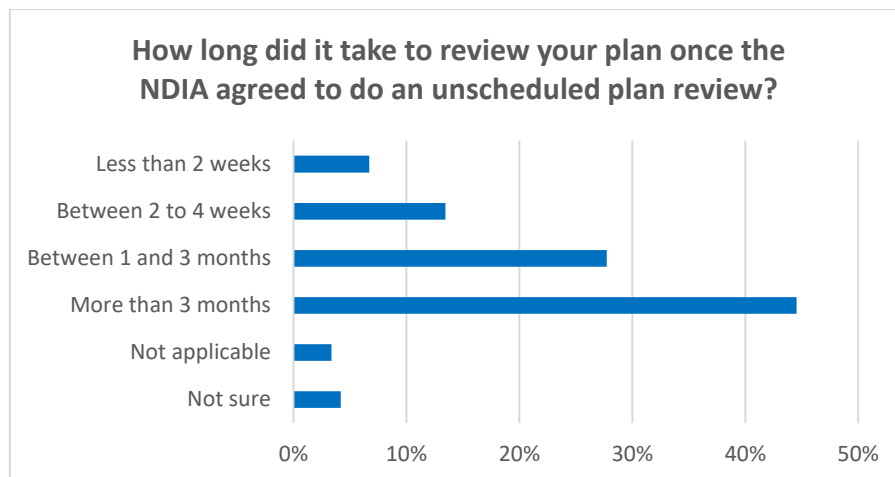
planned reviews, and the demand for these exceeded what had been anticipated. Nevertheless, as a rate of total participant population, this review acknowledges the number of unscheduled reviews is decreasing over time, from 24.3 per cent at 30 September 2017 to 14.3 per cent 30 September 2019¹⁹.

- 8.8. This review also understands the NDIA have accepted the Commonwealth's Ombudsman's 2018 recommendations on the administration of reviews, and established a National Review Team in March 2019 to capture and manage all unscheduled plan review requests. The NDIA have provided data which indicates from 4 March 2019 to date, the National Review Team has received more than 40,000 plan review requests and addressed 90 per cent of these requests. This review understands the team is on track to manage outstanding pre-April 2019 review requests by the end of December 2019.
- 8.9. This review also understands the National Review Team is receiving, on average, 1,000 participant initiated unscheduled plan review requests per week, and has allocated increased resourcing to ensure participants requests are responded to in a timely manner, and ensure all requests are managed efficiently and in a streamlined manner.
- 8.10. As the number of participants entering the scheme increases, being able to amend a plan and providing more clarity around when a unscheduled review would be conducted may go some way to decrease the number of unscheduled reviews being lodged (paragraphs X to X refers).
- 8.11. Furthermore, as discussed in Chapter 3, providing more transparency around planning decisions, giving participants more support to implement their plans and providing more flexibility over their plan budget will help build on the NDIA's current initiatives to improve the administration of reviews.

Timeframes for decision making

- 8.12. Under section 48(3) of the NDIS Act, if the NDIA agrees to a participant's request to conduct an unscheduled review of their plan, the NDIA must commence facilitating the review within 14 days after so deciding, and must complete the review 'as soon as reasonably practicable'. In regard to scheduled plan reviews, section 48(5) of the NDIS Act only sets out it must be conducted before the date specified in the plan. It does not impose a timeframe for when the review should commence or when it should be completed.
- 8.13. Consultation feedback indicates both scheduled and unscheduled plan reviews are not being completed in a timely manner. Over 40 per cent of survey respondents indicated it took more than three months for the NDIA to complete the unscheduled review of their plan.

¹⁹ COAG Disability Reform Council Quarterly Report 30 September 2019, p.98



- 8.14. In some cases, participants reported the delay resulted in material impacts on their health and wellbeing and the impact of their disability worsened as a result of a significant change in circumstances. It is evident the NDIA's review process has not always been able to respond in appropriate timeframes.

"I was not happy with my plan as it read. There were significant mistakes due to the cut and paste option used by the LAC. My condition is deteriorating and this is not accounted for in my current plan. I wish to have more supports but this was denied."

Carer of NDIS Participant, Regional New South Wales

"I had to apply for a review because the intensive capacity funding application was "overlooked" by someone at the NDIA. Whenever I called, no one could tell me what was happening with the application and why it was overlooked. I had to go through the whole review application process and had to pay for more reports. Sadly, she has now regressed as we await the decision."

NDIS Participant, Regional Victoria

"The whole plan was done incorrectly and not suitable for my daughters needs. Wasted a whole year complaining and waiting for a review. While my daughter received no transport funding and no support."

Carer of NDIS Participant, Metropolitan Victoria

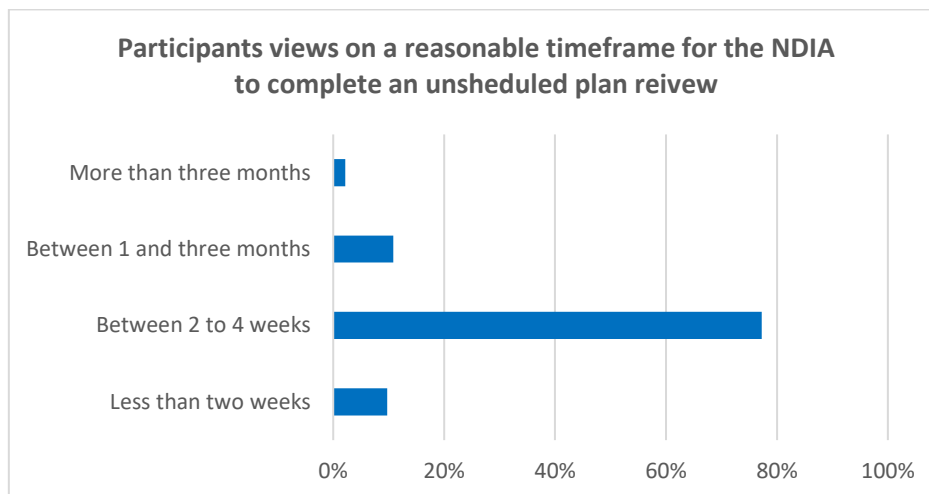
An existing participant who suddenly found themselves homeless was supported to lodge a change of circumstances review with a request for a new NDIS plan based on completely new goals; but was kept waiting for five months before a planning meeting was scheduled

Disability Justice Australia

- 8.15. In keeping with participants being afforded opportunity to exercise their rights to seek an unscheduled review of their plan, the Guarantee should provide

participants with assurance an unscheduled plan review will be completed in a timely manner following the NDIA agreeing to conduct it (Chapter 10 refers).

- 8.16. In order to inform the timeframes for review decisions set out in the Guarantee, this review asked participants what they considered would be a reasonable period if the NDIA had all the information required to make the decision. Of the XXX who provided a specific response to this question, XXXXXX



- 8.17. There is also merit in the Guarantee providing participants more assurance around when a scheduled plan review will commence, and how long it will take to complete, noting the NDIS Act currently does not prescribe a timeframe for these.

“The NDIS Planner needs to consider all reports/information given to them. I believe that very important and relevant information was overlooked when they did my son’s plan review a few months ago. Then they approved the new plan within a couple of weeks, even his previous plan was not due to expire for a couple of months! This NDIS plan was obviously just “rushed through”.

Family member and Carer of NDIS Participant, Regional Queensland

“The plan review meetings were much quicker than the initialing planning meeting. In the plan reviews, the planners seemed to rush the plans through and approve it in a couple of weeks. They did not consider all the relevant information provided; including some very important verbal information and documents/reports.”

Family member and Carer of NDIS Participant, Regional Queensland

“Review one was very rushed and not at a time when my son’s father could attend. Review two was chaotic”

Family member and Carer of NDIS Participant, Metropolitan New South Wales

Guidance for decision makers - unscheduled reviews

- 8.18. Consultation feedback indicates people with disability do not understand how section 48(2) of the NDIS Act operates, including the circumstances in which they should request an unscheduled review of their plan, the things the NDIA will consider when deciding whether to conduct it. The same confusion applies to knowing when the NDIA would decide to initiate a review of their plan under section 48(5).

“There is limited information about what constitutes a change of circumstance for the purposes of an NDIS plan review, the process of this review, the time it will take, the communication during the review, and the evidence required”

Western Australia Government

“Applicants may experience challenges in the internal review process due to the limited knowledge and understanding of the review procedure and their legal rights. There is also often a lack of understanding regarding the reasons for the original decision and the corresponding gaps in support evidence”

Advocacy for Inclusion

“There should be clear information available outlining how a participant can apply for a review and how they can lodge appeal with the AAT if they are not happy with the outcome of an internal review.”

Autism Spectrum Australia

“Participants sometimes experience reviews with little to no knowledge of the process which is occurring. People with psychosocial disability, or from Aboriginal and/or Torres Strait Islander communities, from CALD communities, or those with poor literacy skills and particularly vulnerable. They can be ill-prepared to participate.”

Carers Victoria

- 8.19. There is merit in prescribing the factors the NDIA will consider in determining whether or not to conduct or initiate an unscheduled plan review. This review notes the NDIA’s Operational Guidelines already outlines some factors that could be elevated into a NDIS rule for this purpose. This review also notes providing participants with more flexibility in how they spend their NDIS funding to achieve their goals may assist in driving down the number of unscheduled reviews required.
- 8.20. However, on balance, it is recommended the factors to be considered by the NDIA would include:
- a. where the participant has changed their statement of goals and aspirations;
 - b. where the participant has had a significant change in circumstances;
 - c. where the participant’s functional capacity has deteriorated, or improved;

- d. where the participant has a degenerative condition, any change to their condition; or
- e. after a period of early intervention supports.

8.21. The inclusion of these considerations in a rule would provide participants and NDIA delegates with greater clarity on the circumstances in which the NDIA would ordinarily agree to conduct or initiate a plan review, enabling planners and delegates to make faster decisions. It would also work in well should the NDIA be provided with the ability to amend a plan in certain (limited) circumstances (paragraphs X to X refer).

Recommendation 16: That the NDIS Act be amended to introduce a new Category D rule making power that includes criteria on when the NDIA should agree to undertake an unscheduled plan review.

Deemed decision making

- 8.22. Under section 48(2) of the NDIS Act, should a participant request an unscheduled review of their plan, the NDIA must decide whether or not to conduct it within 14 days of the participant making the request. If the NDIA does not make the decision within 14 days, the NDIA is taken to have decided not to conduct the review and it automatically progresses to an internal (merits) review process. The merits review process is further discussed in [Chapter 9](#).
- 8.23. Stakeholders expressed frustration that the way this deeming provision operates disadvantages the participant and does not incentivise the right behavior of NDIA planners and delegates. For many participants, they were forced to undergo an internal (merits) review of the deemed decision, instead of focusing on the material issue in question - that is, whether or not the NDIA should have decided to review the plan and the appropriateness of the current supports in it.

“Both the NDIA and Community Partners have an internal policy to escalate s48 review [unscheduled review] to a s100 review [internal review] where a decision has not been made on the initial review for a three week period. This action denies the participant a step in the review process and fast forwarding their application to the last ‘port of call’ before an Administrative Appeals Tribunal application”

Darwin Community Legal Service

- 8.24. First principles would suggest a participant should not be penalised as a result of a delay in NDIA failing to decide whether or not to do something in a prescribed timeframe. The participant has no control over the action or inaction of the NDIA delegate making the decision.

- 8.25. Therefore, in keeping with the participant-centered approach of the Guarantee and to improve the participant experience with the administration of plan reviews, there is merit in inverting the deeming provision, so if the NDIA does not make the decision to conduct the review within the stated period, they are deemed to have decided to conduct the review ([Chapter 10 refers](#)). This would be uncontroversial noting operational guidance would be elevated so participants know when the NDIA would ordinarily agree to the request.

Amending a plan

- 8.26. As set out earlier, a participant's plan cannot be varied unless a new plan is created under Division 4 of the NDIS Act. In short, this means to make any change to the plan - including making the most minor administrative change to a plan (such as fixing a typo or changing the participant's contact details) - requires the participant to undergo a full plan review. Understandably, this has caused significant frustrations for participants.

"We had to go through the plan review process because of errors made by the NDIS in relation to the miscalculation of money amounts. NDIS basic mistakes should be easy to correct instead of my daughter being dragged through the plan review process."

Carer of NDIS Participant, Regional Victoria

"The second time [requested a plan review] was due to many errors in my plan, including incorrect goals, incorrect information and insufficient funding for transport."

Carer of NDIS Participant, Remote Victoria

"The primary concerns highlighted by participants is that they are unable to make small changes to their plans without triggering an internal review."

Advocacy for Inclusion

"Even minor amendments [to a plan] currently trigger the development of a whole new plan and can leave people without essential supports or in having changes made to a plan that worsen their situation."

Physical Disability Council of NSW

- 8.27. Consultation feedback also indicates participant's feel this process might otherwise reassess or materially reduce all the supports in their NDIS plan, rather than just consider the matter in contention. A significant number indicated they, despite needing additional or new supports, are choosing not to request a review of their plan for this reason. Although, it should be noted the legislation currently requires the NDIA to be satisfied all supports in the plan are reasonable and necessary, irrespective of the type of change sought.

"I have heard early reviews can take ages and there's no point as you can lose funding and will take 12 months to happen. This is why I haven't done one. Also the stress of it all is too much."

Carer of NDIS Participant, Metropolitan South Australia

"We were told that we couldn't ask for a review as the plan had only just been given. We had to cut our therapy by 30 per cent I again asked for a review & we were threatened that money could be removed from the plan & not to proceed."

Carer of NDIS Participant, Metropolitan Western Australia

"The review process takes so long that it seems not worthwhile and the fact that when participants have sought a review the entire plan gets reviewed and not just the issues of concern has been used to reduce money in other sections of the plan and in some cases people have been kicked off the scheme."

NDIS Participant, Metropolitan South Australia

- 8.28. The NDIA have acknowledged this issue, and has been implementing a "light touch plan review" process in circumstances where only minor amendments need to be made to the participant's plan. This has been used in circumstances such as:
- a. to implement the result of an internal review decision;
 - b. where the participant requested to change their plan management type;
 - c. to make administrative changes to a plan or correct data entry errors; and
 - d. to add new supports following receipt of a quote.
- 8.29. The light touch process involves the planner and the delegate having a conversation with the participant, their plan nominee or child representative, to inform them of the light touch plan review process, ensuring they agree to undertake a light touch plan review and ensure they understand the changes which will be made to their plan.
- 8.30. The NDIA have not been implementing a light touch process where there is evidence of a significant change in the participants circumstances, or where:
- a. the participant is seeking additional funding to support a new goal;
 - b. there are insufficient funds in the plan that can be used flexibly; or
 - c. there is insufficient supporting evidence.
- In these instances, a full plan review is completed.
- 8.31. While the "light touch" process has enabled the NDIS to reduce the time some participants are waiting to make certain changes to their plan, it is still burdensome for the participant and the NDIA. This is because the decision to approve the plan requires a formal delegate decision and because a new plan is created as a result, the participant needs to re-establish service bookings with their providers.

- 8.32. Current plan review arrangements are also particularly burdensome for participants requiring Assistive Technology and Home Modifications, where simply adding funding to the plan for the capital item after the receipt of a quote is forcing a full plan review to be conducted. In some cases, consultation feedback suggested a participant may wait up to 18 months to receive their Assistive Technology supports, after factoring in time for the initial planning conversation, obtaining the quote, making the request for the plan review, having it accepted, and then having the plan review completed and the funding added to the plan.

“A participant has been waiting for approval for an AFO prosthesis for 18 months during which time they could not independently access their local pool to complete their funded hydrotherapy program.”

Disability Justice Australia

“The process for approving equipment and home modifications is complex and confusing, and very often lengthy. People are waiting months, even years, for vital equipment and even longer for home medications. Often the process takes so long that quotes “expire” and the process must start again.”

National Disability and Carers Alliance

- 8.33. Access to supports already determined as reasonable and necessary supports should not be delayed unnecessarily. On this basis, this review considers a plan should be able to be amended, without constituting a plan review or automatically creating a new plan, in certain (limited) circumstances, where the NDIA is satisfied the change to be made (or the new support to be added) could be considered in isolation from the other supports in the plan. These circumstances would be:
- a. if a participant changes their statement of goals and aspirations;
 - b. if a participant requires crisis/emergency funding as a result of significant change to their support needs and the CEO is satisfied the support is reasonable and necessary;
 - c. if a participant has obtained information, such as assessments and quotes, requested by the NDIA to make a decision on a particular support, and upon receipt of the information the NDIA is satisfied the funding of that support is reasonable and necessary (for example, for Assistive Technology and Home Modifications);
 - d. if the plan contains a drafting error (e.g. a typo);
 - e. if plan management type is changed, subject to the completion of appropriate risk assessments;
 - f. for the purposes of applying a compensation reduction amount, or for adjustment of a compensation reduction amount;
 - g. to allow supports to be determined as reasonable and necessary to be added to a plan if the relevant statement of participant supports is under review by the AAT;
 - h. upon reconciliation of an appeal made to the AAT; and
 - i. to implement an AAT decision that was not appealed by the parties.

- 8.34. Importantly, giving the NDIA the ability to amend a plan would allow quick adjustments to be made to plans, reserving the formal review process for participants who have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal. It would also mean a participant did not need to be recreated, given current IT solutions. Plan amendment powers would thus provide participants with timely access to supports, providers with faster access to funding and reduce administrative burden on the NDIA, allowing more resources to be dedicated to supporting quality planning and plan implementation processes.
- 8.35. Importantly, this review does not consider the action to amend a plan should be a reviewable decision, rather the reviewable decision would be the matter the plan was amended for. That is, the plan will be 'taken to be amended' following the original decision. This review notes not all matters listed above are currently reviewable decisions, and therefore amendment to the NDIS Act will be required to ensure all matters a plan can be amended to be reviewable decisions under section 99 of the NDIS Act and for the purposes of section 100 of the NDIS Act.

Recommendation 17: The NDIS Act be amended to:

- a. introduce a new Category D rule making power giving the NDIA the ability to amend a plan in limited circumstances; and
- b. require all matters a plan can be amended for to be considered reviewable decisions under section 99 of the NDIS Act.

Plan review gaps and service bookings

- 8.36. Once a participant has an approved plan, they can create service bookings in the NDIS portal. Service bookings are used to set aside funding for an NDIS registered provider for a support or service they will deliver in accordance with the participant's plan. Generally speaking, a service booking will show the type of support to be provided, when it will be provided and the length of time it is needed.
- 8.37. Many participants create their service bookings in advance, and both participants and providers expressed frustration that when a new plan is approved, this ends all the participant's current service bookings, and requires new service bookings to be put in place.

"Every time a change is made means a whole new plan with service agreements! Realise that families and carers are effected too. We are busy people trying to care for someone and don't have time to go chasing reports and attend multiple appointments."

Carer of NDIS Participant, Regional Victoria

- 8.38. Consultation feedback also suggests a participants access to their NDIS supports stops if the review of their plan was not completed and a new plan created by the date specified in their plan.

“Guardians have reported on numerous occasions that there have been instances where plans reviews have been undertaken due to a change in circumstances however NDIA has not approved the plan in a timely way and the plan has run out and the support services ceased.”

Western Australia Office of Public Advocate

“There are often delays between old plans expiring, the scheduled of a review, and new plans being approved. As a result, service providers may go into debt if they continue providing the NDIS participant with the supports they need. Others will cease providing services, leaving vulnerable NDIS participants without the required supports, which in some cases has lead to homelessness.”

ACT Human Rights Commission

“Applicants have reported that the delays in the internal review process can cause the review process to extent past the expiration date of their NDIS plan. This can leave the applicant without an ability to pay for their supports, and ultimately lead to their support services being temporarily suspend. This ultimately goes against the proposed principles of ‘timely’, ‘connected’ and, at best, ‘valued’.”

Advocacy for Inclusion

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- 8.39. Both of these issues are artificial and arise out of the way the ICT system is built. There is no legislative reason for why participants should have their access to NDIS supports stalled because of plan review delays, or for providers to need to recreate service bookings once they have been given a new plan. Understandably, these are causing significant frustrations for both participants and providers.
- 8.40. The NDIA is identifying IT solutions to both issues. In September 2019, the NDIA launched a new process which identifies participants with plans expiring within seven days, and, in certain circumstances, automatically extends the end date of their plan. This will mean participants will be able to receive supports regardless of a delay in their new plan being approved. It also means providers will continue to be able to claim for supports delivered in accordance with the plan until the new plan is approved.
- 8.41. Notwithstanding this work, there is merit in the NDIA continuing to explore more permanent solutions, including the ability for service bookings to carry across subsequent plans.

CHAPTER 9 – REVIEWABLE DECISIONS AND AAT APPEALS

KEY FINDINGS

- ✓ Internal review processes are not working as intended. Despite efforts to expedite decision-making, participants are experiencing uncertainty and delays and have limited options to exercise their right of appeal.
- ✓ Changes to appeal processes are needed to provide clear and streamlined pathways for participants to resolve issues in relation to their plans and reduce administrative red-tape.
- ✓ Parameters need to be established to provide clearer guidance as to when the AAT has jurisdiction to hear a case, and as well as provide clarity of the nature of the decision in question and all of the surrounding circumstances.

- 9.1. Part 6 of Chapter 4 of the NDIS Act outlines what decisions made by the NDIA are reviewable decisions, and the process of administrative review, including both internal review by the NDIA, and external review by the AAT.
- 9.2. While there are many types of decisions subject to internal review, I have centered my analysis on those which involve decisions relating to access and the approval, development or review of a participants plan. I also considered the jurisdiction of the AAT to review NDIA decisions, including opportunities to provide clarity on what decision is before the AAT and what happens to a plan where the scheduled review date occurs during the AAT process.

Triple use of the word “review”

- 9.3. As outlined earlier, participants can seek two types of review under the NDIS Act: a review of their plan (in accordance with section 48) and an internal review of a reviewable decision (in accordance with section 100). A third type of review is created when the participant appeals an internal review decision to the AAT.
- 9.4. Concerns over the duplicate use of “review” has been raised by participants, the AAT, NDIA and disability peak organisations on multiple occasions, including as early as 2015 when the first review of the NDIS Act was conducted. To date, no amendment has been made to address the confusion.
- 9.5. Some stakeholders maintained this twin, if not triple use of the word ‘review’ is confusing participants, and, in turn, potentially hindering their rights to exercise their right of appeal of an NDIA decision.

“There has been occasions where a participant has sought an Internal Review (explicitly stated as such) and the NDIA has instead commenced a change of circumstances review.”

Legal Services Commission of South Australia

“People consistently report they find the review process complicated and confusing. There are too many concepts and processes that sound like each other but actually mean completely different things.”

Every Australian Courts

“The review and appeal process has been identified as problematic including the language used by the NDIA staff and its partners which is confusing and unclear.”

Children and Young People with Disability Australia

“The confusion resulting from calling all process a ‘review’ often results in participants who want an internal review of their statement of supports going through an unscheduled reassessment process.”

National Legal Aid

- 9.6. The NDIS Act should be amended so the word ‘review’ has only one meaning. One way it could be implemented is to reframe ‘review of participant’s plans’ as ‘XX of participant’s plans’, as suggested by the NDIS Participant Reference Group.

Recommendation 18: The NDIS Act be amended to resolve confusion surrounding the duplication and twin-use of the word “review”.

Internal reviews

- 9.7. Section 100(2) of the NDIS Act sets out a person may request the NDIA to review a reviewable decision. If they choose to do this, they must make the request within three months after receiving the notice of the reviewable decision. Section 99 of the NDIS Act sets out the reviewable decisions related to access and planning are:
- a. a decision a person does not meet the access criteria (sections 20(a), 21(3) and 26(2)(c));
 - b. a decision to revoke a participant’s status as a participant (section 30);
 - c. a decision to approve the statement of participant supports in a participants plan (section 33(2)); and
 - d. a decision not to undertake an unscheduled plan review (section 48(2)).
- 9.8. Under s.100(6) of the NDIS Act, should a person request an internal review of a NDIA decision, the reviewer must ‘as soon as practicable’, make a decision to either:

- a. confirm the decision;
 - b. vary the decision; or
 - c. set it aside and replace it with a new one.
- 9.9. **XX** of survey respondents indicated they had asked the NDIA to review a previous decision it made in relation to their access to the scheme or their plan. Of those, the majority reported they experienced stress and anxiety during the process, the process was unclear, their concerns were not being listened to, and they were unhappy with the outcome.

“I had an extreme lack of funding in first plan and I phoned the NDIA and asked for an internal review but no one could tell me exactly how to do it “

Carer of NDIS Participant, Metropolitan Queensland

“My original plan identified my need for a motorised wheelchair. My O/T application was rejected and I was informed of this by phone. I proceeded to the next stage by requesting a review and providing extra information to support that application, but after 3 months that review hadn't been considered”

NDIS Participant, Regional Queensland

“The review process is a legal maze for people with disability and their families to navigate”

Autism Family Support Association Inc.

“The conduct of scheduled plan reassessments is a cause of stress and anxiety for many of our clients, where NDIS plans can be reduced following a scheduled plan reassessment for a range of reasons outside the participants' control”

National Legal Aid

“The current processes trigger trauma and deepen the divide for people experiencing disadvantage, with participants who are the least resourced being the most likely to fall through the cracks”

Victorian Council of Social Services

- 9.10. Consultation feedback also indicates people with disability and their carers are concerned about how long internal review processes took, and they did not have visibility of the process.

“The review of a reviewable decision was never looked at for a whole year. Despite numerous phone calls and time wasted was finally contacted by someone and told that it would be closed as now due for scheduled annual review. Also repair quote sent to AT, despite numerous phone calls and escalations never received a reply in 12 months.”

Carer of NDIS Participant, Metropolitan Victoria

“The NDIA have turned me down for services I clearly need relating to my disability and that others with my exact disability are getting. I have also had to ask them to include things they agreed they would and then forgot to include. Although I requested reviews, I never heard back and none were conducted.”

NDIS Participant, Metropolitan Queensland

“I am still waiting on a response to my internal review request after nine months and numerous phone calls.”

Carer of NDIS Participant, Regional New South Wales

“Participant often wait from six to 12 months for a decision regarding an internal review, and in the interim, participants are left in the dark about the status of their request.”

Victorian Council of Social Services

- 9.11. This review understands the NDIA has a range of strategies in place to improve the timeliness of internal reviews, including through establishing an Early Resolution Team in August 2019 to expedite requests that can be resolved quickly. This review understands the team is committed to acknowledging requests within 14 days, completing decisions within 90 days and providing the person with disability with a consistent contact person throughout the review.
- 9.12. Data provided by the NDIA indicates the team has been able to settle 16 per cent of internal reviews through a streamlined process, including where the matter is low risk and can be resolved without the need for further information, and on average 35 per cent of requests are currently being completed within 90 days. The NDIA has also indicated the Early Resolution Team is continuing to build resources and staff capability and capturing data on the drivers of internal reviews to feedback to the original decision makers so practice across the agency can be improved. The intent of this work is to improve the quality of decision making and ensure people with disability understand why and how the decision was made at the time it was made.

Timeframes for decision making

- 9.13. Notwithstanding the NDIA’s work to improve the timeliness of internal review decisions, there is currently no way for a person with disability to be certain a decision maker has not made the internal review decision ‘as soon as reasonably practicable’, other than to appeal the matter to the AAT.

- 9.14. If the Guarantee were to provide a set timeframe for an internal review to be completed, with an explicit provision that failure to make the decision in the stated time would give rise to a deemed decision, then this would give participants certainty and a clear avenue for meaningful review of NDIA decision-making.
- 9.15. This review sought feedback from participants about what would be a reasonable period for the NDIA to finalise an internal review decision. Over XX of participants felt between 2-4 weeks was a reasonable period given the NDIA was not considering the substance of the plan or their request, but merely affirming a previous decision it made was the correct one based on the facts of the circumstances.
- 9.16. However, the internal review process as provided by the legislation is manually intensive and is broader than a simple desktop audit of a decision. Affirming, varying or setting aside the decision requires due consideration of the facts and evidence of the matter. This includes researching information and fresh consideration of the facts, legislation and policy aspects of the original decision.
- 9.17. In practice, the Early Resolution Team is also responsible for speaking to the person who requested the review, other stakeholders as required, and relevant internal teams within the NDIA if the issue(s) requires detailed or technical input before the decision can be made. As such, the Guarantee should provide a realistic timeframe for this work to be completed, without rushing the decision and potentially compromising quality participant outcomes.
- 9.18. Prescribing a timeframe for the making of the decision also overcomes issues around AAT jurisdiction. This review acknowledges the AAT has previously concluded the words “as soon as reasonably practicable” constituted a deemed decision under s.25(5) of the *Administrative Appeals Act 1975*. Therefore, if the AAT found a decision under s.100(6) of the NDIS Act was not made as soon as was reasonably practicable, it would be deemed the decision had been made.
- 9.19. The NDIA is seeking to avoid the issue of jurisdiction and deliver timely participant outcomes by making expedited internal review decisions. However without further clarity around what “as soon as reasonably practicable” might be, the NDIA and participant will continue to lose the opportunity to address and resolve the substantive issues. The Guarantee should provide a clear definition of what this timeframe should be (Chapter 10 refers).

AAT review

- 9.20. Under section 103 of the NDIS Act, a participant may make an application for the AAT to review an internal review decision made under section 100(6). The AAT does not have jurisdiction to review a decision that has not been internally reviewed by the NDIA, nor can it review every decision the NDIA makes.
- 9.21. AAT lodgements increased from 186 in 2016-17 to 744 in 2017-18 and 1,220 in 2018-19. As at 30 September 2019, there have been 2,670 lodgments, which is less than 0.4 per cent of all access decisions²⁰.
- 9.22. This review notes, although seemingly significant, this rate of growth is in large part expected and consistent with the rate of participant transition as the NDIS has progressively rolled out across Australia. It is also relatively low as a percentage of the number of participants in the scheme.
- 9.23. This review understands the NDIA takes a conciliatory approach to AAT matters, with the focus on resolving matters at the earliest opportunity or to proceed as quickly as possible to AAT hearing on issues that cannot be resolved. Consistent with this approach over 95 per cent of all matters are resolved without a substantive hearing.
- 9.24. This review also understands, wherever appropriate, the NDIA offers to enter into partial terms of settlement on matters which have been agreed, to ensure the participant can access those supports while the other matters are dealt with in the AAT.
- 9.25. Notwithstanding the NDIA's efforts to resolve issues early, evidence suggests a number of issues are being driven to the AAT, in part, because there is some confusion by the participant, and at times the NDIA, as to whether the applicant is seeking a review of the decision to approve their statement of participant supports under section 33(2) or the decision (deemed or otherwise) to not review a participants plan under section 48(2). Because both processes are called 'reviews', and the considerations are largely the same, there can be confusion by all as to what is actually being sought.
- 9.26. The AAT has previously commented on the confusion involved in determining these matters (emphasis added):

²⁰ COAG Disability Reform Council Quarterly Report 30 September 2019, p.102

In this case, I have set out the steps that the NDIA has taken to illustrate the confusion that would seem to permeate the process of review. To a large extent, the confusion would seem to arise from the structure of the NDIS Act... To distinguish between decisions regarding the plan and its reassessment and decisions regarding the substance of what it is to which a participant is entitled and which is set out in a statement of participant supports in his or her plan, seems an unnecessary distinction. It is a distinction that leads to cases such as this in which time must be spent to work out what has been decided rather than to work out what it is to which a participant is entitled.

(LQTF and NDIA [2019] AATA 631)

- 9.27. This review acknowledge participants simply want a decision about their support needs, not a decision about another decision. The internal review process could be improved through training, clearer forms and a change in terminology. This review notes the same form is used to request a section 33(2) review, an unscheduled review under section 48(2) or an internal review of a reviewable decision under section 100.
- 9.28. Consideration could also be given to operational guidelines confirming, in most cases, a request lodged within three months of a plan being approved is a request for a review of a reviewable decision under section 33(2), to distinguish it from a request for a review decision under section 48(2).

Confirming the matter before the AAT

- 9.29. The AAT only has jurisdiction to consider the reviewable decision made at the time of lodgment of the application for appeal. The AAT does not have jurisdiction to consider any subsequent decision the NDIA may have made in relation to the person, including changes to their plan or requests that may have been made by the person with disability. As a consequence, the AAT's decision can quickly become obsolete or outdated if the hearing takes longer than expected.
- 9.30. For example, while the participant is waiting for the AAT decision the participant may have a scheduled plan review, which subsequently changes their plan resulting in the creation of a new plan. Alternatively, an internal review decision may be made after the lodgment of the application for appeal. Under these circumstances, the AAT's decision will only take into account the plan at the time the decision was lodged with the AAT and not any subsequent plan or decision. Understandably, this is creating administrative red-tape and frustrations for both participants and the NDIA.
- 9.31. Section 26(1)(b) of the AAT Act allows the AAT, with the trilateral agreement of the participant, the NDIA and the AAT, to alter the application before the AAT. However, exercising this provision relies on the NDIA having the power to alter or vary the decision. This power does not currently exist outside the construct of

section 100(6) of the NDIS Act. Furthermore, the NDIA is prevented from varying a plan under section 37(2) of the NDIS Act.

- 9.32. In circumstances where a statement is before the AAT and the scheduled plan review date is imminent, there is merit in allowing the NDIA (where the parties agree, pursuant to s 26(1)(b) of the AAT Act) to vary the plan review date (i.e. push it out until after the AAT has handed down its judgement).
- 9.33. Further, the ability to amend a plan in accordance with section 26(1)(b) of the AAT Act could also be utilised where, for example, the majority of the supports in contention have been agreed or settled between the participant and the NDIA and can be placed into the participants plan and utilised, while the AAT deals with the remaining supports.
- 9.34. These steps are primarily procedural or jurisdictional but would be expected to reduce the number of unnecessary appeals and ensure review processes are focused on the participant and facilitated in a way reduces administrative red-tape and frustrations for participants, the NDIA and AAT.

Recommendation 19: The NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended based on trilateral agreement while a matter is before the AAT.

Timeframes for implementing the AAT decision

- 9.35. The timely implementation of an AAT decision is critical for participants as the decision in question may specifically relate to the reasonable and necessary supports in their plan. However, there is no ordinary timeframe for AAT decisions to be handed down, or any legislative requirement as to what would be a reasonable timeframe. This is generally dependent on the complexity of the matter and the individual AAT member.
- 9.36. There are significant operational resources being deployed by the NDIA to improve the experiences of participants undergoing AAT appeal and the administration of reviews, including the timely implementation of AAT decisions. NDIA data indicates most AAT decisions are implemented in a participant's plan within one to two weeks of settlement or a AAT decision, unless further information such as a quote is required (e.g. for Assistive Technology).
- 9.37. However, some stakeholders reported there are lengthy and unexplained delays in amending the participant's plan in line with the AAT's decision. On this basis, there is merit in the Guarantee providing participants certainty on a timeframe for the implementation of an AAT decision to provide important assurance the NDIA will honour the AAT decision as stated. However, this should be qualified by the fact any person (including the NDIA) who is not satisfied with the AAT decision can

appeal it to the Federal Court on a question of law (refer section 44(1) of the AAT Act)²¹.

Model litigation

- 9.38. During consultations, some stakeholders raised concern the NDIA was not acting in accordance with its obligations as a model litigant in the conduct of litigation before the AAT. Some submissions noted NDIA solicitors did not read material submitted by the applicant before the hearing, failed to comply with the timeframes agreed in case plans, and in some cases, unnecessarily delayed matters before the AAT. This behavior was attributed as being worse when the assigned lawyer was an NDIA employee. By contrast, solicitors contracted from external law firms to act on behalf of the NDIA were reported to be better prepared for litigation.
- 9.39. I have not sought to validate these concerns as they relate to the conduct of individual staff members employed (or engaged by) the NDIA. However, this review strongly reinforces to the NDIA it is obliged to act as a model litigant under the *Legal Services Directions 2017*. This includes in handling claims and litigation, brought by or against the NDIA, the NDIA (or persons employed to act on their behalf) is required to act with complete propriety, fairness and in accordance with the highest professional standards.

²¹ To date three NDIA cases have been appealed to the Federal Court of Australia: *Mulligan v National Disability Insurance Agency* [2015], *McGarrigle v National Disability Insurance Agency* [2017] and *SSBV v National Disability Insurance Agency* [2018].

CHAPTER 10 – THE NDIS PARTICIPANT SERVICE GUARANTEE

KEY FINDINGS

- ✓ The Guarantee should be legislated through a new rule that includes a balance of qualitative and quantitative measures.
- ✓ Commencement of (and reporting against) the Guarantee's quantitative timeliness measures should be staged over two years to 2021-22, to allow sufficient time for the NDIA workforce to build its capacity and capability to provide a quality service experience for NDIS participants.
- ✓ The NDIS Act should explicitly provide for the Commonwealth Ombudsman's powers to monitor the NDIA's performance against the Guarantee, as well as clarify that the Ombudsman has powers to obtain information relevant to that purpose.

- 10.1. The Terms of Reference for this review focused on the amendments that would need to be made to the NDIS Act to introduce the Guarantee, including legislating timeframes for decision-making by the NDIA.
- 10.2. In assessing NDIS implementation to date, including the underlying reasons for issues being raised by participants, their families and carers, this review considers that a Guarantee based solely around timeframes for decision-making is likely to result in perverse outcomes for participants and risks compromising the quality of the NDIS participant experience. For example, adherence to timeframes for plan development would be undermined if an approved plan is of poor quality and does not equip the participant as necessary.
- 10.3. The Guarantee needs to strike an appropriate balance between the quality of NDIS processes and the speed of those processes. The development of the Guarantee also needs to take into account that a number of the factors causing issues with the participant experience are either a direct result of the scale and speed of the transition period, or are being addressed through operational reforms currently underway by the NDIA.

Three elements of the Guarantee

- 10.4. The role of the NDIA is to:
 - a. support people with disability, their families and carers to participate in the NDIS;

- b. connect people with disability with information and resources, and offer guidance as they plan for, select and use the supports, services and community activities they need in their lives; and
 - c. work with people with disability and the people important to them to develop and maximise the benefits of their individual plans to help them achieve their goals and aspirations.
- 10.5. Accordingly, the Participant Service Guarantee and the way it is structured and articulated should:
- a. enhance and strengthen the participant-centered focus of the NDIS, and reinforce fundamental design principles such as statements of goals and choice and control;
 - b. enable participants to have a clear understanding of what they can expect at various stages of their engagement with the NDIA or its partner agencies;
 - c. support participants to have a clear understanding of what they need to provide to the NDIA and partner agencies, and give participants appropriate time to seek evidence or provide other information required for access or planning decisions;
 - d. build greater understanding of the service delivery expectations between the NDIA, its partners, participants and the community; and
 - e. support other efforts to ensure the effective operation of the NDIS, including that plans meet participant needs and that supports are well utilised.
- 10.6. The Guarantee should set out how the NDIA will work with people with disability in undertaking these functions. Specifically, this review considers that the Guarantee should have three parts:
- a. set out how the NDIA is to engage with and work alongside people with disability;
 - b. the timeframes for the NDIA to make decisions or undertake administrative processes; and
 - c. key performance metrics, including targets.
- 10.7. The Guarantee is intended to cover the full journey of a participant's interactions with the NDIS, including with NDIA staff and its partner organisations. It is envisaged that the NDIA would use the Guarantee to inform its statements to partner organisations regarding performance expectations and outcomes.
- 10.8. Consistent with the structure of the NDIS Practice Standards for registered providers (managed by the NDIS Quality and Safeguards Commission), this review proposes that the qualitative expectations of the Guarantee be focused on principles-based outcomes statements supported by underpinning service standards.

Part 1 – NDIA Engagement

- 10.9. As part of consultation activities informing this review, six preliminary principles and associated service standards were described in the “Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing red tape” discussion paper.
- 10.10. Consultation feedback indicated that people with disability and the sector more broadly are supportive of a qualitative aspect to the Guarantee to ensure the NDIA remains accountable for the way in which it engages with and works alongside people with disability in delivering the NDIS.
- 10.11. Following consultation feedback, the proposed principles and service standards have been refined and consolidated and are set out in **Table 1**. Their articulation is subject to change according to the usual legislative drafting process.

Table 2: Qualitative indicators for inclusion in the Guarantee

Proposed Engagement Principle	Proposed Service Standard
Transparent	<p>Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, that is easy to understand and available in formats that meet their needs.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • ensure that all information, forms, instructions and guidelines are up to date and readily available in various languages and accessible formats and on the NDIS website; • ensure that direct communication with participants and prospective participants is in their preferred format to enable each participant to understand the information for themselves; and • provide clear, consistent, accurate and accessible guidance on the evidence required to demonstrate eligibility for access decisions, including who is qualified to provide this evidence.
Responsive	<p>Participants and people with disability are supported and their independence is maximised by addressing their individual needs and circumstances.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • promptly acknowledge the concerns or queries of participants, their families and carers;

Proposed Engagement Principle	Proposed Service Standard
	<ul style="list-style-type: none"> • intervene early to support the best outcome for participants, provide supports where they have the greatest positive impact and resolve issues as they arise; • utilise planning approaches that respond flexibly to the participant's individual circumstances and needs; • examine their processes and systems regularly to ensure they are fit for purpose as the NDIS evolves and the needs of participants, their families and carers change; • provide an effective single point of contact so that participants, their families and carers only have to tell their story once and are able to build productive relationships with the NDIS. There should be a single point of contact for multiple participants in a family or other strongly connected groups of participants.
Dignity and Respect	<p>Participants and prospective participants are valued, listened to and respected.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • enshrine a participant-centered approach by treating participants, their families and carers with empathy, dignity and respect for their diverse experiences, values and beliefs; • ensure staff have a high level of training in disability, including psychosocial disability and other complex conditions, and understand the impact of disability on people's lives; • ensure staff have a high level of training in diversity, including Aboriginal and Torres Strait Islander cultures, culturally and linguistically diverse values and practices, LGBTQI+ and gender considerations; • recognise participants' expertise about their disability and use the recommendations and evidence provided by qualified professionals to assess support needs; and • demonstrate continuous improvement by inviting, considering and incorporating feedback from people with disability and the wider community.
Empowered	<p>Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • actively and appropriately reach out to prospective participants, including those from Aboriginal and Torres Strait communities, culturally and linguistically diverse

Proposed Engagement Principle	Proposed Service Standard
	<p>backgrounds, regional/remote areas and those with psychosocial disabilities to assist them to connect with the NDIS;</p> <ul style="list-style-type: none"> • assist participants to prepare for their access decisions and planning meetings, and to understand their plans and how to use them, including supporting them to request and receive their approved plan in the format that best suits their needs; • inform participants of their right to bring anyone they choose to help support them through the process; • provide participants and prospective participants with a statement of reasons for all NDIA decisions about them (when requested); • provide all participants with a summary of their planning conversation in a format of their choosing; • inform participants and prospective participants about their right to appeal decisions; and • report on NDIS performance, as set out below in Part 3 of the PSG, as varied from time to time, to ensure the NDIS remains transparent and accountable in its undertakings.
Connected	<p>The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • work constructively and collaboratively with Commonwealth and state and territory government service systems, including through data sharing arrangements, to streamline and reinforce the participant-centered approach; • adapt their approaches to connect with participants, their families and carers in different communities, especially in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities; • ensure that funding for supports is not interrupted if a new plan is not in place by the scheduled review date to provide continuity of support and reduce the overall burden of NDIS-related out-of-pocket costs for participants where possible.

10.12. This review also considers the Guarantee should include a reciprocal engagement principle for participants on the basis that building strong relationships is a two-way process.

Proposed Engagement Principle	Proposed Service Standard
Participant Communications	<p>Participants, prospective participants and their representatives help the NDIA and its Partners in the Community to deliver the best possible experience of the NDIS.</p> <p>Participants and prospective participants will:</p> <ul style="list-style-type: none"> • provide accurate and up-to-date information to support effective NDIA decision making; • inform the NDIA and its Partners in the Community of any significant changes to their needs, circumstances or goals and aspirations; and • provide constructive feedback on their experience of the NDIS in order to support the continued improvement of the NDIS.

Part 2 – Timeframes

Explanation of decision-making

10.13. As discussed in **Chapter 3**, this review considers that the Guarantee should empower an NDIS participant (or prospective participant) to request an explanation of an access, planning or plan review decision made by the NDIA.

10.14. Generally speaking, the explanation should:

- a. be provided in an accessible format of their choice;
- b. be set out in a clear and logical manner than is easy to read and understand”
- c. set out material findings of fact of the matter;
- d. the evidence and information considered in making the decision;
- e. provide a basis for conclusions reached, and the reasoning leading to the outcome in the matter; and
- f. offer advice about any right of appeal, including the time allowed to apply for the appeal and how to apply.

10.15. This review considers that it is reasonable for this explanation to be provided within 28 days, rather than a shorter timeframe.

Table 3: Timeframes for inclusion in the Guarantee - explanation of decisions

Decision	Current Timeframe	Timeframe from 1 July 2020
Request an explanation of a decision	Nil	28 days

Access decisions

10.16. As discussed in [Chapter 5](#), this review does not find a compelling reason to amend the current legislated timeframes for the NDIA to make an access request decision. However, this review does consider that a prospective participant should be given more than the 28 days currently provided to source material relevant to their access request, if requested to provide additional information by the NDIA. This review recommends extending this period to 90 days, with provision for the NDIA to specify a longer period. The NDIA should also be required to make all reasonable efforts to contact a prospective participant before the access request is deemed to be lapsed.

Table 4: Timeframes for inclusion in the Guarantee (access)

Decision	Current Timeframe	Timeframe from 1 July 2020
Initial CEO Access decision, or request for more information	21 Days	21 Days
Participant to provide information	28 days before access request lapses	90 days and access request only lapses after NDIA makes all reasonable efforts to contact
CEO decision after more information provided	14 Days	14 Days

Planning and plan review decisions

10.17. In considering timeframes for decision-making in relation to planning and plan review processes, it is important to balance NDIA capacity and capability against community expectations. Importantly, delivering and reporting on the timeframes set out in the Guarantee will require a substantial redesign of the NDIA's existing ICT and workflow management tools, and increased resourcing. As it will take at least 12 months post implementation for the NDIA to have the tools, this review considers that a staggered implementation is appropriate.

10.18. As discussed in [Chapters 6 and 7](#), this review considers the Guarantee should include several new timeframes for the planning process, including the offer of a planning meeting after an access decision and a plan implementation meeting following approval of the statement of participant supports. This review also considers that, at maturity, it would be expected that a participant will have a plan put in place no more than eight weeks after an access request decision. Importantly, in adhering to the timeframes set out in the Guarantee, this review

considers it is more important that the plan be approved in that eight week timeframe, even if the planning meeting could not occur within the 21 day timeframe.

10.19. This review does not, however, find a compelling reason to amend the timeframes for providing a copy of a plan to a participant following the approval of a participant's plan.

Table 5: Timeframes for inclusion in the Guarantee (planning)

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating the preparation of a plan	As soon as reasonably practicable	21 days following access decision.	21 days following access decision.
Approve statement of participant supports	As soon as reasonably practicable	70 days following access decision	56 days following access decision
Offer and hold a plan implementation meeting	Nil	28 days following the plan being approved ²²	28 days following the plan being approved ²³
Plan copy provided to participant following approval of statement of participant supports	7 Days	7 Days	7 days

10.20. As discussed in [Chapter 8](#), this review considers the Guarantee should include several new timeframes relating to unscheduled and scheduled plan reviews, as well the new plan amendment process.

10.21. In keeping with the proposed timeframes for facilitating a participant's first plan, this review considers that, at maturity, the NDIA should commence a participant's scheduled plan review at least five weeks before the scheduled review date, to enable a seamless move from one plan to another, with a new plan in place by the scheduled plan review date.

10.22. In supporting the proposed new plan amendment process where a plan may be changed without requiring a plan review to be undertaken, this review considers that it is reasonable to expect, once the original decision has been made, the amendment to the plan will occur within 28 days.

10.23. This review has proposed reserving the formal plan review process for situations where participants have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new

²² Subject to the availability of the participant

²³ Subject to the availability of the participant

goal. On this basis, and in keeping with the intent of the plan amendment power, it seems reasonable that the NDIA should undertake and complete an unscheduled plan review within four weeks following the decision to conduct it.

- 10.24. Furthermore, this review considers that the current process for deeming an unscheduled plan review decision should be reversed, such that if the NDIA does not make a decision in the prescribed period, then the NDIA is taken to have agreed to undertake the unscheduled review. However, and due in-part to the operational resources required to undertake a full plan review, it is reasonable to provide the NDIA with up to 21 days to make the decision before deeming it.
- 10.25. As discussed in [Chapter 9](#), in undertaking an internal (merits) review the NDIA consider more than the documentation made available to the delegate responsible for making the decision in question. As such, the merits review process is broader than a simple desktop audit of the decision, which could ordinarily be completed quickly.
- 10.26. On the basis that the NDIA may seek additional information from a participant, or prospective participant, it seems reasonable that at maturity, an internal merits review should be completed within a period of 60 days, unless an extended period is agreed mutually between the parties.

Table 6: Timeframes for inclusion in the Guarantee (plan review and amendment)

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating a scheduled plan review	Nil	No later than 56 days before the scheduled review date	No later than 42 days before the scheduled review date.
Review - deciding to undertake an unscheduled review, prior to deemed decision.	14 Days	21 days	21 days
Review - undertaking an unscheduled review	As soon as reasonably practicable	28 days following the decision to undertake it	28 days following the decision to undertake it
Plan amendment	Nil	28 days following the making of the decision	28 days following the making of the decision
Plan copy provided to participant following plan amendment	Nil	7 Days	7 days
Review - undertaking an internal review	As soon as reasonably practicable	90 days	60 days

10.27. As discussed in [Chapter 10](#), this review considers that a new timeframe should be introduced to require the NDIA to amend a plan in line with an AAT decision within 28 days. This would be in keeping with the timeframe proposed for the new plan amendment process.

Table 7: Timeframes for inclusion in the Guarantee (AAT)

Decision	Current Timeframe	Timeframe from 1 July 2020
Review - implementing a plan variation from an AAT decision	Nil	28 days

10.28. Notwithstanding the timeframes specified in [Tables 1 to 5](#) above, this review considers that the NDIA should not be penalised where the timeframe cannot be met because actions are required by the prospective participant or participant. For example, in order to complete an unscheduled plan review, a participant may need to provide further information of their functional impact of their impairment. In that instance, this review considers that the NDIA should make the decision, or do the thing set out in the Guarantee, within 14 days of receiving the information that was requested from the participant, or the timeframe set in the Guarantee, whichever is later.

Other timeframes not prescribed

10.29. Although not expressly discussed in previous chapters, this review has also considered the timeframes relating to the appointment and cancellation of nominees to the extent that they impact participants' experience of NDIA decision-making.

10.30. Currently, the NDIS Act does not prescribe a timeframe for the NDIA to cancel the appointment of a nominee following the request of a participant. This review considers that the Guarantee should provide for this, aligned to the 14 day timeframe for the NDIA to cancel the appointment of the nominee they initiated. This would be in keeping with the intent that the NDIA should act quickly in accordance with participant wishes and expectations.

10.31. This review does not, however, find any compelling reason to amend the timeframes for nominees to appeal an action by the CEO to suspend their appointment.

Decision	Current Timeframe	Timeframe from 1 July 2020
Cancel participant requested nominee	As soon as reasonably practicable	14 Days
Cancel CEO initiated nominee	14 Days	14 Days
Appealing the suspension of a nominee	28 Days	28 Days

Special circumstances

- 10.32. As previously discussed, strict adherence to timeframes at the expense of quality decision making may result in perverse outcomes for participants. Therefore, any move to prescribe strict timeframes for decision-making needs to be balanced against the reality that, for some participants, their needs and circumstances may be sufficiently complex, such that the timeframe cannot be met without compromising their experience.
- 10.33. However, irrespective of the complexity of a participant's circumstances, they should still have certainty around when a decision will be made by the NDIA, particularly in regard to the process of developing a plan, amending it, reviewing it, or reviewing a decision the NDIA made.
- 10.34. The Guarantee should allow, if a plan amendment, plan review or internal review could not be made within the timeframes set out above without comprising the quality of the participant's experience, that the timeframe can be extended by up to 50 per cent, but only where certain (limited) circumstances apply.
- 10.35. This review considers that those circumstances would be where the participant:
 [NDIA to provide advice on when it is appropriate to extend - need meat on this as we can legislate decision timeframes based on broad percentages - the legislation is based on an individual]
- a. has severe and multifaceted disability requirements requiring multiple supports;
 - b. the involvement of multiple service systems, such as health, justice, child protection; and
 - c. the need for complex home modifications and/or assistive technology.
 - d. [Query - need to consider how these butt up against the new criteria for unscheduled plan reviews - we are restricting unscheduled reviews to similar circumstances - seems odd to say then those same criteria apply in giving the NDIA a longer period to make the decision]
- 10.36. This review also considers that, should the NDIA determine that one or more of these criteria apply and that the decision cannot be made within the timeframe specified in the Guarantee, the NDIA must inform the participant, providing the reasons for that decision and providing certainty about the timeframe in which the decision will be made. This will provide important transparency around the administration of, and reasoning supporting, NDIA decisions.

Part 3 – Performance Metrics

- 10.37. Section 174 of the NDIS Act currently sets out that the NDIA Board must provide DRC with a quarterly report on the operations and performance of the NDIA. This report must include information (including statistics) that relates to either or both of

the following in the period to which the report relates: participants in the NDIS, and the funding or provision of supports by the NDIA.

- 10.38. The existing participant satisfaction metric included in quarterly reports indicates an overall satisfaction rate of around 90 per cent. However, this review has heard that participants strongly disagree with the way satisfaction is measured and does not reflect a true measurement of the participant experience. This is despite recent changes to measure satisfaction at a number of points in the participant's NDIS journey.
- 10.39. In particular, this review has heard that the current satisfaction metric is gathered at the end of the planning conversation, but before the plan is approved. In doing so, it does not accurately assess a participant's satisfaction with the final plan, or with the engagement by the NDIA to support participants to implement their plan.
- 10.40. This review therefore considers that a new measure of participant satisfaction designed by an independent third party should be implemented by the NDIA, and that reporting on this measure be included in the quarterly reports.
- 10.41. This review also considers that the quarterly reporting requirement should be expanded to include a report on the NDIA's performance in delivering against each measure set out in the Guarantee, and specifically:
- a. activities undertaken or improvements made in the quarter in relation to each qualitative service standard;
 - b. the average response or decision time against each timeframe;
 - c. the percentage of decisions made in excess of each timeframe; and
 - d. as a proportion of total participants and business as usual targets and expectations, the number of:
 - a. access decisions made;
 - b. scheduled plan reviews initiated and completed;
 - c. unscheduled plan reviews initiated and completed;
 - d. plan amendments initiated and completed;
 - e. internal reviews initiated and completed;
 - f. applications to AAT, both those settled before a substantive hearing and those progressing to tribunal; and
 - e. average plan duration.
- 10.42. It is expected the NDIA would embed both the qualitative and quantitative aspects of the Guarantee through its own robust quality assurance practices. In the instance where the NDIA is unable to report on, or is not yet achieving, a particular measure, the quarterly report should also include details on the activities undertaken by the NDIA in the quarter, or will undertaken in future quarters, to meet it. This will provide a clear line of sight as to the NDIA's capacity and performance in delivering an improved participant experience.

The legislated form of the Guarantee

- 10.43. Notwithstanding that the Guarantee is anticipated to commence from 1 July 2020, the NDIS as a system will be subject to continuous evolution. As a result, the Guarantee needs to be sufficiently flexible and responsive to prevailing circumstances as they evolve.
- 10.44. Therefore, this review considers it would be appropriate to introduce the Guarantee as a new Category C rule, which would allow the Commonwealth Minister responsible for the NDIS to update the Guarantee from time-to-time with the majority agreement of the Commonwealth and states and territories.
- 10.45. A Category C rule is proposed on the basis that rules currently made under the NDIS Act relating to timeframes for NDIA decision-making are Category C. In addition, reflecting on the ongoing role of states and territories in the governance of the scheme, and as agreed through bilateral agreements between the Commonwealth and each state and territory for full scheme, it would seem appropriate that the rule making power relating to the Guarantee would also be a Category C rule.
- 10.46. As this will be the first version of the Guarantee legislated, this review also considers the Guarantee should be reviewed within the first two years of its operation to ensure it continues to be fit for purpose.
- 10.47. For the avoidance of doubt, this review also considers that relevant timeframes legislated in the NDIS Act be removed and instead included in a new Guarantee rule; for instance the current 21 day period for the CEO to make an access request decision. This will ensure there is one consolidated location for all timeframes associated with the participant's journey through the NDIS.

Recommendation 20: That the Guarantee be legislated through a new Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision-making move from the NDIS Act to the new rule;
- b. the proposed timeframes, quality indicators and performance metrics;
- c. participants (and prospective participants) being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. a new, independently designed participant satisfaction survey to be introduced; and
- e. the Guarantee to be reviewed within two years of being enacted.

The role of the Commonwealth Ombudsman

- 10.48. The Australian Government has committed \$2 million, across 4 years from 2020-21, to allow the Commonwealth Ombudsman's Office to monitor the NDIA's performance against the Guarantee and to support NDIS participants pursuing complaints about the timeframes for NDIA-decision making they have experienced.
- 10.49. The *Ombudsman Act 1976* currently sets out the Commonwealth Ombudsman's functions, which include investigating the administrative actions of Australian Government departments/agencies, including the NDIA, and prescribed private sector organisations.
- 10.50. The Ombudsman Act also provides the Commonwealth Ombudsman with a range of powers which will facilitate the functions associated with the Guarantee, including the ability to investigate complaints, conduct own motion investigations and compel agencies, within jurisdiction, to provide documentation or information. The Ombudsman Act also gives the Commonwealth Ombudsman jurisdiction to investigate the actions of Commonwealth service providers as if the relevant department or authority had taken those actions.
- 10.51. The Ombudsman's Office will have capacity to investigate individual complaints about the NDIA, based on the Guarantee timeframes outlined, as this would be considered a matter of administration. As a part of this function, the Ombudsman's Office will also monitor complaints with a view to identifying systemic issues. This can be done through data analysis of the complaints received, outreach activity, engagement with other organisations/agencies (such as advocacy organisations) and a range of other activities in order to determine the nature of the issue.
- 10.52. Additionally, the Ombudsman's Office would also conduct ongoing monitoring and reporting of the NDIA's performance against the service standards set within the Guarantee. If systemic issues are identified, the Ombudsman could then decide whether the Ombudsman's Office should progress to conduct an own motion investigation with the NDIA, which may include reviewing practices and procedures.
- 10.53. Notwithstanding the powers already provided for in the Ombudsman Act, there is merit in amending the NDIS Act to clearly establish the Ombudsman's ongoing powers to monitor the NDIA's performance against the Guarantee, as well as to clarify that the Ombudsman has powers to obtain information from the NDIA relevant to their performance in delivering against the Guarantee despite any other provisions in the NDIS Act.

Recommendation 21: That the NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Guarantee

Proposed consequences

- 10.54. This review has considered what should occur if the NDIA fails to meet or work toward the elements contained in the Guarantee.
- 10.55. Firstly, the review considered whether to introduce additional deeming decisions, such that if a timeframe in the Guarantee is not met, that would result in a deemed decision in the positive for the prospective participant or participant. While this would provide more certainty to people with disability around the outcome of NDIA decision-making in the instance where a timeframe is not met, this review considers there would be a substantial risk to the legislative framework in doing so, particularly if it were applied to access or reasonable and necessary decisions. This is because the outcome of a deemed decision in the positive could still be out-of-scope or inconsistent with the legislative requirements.
- 10.56. This review also considered whether a financial penalty to the NDIA should apply. However, this too could create perverse incentives should the NDIA be driven toward making quick but poor quality decisions, in favour of avoiding the financial impact of paying the penalty. Importantly, the consequences of not meeting the Guarantee should work to reinforce the intent of the Guarantee, and not work against it.
- 10.57. Therefore, this review considers that transparency and public accountability is likely to be the most effective tool to drive improved participant outcomes. Therefore, the proposed Guarantee has been designed to make visible areas where it is clear that the NDIA is meeting, or not meeting, elements required to drive improved participant experiences.

CHAPTER 11 – UPDATING THE LEGISLATION

KEY FINDINGS

- ✓ Elements of the NDIS Act are designed around a scheme that was in a launch or transition phase. As of 1 July 2020, when the transition to the NDIS will be completed in all states and territories, aspects of the NDIS Act will be out of date.
- ✓ The NDIS Act should be amended to ensure it is fit-for-purpose in the context of a maturing and evolving scheme that will be truly national from 1 July 2020.
- ✓ The NDIS Rules should also be amended to remove transitional provisions and reflect best-practice drafting standards.

Updating the NDIS Act

- 11.1. Many provisions in the NDIS Act refer explicitly to trial and transition, or “the NDIS launch”. This includes references to the progressive roll-out of the NDIS across Australia and the different phasing arrangements that were to apply in each state and territory (see, for example section 33A of the NDIS Act). As of 1 July 2020, these references will be out of date following the completion of the transition period.
- 11.2. Currently, the NDIS Act differentiates between a ‘host’ and a ‘participating’ jurisdiction. In short, a host jurisdiction is a reference to a state or territory in which the NDIS is operating and a ‘participating’ jurisdiction is a reference to a state or territory where the NDIS Quality and Safeguards Commission is operating.
- 11.3. As the NDIS had not commenced in each state and territory when the NDIS Act first came into force, the NDIS Act needed to be able to differentiate between them. Using the term ‘host jurisdiction’ was the way this was done.
- 11.4. Similarly, the term ‘participating’ jurisdiction was introduced to reflect that states and territories would not all come under the remit of the NDIS Quality and Safeguards Commission at the same time. The Commission commenced operations in New South Wales and South Australia on 1 July 2018, and all other states and territories (except Western Australia) on 1 July 2019. The Commission will commence operations in Western Australia on 1 July 2020.
- 11.5. Because the NDIS is operating across Australia, all jurisdictions are now considered “host” jurisdictions and from 1 July 2020, all jurisdictions will be considered “participating” jurisdictions. It would therefore be appropriate to replace all existing references to ‘host’ or ‘participating’ jurisdictions with ‘states and

territories'. This will reflect that the NDIS is truly a national system of disability support for people with severe and profound disability.

- 11.6. The NDIS Act also differentiates between the registration requirements that would apply to a NDIS provider in a host jurisdiction that is not a participating jurisdiction, and the arrangements that apply to NDIS providers in host jurisdictions that are participating jurisdictions. The former provisions can be removed from 1 July 2020, as there will be no host jurisdictions that are not participating jurisdictions. From 1 July 2020, the registration of all NDIS providers across Australia will be managed by the NDIS Quality and Safeguards Commission and subject to the Commissioner's registration powers at Chapter 4, Part 3A of the NDIS Act and the NDIS rules made for the purposes of that part.
- 11.7. The NDIS Act also references a number of 'firsts'. For example, arrangements that apply to the appointment of the first CEO of the Agency, the first reviewing actuary, the first report that must be provided to the Board about the scheme's performance and the first review of the NDIS Act to occur in 2015. These provisions can also be removed as these events have already occurred.
- 11.8. While none of these changes are strictly required for the NDIS to operate under full scheme arrangements, amending the NDIS Act to reflect a full scheme environment will reduce complexity and confusion, as well as provide an important signal that the NDIS has moved beyond the roll out stage. A full list of the suggested amendments to be made to the NDIS Act is provided at [Appendix D](#).

2015 Independent Review of the NDIS Act

- 11.9. In accordance with existing legislative provisions, the NDIS Act was reviewed in 2015. The purpose of the review was to assess the operation of the NDIS Act, as well as to consider whether or not any amendments could be made to better enable government to further the objects and principles of the NDIS Act.
- 11.10. The 2015 review recommended a number of minor and technical amendments to help governments manage risks proactively, so the NDIS stays on time, on budget and keeps delivering positive outcomes for people with disability. The Review also made a number of recommendations that show there are opportunities to provide greater clarity to the legislative framework. To date, these amendments have yet to be legislated.
- 11.11. This Review considers that any update that is made to the NDIS legislation to give effect to the Guarantee also implements the 2015 Act review recommendations, as agreed by COAG in December 2016 as there is no compelling reason not to proceed with the proposed amendments. These include:
 - f. removing moderating language;

- g. including amendments to reflect the centrality of people with disability and their inclusion in a co-design capacity; and
- h. amending the principles of the NDIS to acknowledge the unique experiences of women and LGBTQIA+ people with disability.

A full list of the amendments to be made to the NDIS Act as a result of the 2015 Review is provided at [Appendix E](#).

Updating the NDIS rules

11.12. A significant number of NDIS Rules were created to give effect to trial and transition periods and will no longer be relevant from 1 July 2020. These include:

- a. the *National Disability Insurance Scheme (Facilitating the Preparation of Participants plans - Australian Capital Territory) Rules 2014* and equivalent rules relating to New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and Western Australia.
- b. the *National Disability Insurance Scheme (Prescribed Programs - New South Wales) Rules 2016*;
- c. the *National Disability Insurance Scheme (Prescribed Program - Western Australia) Rules 2018*;
- d. the *National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*; and
- e. the *National Disability Insurance Scheme (Timeframes for Decision Making) Rules 2013* (to be replaced by a new rule giving effect to the Participant Service Guarantee).

This review considers that these rules should be repealed.

11.13. This review has not considered the SDA Rules as a separate review process is underway to refresh the rules in line with the 2018 Review of the SDA Pricing and Payments Framework. In addition, this review does not propose any amendments to the information disclosure or accounting for compensation rules, as these rules are currently considered broadly fit-for-purpose.

11.14. For all remaining rules made for the administration of the NDIS by the NDIA, this review considers that that these be repealed and replaced with rules that have been drafted in accordance with best practice drafting standards. This will ensure consistency and clarity of interpretation, to correct drafting errors, and remove unnecessary repetition of the NDIS Act, without altering the intention of the rule. In particular, the rules at [Box 8](#) should be repealed and replaced:

Box 5: NDIS Rules recommended to be repealed and replaced

Name of Rule	Description
National Disability Insurance Scheme (Becoming a Participant) Rules 2016	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent (Chapter 5 refers). • Clarify the definition of appropriate medical treatments when considering functional impairment/s as permanent (Chapter 5 refers).
National Disability Insurance Scheme (Children) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Nominees) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Plan Management) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Clarify that supports in plans should usually be described generally, and prescribed specifically in certain (limited) circumstances (Chapter 7 refers). • Allow the NDIA to undertake flexible commissioning models on behalf of participants (Chapter 7 refers). • Redefine plan management as a form of self-management (Chapter 7 refers).
National Disability Insurance Scheme (Supports for Participants) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Strengthen the role of families in early intervention and parental or carer rights to reasonable supports in the home and other forms of respite (Chapter 6 refers). • Recognise the importance of family centered planning approaches for children (Chapter 6 refers). • Clarify the boundaries and responsibilities of the NDIS and other service systems following DRC decisions (Chapters 3 and 6 refers). • Outline the considerations for the provision of funded support coordination in plans (Chapter 7 refers)

Recommendation 22: That the NDIS Act and accompanying rules be amended to:

- a. remove trial and transition provisions; and
- b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act.

The National Disability Strategy

- 11.15. The National Disability Strategy 2010-2020 (the Strategy) provides a ten-year national policy framework for improving the lives of people with disability, their families and Ac carers. It represents the commitment of all Australian governments to a unified, national approach to policy and program development and has a vision of enabling an 'inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. In giving effect to the objects of the NDIS Act, regard must be had for the Strategy as endorsed by COAG on 13 February 2011.
- 11.16. The Strategy helps incorporate the principles of the United Nations Convention on the Rights of Persons with Disabilities into government policies and programs affecting people with disability, their families and carers.
- 11.17. The current Strategy is due to finish at the end of 2020. This Review recognises the disability landscape has changed significantly since the current Strategy was endorsed with COAG, particularly with the introduction of the NDIS. This Review also recognises that governments across Australia are working together to design a new National Disability Strategy to replace the current Strategy from the start of 2021.
- 11.18. Therefore, this review considers the NDIS Act should be amended to have regard for the Strategy as it is in force from time to time rather than referring specifically to the current Strategy that will finish at the end of 2020.

Recommendation 22: That the NDIS Act be amended to reference the National Disability Strategy as in in force from time to time.

- 11.19. Over the last three years, there have been a number of reviews and inquiries that have made recommendations to improve the effectiveness of the current Strategy. These reviews showed that while some things are working well and progress has been made, there is still room for improvement.
- 11.20. This Review considers that the new Strategy should make reference to how it complements and builds on the NDIS by driving improved outcomes for people with disability in all areas of their lives, irrespective of whether or not they are NDIS participants. This includes driving improvements in the performance of mainstream service systems in delivering outcomes for all people with disability.

- 11.21. Despite being the most substantial reform driving the disability policy agenda, the NDIS should not remove governments' policy attention on other aspects of the Strategy, such as learning and skills, employment and accessible communities. The NDIS should be the sole focus and effort of governments as it cannot be the only vehicle through which people with disability receive the services and supports they need to live an "ordinary life".
- 11.22. Rather, it needs to be recognised that the Strategy's focus on improving mainstream services and community access will be vital to ensuring the long-term viability and effectiveness of the NDIS in improving outcomes for people with disability. This is because people with disability use a broad range of Commonwealth, state and territory government-funded services and supports that are outside the scope of the NDIS and all governments have an ongoing responsibility to support the accessibility and inclusion of people with disability in all aspects of their community.

Recommendation 23: The new National Disability Strategy being developed for beyond 2020 should make reference to how it compliments and builds on the NDIS by driving improved outcomes for all people with disability in all areas of their lives.

APPENDIX A

List of organisations who made written submissions to the Review

Organisations
Autism Family Support Association Vic
Public Trustee & Guardian ACT
Barkly Regional Council
Perth Inner City Youth Service Inc
A4: Autism, Aspergers Advocacy Australia
NSW Carers Advisory Council
North Metropolitan Health Service WA
Carers Australia
Dementia Australia
Vision Australia
Prader-Willi Syndrome Australia
Health & Community Solutions
Carers Australia NSW
NSW Government
Ideas
Noah's Ark
South Australian Government
Syndromes without a Name (SWAN)
Mental Health Australia, Community Mental Health Australia and Mental Illness Fellowship of Australia
Women with Disabilities ACT
Tasmanian Government
Alliance20
Darwin Community Legal Service
Maurice Blackburn Lawyers
Occupational Therapy Australia
RoundSquared
Youth Connections
Carers Australia Vic
WA's Individualised Services
Mind Australia
Royal Australian College of Physicians
Solve Disability Solutions
Australian Society of Rehabilitation Counsellors
Scope Australia
Dr Helen Haines MP
ACT Disability Aged and Carer Advocacy Service
Cara Inc South Australia

Victorian Healthcare Assn
Autism Spectrum Australia (Aspect)
Blind Citizens Australia
Public Interest Advocacy Centre
My Plan Manager
Motor Neurone Disease Australia
State Trustees Vic
Mudgeeraba State Special School P&C Association
Settlement Services International
Association for Children with a Disability
Women with Disabilities Vic
Speech Pathology Australia
Mental Health Carers Australia
Queensland Advocacy Inc
Brain Injury SA
Intellectual Disability Rights Service
The Disability Trust
Victorian Council of Social Services
Melbourne Disability Institute
Summer Foundation
Cochlear Ltd, First voice and Cicada
Independent Advocacy in the Tropics
Australian Small Business and Family Enterprise Ombudsman
Dieticians Assn of Australia
Stroke Foundation
National Disability Services
PointZero5
People with Disabilities WA
Advocacy Tasmania
Physical Disability Council of NSW
Mental Health Victoria
Neurodevelopment and Behavioural Pediatric Society of Australasia
Royal Australian College of General Practitioners
Mission Australia
Plan Partners
Community Lifestyle Accommodation Ltd
Purple Orange
Advocacy for Inclusion
The Public Advocate QLD
National Mental Health Commission
Vision 2020 Australia
National Legal Aid
Young People In Nursing Homes National Alliance
Queensland Government

Disability Advocacy Vic, Rights Information and Advocacy Centre, Disability Discrimination Legal Service and Leadership plus
ACT Human Rights Commission
National Disability and Carer Alliance
Department of Communities WA
Every Australian Counts
People with Disability Australia
Commonwealth Ombudsman
Carers Tasmania

** This list contains the name of organisations that made submissions, including Government agencies, to the Review and includes some individuals who made submissions in their professional capacity. The Review received 196 submissions in total (79 from individuals), but not all yet have been authorized for publication.*

APPENDIX B

List of persons and organisations I met with in conducting this Review

Persons and organisations
The Hon. Stuart Robert MP, Minister for the National Disability Insurance Scheme, and senior officials from the Commonwealth Department of Social Services
The Hon. Gareth Ward MP, New South Wales Minister for Families, Communities and Disability Services, and senior officials from the New South Wales Department of Family and Community Services
The Hon. Luke Donellan MP, Victorian Minister for Disability, Ageing and Carers, and senior officials from the Victorian Department of Health and Human Services
The Hon. Coralee O'Rourke MP, Queensland Minister for Disability Services, and senior officials from the Queensland Department of Communities, Disability Services and Seniors
The Hon. Stephen Dawson MLC, Western Australia Minister for Disability Services, and senior officials from the Western Australia Department of Communities
The Hon. Robert Jaensch MP, Tasmanian Minister for Disability Services and Community Development, and senior officials from the Tasmanian Department of Disability and Community Services
Ms Suzanne Orr MLA, Australian Capital Territory Minister for Disability
Senior officials from the South Australian Department of Human Services
Senior officials from the Northern Territory Department of Health
The Chair of the National Disability Insurance Agency (NDIA), the NDIA Board and senior NDIA officials
First Peoples Disability Network
Disability Advocacy Network Australia and other advocacy partners, including: <ul style="list-style-type: none"> • Independent Advocacy in the Tropic • Speak Out Advocacy • VALID • Queensland Advocacy Inc • Leadership Plus • Action for More Independence and Dignity in Accommodation.
Children and Young People with Disability Australia
Every Australian Counts
National Disability Services
Carers Australia
Australian Federation of Disability Organisations
Autism Aspergers Advocacy Australia (A4) and associated member organisations
Community Mental Health Australia
Mental Health Australia
Mental Illness Fellowship of Australia
Brotherhood of St. Lawrence

On my behalf, the Review Secretariat also met with:
Legal Aid Western Australia
Legal Aid Queensland
Legal Aid Victoria
Legal Aid Tasmania
Legal Aid New South Wales
Legal Aid Australian Capital Territory
Office of the Public Advocate Victoria
Legal Services Commission South Australia
Disability Justice Australia

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APPENDIX C

NDIA operational reforms

Participant and Provider Pathway Reforms

- 4.49. Following its 2017 review, the NDIA redesigned the participant pathway to provide more simplified interactions from a participant's perspective and introduced other reforms to improve the participant experience, including:
- a. specific pathways for participants with complex needs, or who enter under the ECEI gateway;
 - b. specific service streams for people with psychosocial disability and hearing loss, to deliver targeted support that provides those participants with an experience more suited to their specific disability needs; and
 - c. service enhancements to meet the communication and engagement needs of people from different backgrounds or areas, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people living in remote and very remote communities, and people who identify as LGBTIQ+.
- 4.50. In June 2019, the NDIA commenced the national roll out of baseline service improvements to give effect to the pathway reforms, including:
- a. a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers;
 - b. a consistent point of contact for participants;
 - c. enhanced planning communication products in a variety of formats;
 - d. face-to-face pre-planning and plan implementation meetings at the discretion of the participant;
 - e. improved linkages between NDIA planners and the Partners in the Community workforce, including LAC's and ECEI Partners; and
 - f. improved training for NDIA planners and Partners in the Community.
- 4.51. Provider improvements have also been rolled out or are underway, including:
- a. more clarity on pricing, following an independent price review in 2017;
 - b. efficiencies to payment processing and the creation of a dedicated provider payment team, including working to develop and implement a solutions that address the root causes of provider payment issues, and developing a payments strategy to support an improved future payments platform;
 - c. the implementation of a National Providers Engagement team who help providers engage with and navigate the NDIS; and
 - d. improved MyPlace provider portal functionality.

Improvements to Assistive Technology

- 4.52. The NDIA has been working to make it easier and quicker for NDIS participants to access Assistive Technology with consideration for better tracking to ensure more timely outcomes. As at 1 July 2019, the NDIA made several process improvements, including:
- a. Assistive Technology under \$1,500 can be purchased without further quotes or approvals once it is approved in a participant's plan;
 - b. planners have clearer guidance to ensure sufficient funding is included in plans for the repair and maintenance of Assistive Technology, and the requirements for replacing worn out or outgrown Assistive Technology have been simplified;
 - c. improved Assistive Technology assessment templates have been released to support better information sharing between professionals and the NDIA; and
 - d. Assistive Technology codes were revised with updated, market-based benchmark prices to minimise delay when considering quotes provided by participants.
- 4.53. In addition, the NDIA has developed and is evaluating more complex process improvements for people with disability requiring Assistive Technology, including:
- a. improvements to processes and systems, plus an independent Assistive Technology assessor panel, to improve the quality and timeliness of recommendations for participants requiring complex and non-standard Assistive Technology; and
 - b. methods to facilitate flexible access for participants with changing needs to the right Assistive Technology when they need it. The development of libraries or loan banks of relevant Assistive Technology, and safe access to refurbished or pre-used Assistive Technology are also being explored with the market.

Improvements to Specialist Disability Accommodation

- 4.54. The NDIA has been working to improve access to SDA for eligible participants and with governments to improve provision of accessible and well-designed housing for people with disability. Reforms already implemented by the NDIA include: establishing a dedicated team to fast-track eligibility decisions and developing an Innovation Plan to detail the actions the NDIA will take to encourage more innovation in SDA and accommodation support models.
- 4.55. This work supplements the actions taken by governments to change the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to give participants greater flexibility in their choice of living arrangements, including who they live with.

Communications, Engagement and ICT

- 4.56. The NDIA is continuing to review its communications approach and has a range of initiatives in place to improve its communications and engagement practices.
- 4.57. In January 2019, the NDIA improved the structure, functionality, accessibility and information available through the NDIS website, through an extensive redevelopment. The website redevelopment includes a clear pathway prominently throughout the website, which was designed with extensive user testing and consultation with key stakeholders such as Blind Citizens Australia and Disability Advocacy Network Australia.
- 4.58. Through 2018-19, the NDIA transitioned the National Contact Centre to a new supplier. This transition has seen a reduction in:
- the average speed of answer (from four minutes and 43 seconds to 28 seconds);
 - a reduction in abandon call rates (from 17.5 per cent to 1.5 per cent);
 - an increase in first contact resolution (from 70 per cent to 85 per cent); and
 - quality score results averaging on 91 per cent.
- 4.59. The NDIA has also released three new participant booklets to support people with disability and participants throughout their NDIS journey. The booklets are intended to be a practical tool to help people with disability, participants, their families, carers and the wider community to learn more about the NDIS, prepare for a planning meeting and to implement their plan. The NDIA has also recently released a suite of information on employment supports available through the NDIS in an easy read format.
- 4.60. In addition, the NDIA has:
- simplified access to and use of interpreting services for NDIS participants, NDIA staff, the Partners in the Community workforce and providers from CALD background;
 - undertaken extensive stakeholder engagement to resolve inconsistencies in terminology and phrases used to describe supports in the NDIS price guide, MyPlace portal and participant plans;
 - provided participants the option to request their plans in the format of their choice (e.g. large font, audio, e-text and braille); and
 - reviewed all existing NDIA publications, fact sheets and brochures to ensure the NDIA is providing up-to-date information that is aligned to recent DRC decisions to make it easy to understand and available in a number of accessible formats and languages.
- 4.61. The NDIA has acknowledged that a good ICT system will reduce administrative burden and ensure consistency of NDIA internal operations and decisions and facilitate improved outcomes for participants. To this end, the NDIA has been working to simplify and streamline existing ICT arrangements and is providing more

assistance to participants and providers to use the portal and make payments and claims.

- 4.62. In August 2019, the NDIA introduced ICT changes to ensure participants can continue to access supports if a plan review is not completed by the scheduled plan review date. This change reflects the NDIS Act, in that a plan does not lapse in the event a scheduled plan review is not completed by the plan review date. The extension also means providers can continue to claim for the supports they have provided until the new plan is approved.
- 4.63. In November 2019, the Agency updated their ICT, planner guidance and public communications to provide the opportunity for participants in a stable situation the ability to have and request plans with a scheduled plan review date of up to three years after the plan is approved. A longer plan review duration means participants can carry on with their lives without needing to go through an annual plan review process.
- 4.64. Other recent changes to the MyPlace Portal include, but are not limited to:
- a. enhancements to the Provider Finder Tool that make it easier for participants to find providers;
 - b. interface and accessibility improvements for participants, including the ability for participants to receive SMS communications when a provider has changed a service booking and an improvements in the way a participants budget is display, including how much funding is committed or used; and
 - c. new functionality for providers that provides greater flexibility in managing service bookings, including a new dashboard for providers to see the participants that they work with.

Workforce training and development

- 4.65. The NDIA has acknowledged that a participant's engagement with NDIA staff, including planners and the Partners in the Community workforce significantly impacts how participants and their families and carers perceive the NDIS. The NDIA has also acknowledged participant feedback that planners do not possess specialist skillsets, particularly in disability awareness, and that there is a need to strengthen communications and training resources, particularly for those planners supporting people with complex needs and vulnerable backgrounds.
- 4.66. To this end, the NDIA has been investing in staff training to support workforce growth and assist in the implementation of the pathways reforms. The NDIA has indicated that their service delivery employees (which includes NDIA Planners and Partners in the Community) undertake a range of training programs prior to supporting participants, including a six week New Starter Program that includes face-to-face, eLearning and on-the-job training. Example modules include:
- a. disability-specific training, including psychosocial awareness;

- b. agency-specific training, including work health and safety, fraud awareness and NDIA induction;
- c. service delivery specific training on the participant pathway. This includes reasonable and necessary supports, mainstream support interfaces, housing, employment support, self-management and AT; and
- d. specific training to support the implementation of disability-related health supports which participants need as a direct result of their disability, and as part of their daily life, through their NDIS plans.

4.67. The NDIA has advised that ongoing training is provided to build and maintain the specialised skillset of planners and partners and that key areas of future focus include:

- a. training in pathways service enhancements and building cultural awareness of Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, and people who identify as LGBTIQ+; and
- b. collaborating with the Disability Advocacy Network of Australia and other peak bodies to raise disability awareness and help improve the participant experience, including through:
 - c. learning for planners on Contemporary Disability Rights;
 - d. videos where participants share their lived experience of their disability; and
 - e. a facilitator led workshop focussing on how the NDIA can be more inclusive and respectful with participants, their families and carers.

Outreach and engagement strategies

4.68. The NDIA has a significant body of work underway to enhance pre-access and engagement for diverse and hard to reach populations. This work is in addition to the pathway service enhancements and local engagement strategies being implemented by NDIA state and territory offices to engage with and facilitate successful contacts with the NDIS for Aboriginal and Torres Strait Islander and CALD populations as well as people with psychosocial disability.

Aboriginal and Torres Strait Islander communities

4.69. The NDIA has entered into 31 Aboriginal Community Controlled Organisations across Western Australia, the Northern Territory, South Australia and Queensland servicing 244 communities to employ local community connectors in remote areas. This program, referred to as the Remote Community Connector (RCC) Program, is a cultural brokerage which aims to engage, inform and assist people from Aboriginal and Torres Strait Islander backgrounds and rural and remote communities through the NDIS pathway process. The RCC program has proven to be critical in supporting the rollout of the scheme in remote and very remote regions and is in the process of expanding to more communities.

4.70. The NDIA is also undertaking targeted engagement in remote and rural schools to raise access about the NDIS. The NDIA is also working closely with the local shire,

particularly Early Learning Centres to build awareness of the NDIS and identify potential participants. Engagement focuses on information exchange and building trust with elders and members of the community to build trust before being invited to work within a community.

- 4.71. The NDIA is also engaging of Aboriginal Community Controlled Organisations, at a national, state and territory and community level to work collaboratively on resolving issues in local communities, including the cost, availability and accessibility of culturally appropriate services, access to assessments, and build trust in the scheme and the benefits it can offer the community. A pilot program is operating in South-East Queensland to support at least 500 Aboriginal and Torres Strait Islander people to access the NDIS and through the pre-plan and plan build cycle.
- 4.72. The NDIA and Partners are also supporting local Aboriginal engagement initiatives, working with and attending local community days and event to support engagement and understanding of the NDIA, and developing targeted communication products for Aboriginal and Torres Strait Islander communities.

People from CALD backgrounds

- 4.73. The NDIA has enhanced language navigation tools for the NDIS website and key NDIS participant planning information in languages other than English. The NDIA is also engaging with language interpreters to support their understanding of the NDIS so when they are called to support individuals they are confident with terminology and able to assist in getting the best out of interactions for people in communities.
- 4.74. The NDIA has also entered into partnerships with National Ethnic Disability Alliance to improve engagement with CALD communities in targeted locations, in particular through the Department of Social Services Humanitarian Support Program, which assists new arrivals in Australia. The NDIA is also working actively with settlement services and multicultural support services to educate and inform support workers and case managers on the NDIS, providing additional trusted people in communities to support people from culturally diverse communities to identify potential participants and support them to engage with the NDIS.
- 4.75. The NDIA currently employs two Cultural Liaison officers in South east Queensland to work with CALD population to engage, inform and assist people from CALD backgrounds through the NDIS pathway process. In time, this will be expanded to cover more communities across Australia through the national community connector program and employ local people from local communities to be trusted and informative sources supporting access to and use of the NDIS.

People with psychosocial disability

- 4.76. The NDIA has implemented a number of pathway enhancements for participants with psychosocial disability and has been working with all governments, Mental

Health Australia and other sector stakeholders to examine what further improvements could be made to improve outreach and referral services to bring people with psychosocial disability into the NDIS. This work includes:

- a. streamlined access processes that supports prospective participant to verbally begin their access request with a support worker or another trusted person;
- b. new resources to resolve confusion about the information needed to demonstrate evidence of disability for people with psychosocial disabilities;
- c. enhancing the role of Partners in the Community and Community Connectors to undertake outreach and support to increase access to the NDIS for people with psychosocial disability, with role specifications completed by April 2020, following which new information and marketing strategies will be rolled out;
- d. projects to support Primary Health Networks and provider organisations to support people transitioning to the NDIS from Commonwealth mental health programmes;
- e. improving linkages and referrals to mainstream mental health supports and the community mental health sector for people not eligible for the NDIS, with new arrangements commencing from March 2020;
- f. establishing a new psychosocial disability recovery framework, including a new psychosocial recovery coach support pricing item by 1 July 2020; and
- g. strengthening information sharing and working arrangements between Commonwealth, state and territory governments and the NDIA, including the provision of six-monthly NDIS data reports (June and December) on psychosocial disability for jurisdictions to monitor developments.

APPENDIX D

Provisions in the NDIS Act to revoke, or amend, from 1 July 2020

Section	Currently states	Description
3(d)	<p><i>The objects of this Act are to...</i></p> <p>Provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and</p>	Strike the word 'launch'.
3(2a)	<p><i>These objects are to be achieved by...</i></p> <p>providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and</p>	Strike the word 'launch'.
3(3a)	<p>In giving effect to the objects of the Act, regard is to be had to...</p> <p>a. the progressive implementation of the National Disability Insurance Scheme.</p>	Strike point a.
3(3ci)	<p>In giving effect to the objects of the Act, regard is to be had to...</p> <p>the broad context of disability reform provided for in:</p> <p>(i) the National Disability Strategy 2010-2020 as endorsed by COAG on 13 February 2011;</p> <p>and</p>	Add 'and as updated from time to time' after 13 February 2011.
4(17a)	<p>It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the CEO, the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to:</p> <p>a. the progressive implementation of the National Disability Insurance Scheme; and</p>	Strike point a.

Section	Currently states	Description
	b. the need to ensure the financial sustainability of the National Disability Insurance Scheme.	
8	Depending on where a person with disability lives, he or she may receive supports or services from registered providers of supports (Part 3 of Chapter 4) or from registered NDIS providers (Part 3A of Chapter 4). Supports and services may also be received from providers who are not registered.	Strike 'from registered providers of supports (Part 3 of Chapter 4) or'
8	This Act also provides for the establishment of the National Disability Insurance Scheme Launch Transition Agency (Chapter 6).	Strike 'Scheme Launch Transition'
9	Agency means the National Disability Insurance Scheme Launch Transition Agency established by section 117.	Strike 'Scheme Launch Transition'
9	FaHCSIA agreement means the enterprise agreement known as the Department of Families, Housing, Community Services and Indigenous Affairs Enterprise Agreement 2012-2014 approved on 24 April 2012 in decision [2012] FWAA 3549.	Strike definition
9	Host jurisdiction has the meaning given by section 10.	Strike definition
9	National Disability Insurance Scheme means: <ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to a prescribed area; and c. the arrangements referred to in paragraph (b) as they apply when those arrangements are not limited on the basis of residence in a prescribed area. 	Strike everything after Chapter 3 in point b.
9	National Disability Insurance Scheme launch means:	Strike definition

Section	Currently states	Description
	<ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to the prescribed area. 	
9	<i>participant</i> means a person who is a participant in the National Disability Insurance Scheme launch (see sections 28, 29 and 30)	Strike 'launch'
9	<i>Participating jurisdiction</i> has the meaning given by section 10A	Strike definition
9	<i>Prescribed area</i> means an area prescribed by the National Disability Insurance Scheme rules for the purposes of paragraph 22(2)(a) or subsection 23(3).	Strike definition.
9	<p><i>registered plan management provider</i> means:</p> <ul style="list-style-type: none"> a. for a provider providing supports to a participant in a participating jurisdiction—an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a); or b. otherwise—a registered provider of supports who is approved in relation to managing the funding for supports under plans as mentioned in paragraph 70(1)(a). 	Strike point b.
9	<i>Registered provider of supports</i> means a person or entity approved under section 70 as a registered provider of supports.	Strike definition.
10	<p>Definition of <i>host jurisdiction</i></p> <p>The Minister may, by legislative instrument, specify that a State or Territory is a <i>host jurisdiction</i>, with the agreement of that State or Territory.</p>	Strike definition

Section	Currently states	Description
	<p><i>Note:</i> Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</p>	
10A	<p>Definition of <i>participating jurisdiction</i></p> <p>The Minister may, by legislative instrument, specify that a host jurisdiction is a participating jurisdiction, with the agreement of that host jurisdiction.</p> <p><i>Note:</i> Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</p>	Strike definition
18	<p>Person may make a request to become a participant</p> <p>A person may make a request (an <i>access request</i>) to the Agency to become a participant in the National Disability Insurance Scheme launch.</p>	Strike 'launch'
21(2)	<p>If the CEO is not satisfied as mentioned in subsection (1), the person <i>meets the access criteria</i> if the CEO is satisfied of the following:</p> <ul style="list-style-type: none"> a. at the time of considering the request, the person satisfies the requirements in relation to residence prescribed as mentioned in subsection 23(3) (whether or not the person also satisfies the requirements mentioned in subsection 23(1)); 	Strike point a.
22(1-2)	<p>(1) A person <i>meets the age requirements</i> if:</p> <ul style="list-style-type: none"> a. the person was aged under 65 when the access request in relation to the person was made; and b. the person satisfies any other requirements in relation to age that are prescribed by the National Disability Insurance Scheme rules. 	Strike 1(b) and all of point 2

Section	Currently states	Description
	<p>(2) Without limiting paragraph (1)(b), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <ul style="list-style-type: none"> a. may prescribe that a person must be a prescribed age on a prescribed date or a date in a prescribed period only if the person resides in a prescribed area of Australia; and b. may prescribe different ages and different dates in relation to different areas of Australia. 	
23(1-3)	<p>(1) A person <i>meets the residence requirements</i> if the person:</p> <ul style="list-style-type: none"> a. resides in Australia; and b. is one of the following: <ul style="list-style-type: none"> i. an Australian citizen; ii. the holder of a permanent visa; iii. a special category visa holder who is a protected SCV holder; and c. satisfies the other requirements that are prescribed by the National Disability Insurance Scheme rules. <p>(2) In deciding whether or not a person resides in Australia, regard must be had to:</p> <ul style="list-style-type: none"> a. the nature of the accommodation used by the person in Australia; and b. the nature and extent of the family relationships the person has in Australia; and c. the nature and extent of the person's employment, business or financial ties with Australia; and d. the nature and extent of the person's assets located in Australia; and e. the frequency and duration of the person's travel outside Australia; and 	Strike 1(c) and all of point 3

Section	Currently states	Description
	<p>f. any other matter relevant to determining whether the person intends to remain permanently in Australia.</p> <p>(3) Without limiting paragraph (1)(c), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <p>a. may require that a person reside in a prescribed area of Australia on a prescribed date or a date in a prescribed period in order to meet the residence requirements; and</p> <p>b. may require that a person has resided in a prescribed area for a prescribed period in order to meet the residence requirements; and</p> <p>c. may require that a person continue to reside in a prescribed area of Australia in order to meet the residence requirements; and</p> <p>d. may require that a person satisfy a prescribed requirement relating to either or both of the following:</p> <ol style="list-style-type: none"> i. the purpose for which the person resides in a particular geographical area; ii. exceptional circumstances applying in relation to the person. 	
28(1)	<p>When a person becomes a participant</p> <p>(1) A person becomes a participant in the National Disability Insurance Scheme launch on the day the CEO decides that the person meets the access criteria.</p>	Strike 'launch' from point 1.
29(1)	<p>When a person ceases to be a participant</p> <p>(1) A person ceases to be a participant in the National Disability Insurance Scheme launch when:</p> <p>a. the person dies; or</p>	Strike 'launch' from point 1.

Section	Currently states	Description
	<ul style="list-style-type: none"> b. the person enters a residential care service on a permanent basis, or starts being provided with home care on a permanent basis, and this first occurs only after the person turns 65 years of age; or c. the person's status as a participant is revoked under section 30; or d. the person notifies the CEO in writing that he or she no longer wishes to be a participant. <p>Note: <i>Residential care service</i> and <i>home care</i> have the same meanings as in the <i>Aged Care Act 1997</i>.</p>	
30(1)	<p>Revocation of participant status</p> <p>(1) The CEO may revoke a person's status as a participant in the National Disability Insurance Scheme launch if:</p> <ul style="list-style-type: none"> a. the CEO is satisfied that the person does not meet the residence requirements (see section 23); or b. the CEO is satisfied that the person does not meet at least one of the following: <ul style="list-style-type: none"> i. the disability requirements (see section 24); ii. the early intervention requirements (see section 25). <p>(2) The CEO must give written notice of the decision to the participant, stating the date on which the revocation takes effect.</p>	Strike 'launch' from point 1
32A	Rules about preparation of plans	Strike entire section
33(6)	To the extent that the funding for supports under a participant's plan is managed by the Agency, the plan must provide that the supports are to be provided only by:	Strike points a and b. Strike 'only' and add 'a

Section	Currently states	Description
	<ul style="list-style-type: none"> a. for supports provided to a participant in a participating jurisdiction—a registered NDIS provider; or b. otherwise—a registered provider of supports. 	registered NDIS provider’ to the end of the heading.
55(2)	<p>Power of CEO to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme</p> <p>(2) The matters are as follows:</p> <ul style="list-style-type: none"> a. whether a prospective participant meets the access criteria; b. whether a participant continues to meet the access criteria; c. whether a person purporting to act on a person’s behalf for the purposes of this Act has the authority to do so; d. the preparation or review of a participant’s plan; e. the monitoring of supports funded for, or provided to, a participant; f. whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant’s plan; g. whether a participant or other person has complied with section 46; h. whether a participant receives: <ul style="list-style-type: none"> i. supports or funding through a statutory compensation scheme or a statutory care or support scheme; or ii. any other disability support; i. whether an applicant for approval as a registered provider of supports meets the criteria for approval; 	Replace ‘registered provider of supports’ in points i and j with “registered NDIS provider’

Section	Currently states	Description
	<ul style="list-style-type: none"> j. whether a registered provider of supports continues to meet the criteria for approval; k. the functions of the Agency. 	
Chapter 4, Part 3	Registered Providers of Support	Strike entire part
s.99	Reviewable decisions and decision-makers	Strike items 7 and 8 in the table at 99(1)
Chapter 6	<p>Chapter 6 - National Disability Insurance Scheme Launch Transition Agency</p> <p>Part 1 - National Disability Insurance Scheme Launch Transition Agency</p> <p>s.117 Establishment</p> <p>(1) The National Disability Insurance Scheme Launch Transition Agency is established by this section.</p>	Strike 'Scheme Launch Transition' in Chapter and Part heading and in 117(1).
144 (1)	<p>Function of the Advisory Council</p> <p>(1) The Advisory Council's function is to provide, on its own initiative or at the written request of the Board, advice to the Board about the way in which the Agency:</p> <ul style="list-style-type: none"> a. performs its functions relating to the National Disability Insurance Scheme; and b. supports the independence and social and economic participation of people with disability; and c. provides reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and 	Strike 'launch from point 1(c)

Section	Currently states	Description
	<ul style="list-style-type: none"> d. enables people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and e. facilitates the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and f. promotes the provision of high quality and innovative supports to people with disability; and g. raises community awareness of the issues that affect the social and economic participation of people with disability, and facilitates greater community inclusion of people with disability. 	
144(3)	<p>(3) Advice provided by the Advisory Council must not relate to:</p> <ul style="list-style-type: none"> a. a particular individual; or b. the approval of a person or entity as a registered provider of supports or the revocation of that approval; or <ul style="list-style-type: none"> (ba) the registration of a person or entity as a registered NDIS provider, or the variation, suspension or revocation of that registration; or c. the corporate governance of the Agency or the Commission; or d. the money paid to, or received by, the Agency. 	Strike point b.
160(6-8)	<p>(6) Despite subsection (1), the first CEO is to be appointed by the Minister.</p> <p>(7) Before the Minister makes an appointment under subsection (6), the Minister must consult the host jurisdictions about the appointment.</p>	Strike sections 6, 7 and 8

Section	Currently states	Description
	(8) This Part (other than subsection (1)) applies to the CEO appointed under subsection (6) as if the CEO had been appointed under subsection (1).	
171A	Transitional provisions for staff of the Agency Schedule 1 has effect	Strike.
174(5)	<i>Quarterly report to the Ministerial Council - First report</i> (5) If this section commences on a day other than a day (a <i>quarter start day</i>) mentioned in paragraph (1)(a): <ul style="list-style-type: none"> a. the Board members are not required to prepare a report for the period ending immediately before the next quarter start day; and b. the first report under this section must be for the period: <ul style="list-style-type: none"> i. starting on the day this section commences; and ii. ending immediately before the second quarter start day after the day this section commences. 	Strike all of point b.
180D(5)	<i>Reviewing actuary for first 3 years</i> (5) The Board must nominate the Australian Government Actuary under subsection (1) as the first reviewing actuary, as soon as reasonably practicable after the commencement of this section. The nomination has effect for 3 years, despite subsection (2) of this section and subsection 33(3) of the <i>Acts Interpretation Act 1901</i> , but subject to subsection (3) of this section.	Strike.
203(1)	Application of Act to unincorporated bodies (1) This Act applies to an entity that:	Strike points a and b.

Section	Currently states	Description
	<ul style="list-style-type: none"> a. is a registered provider of supports; or b. wishes to apply for approval as a registered provider of supports; or c. is a registered NDIS provider; or d. wishes to apply for registration as a registered NDIS provider; or e. is an NDIS provider; <p>as if the entity were a person, but with the changes mentioned in subsections (3), (4) and (5).</p>	
Chapter 7, Part 4	Review of the Act	Strike entire part.
209(5)	<p>(5) The Minister must not make Category B National Disability Insurance Scheme rules relating to:</p> <ul style="list-style-type: none"> a. an area, law or program of a host jurisdiction; or b. the commencement of the facilitation of the preparation of plans of participants who are identified (wholly or partly, and directly or indirectly) by reference to a host jurisdiction; unless the host jurisdiction has agreed to the making of the rules. 	Strike point b.
Schedule 1	Transitional provisions for staff of the Agency	Strike entire Schedule.
If not addressed through the amendments as proposed above....		
Other references to launch	179	Strike reference

Section	Currently states	Description
References to 'host jurisdictions'	120(4), 121(3), 125(3), 131(2), 134(3), 134(4a), 134(3bii), 135(2), 151(2), 155(3), 155(4)a, 155(4bii), 156(2), 173(2), 174(2a), 174(2b), 175(1a), 175(1b), 175(2)(a), 175(2)(b), 175(2)(c), 179, 201(2), 207(2)(note), 209(4), 209(5a), 209(6), 209(7), 210(2)(a), 210(2b)	Strike reference, replace with 'states and territories'.
References to 'participating jurisdictions'	Definition of 'registered plan management provider' (point a), 73A, 73E(1b)	Strike reference, replace with 'states and territories'

APPENDIX E

2015 NDIS Act Review Recommendations

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
1.	Amend principles that directly reference carers so that they align with the 'recognise and respect' terminology of the Carer Recognition Act 2010 (Cth).	Agreed	Supported	<p>Add a new subsection after 4(12) which reads: <i>"(12A) The relationship between people with disability and their carers is to be recognised and respected."</i></p> <p>After a new paragraph after 31(c) which reads: <i>"(ca) where relevant, recognise and respect the relationship between participants and their carers; and"</i></p>
2.	Amend section 5(d) to reference lesbian, gay, bisexual, transgender and intersex status.	Agreed	Supported	<p>Remove "<i>and the gender</i>" from paragraph 5(d) and add "<i>and the sex, gender, gender identity, sexual orientation and intersex status of people with disability</i>". The subsection will then read: <i>"(d) the cultural and linguistic circumstances, and the sex, gender identity, sexual orientation and intersex status of people with disability should be taken into account."</i></p>
3.	Amend relevant principles to remove moderating language (e.g., 'to the extent of their ability' and 'to the full extent of their capacity').	Agreed	Supported	<p>Remove "<i>to the extent of their ability</i>" in subsection 4(2) and "<i>to the full extent of their capacity</i>" in subsection 4(8).</p>

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
4.	Add a new principle to section 4 that reflects the concepts of the centrality of people with disability and co-design.	Agreed	Supported	The proposed new subsection 4(9)(a) will read: <i>“(9A) People with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity”</i>
5.	Add a new principle to section 4, reflecting the importance of a diverse and sustainable market that provides choice and control and high quality supports to people with disability.	Agreed	Supported	Remove existing subsection 4(15) and add: <i>“(15) In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted.”</i>
6.	Provide greater definition on ILC in the legislative framework.	Agreed	Supported	Remove existing subsection 14(a), and replace it with: <i>“(a) for the purposes of enabling those persons or entities to provide information in relation to disability and disability supports or services; or</i> <i>(ab) for the purposes of enabling those persons or entities to provide assistance in building capacity within the community in connection with the provision of goods and services to people with disability and their families and carers; or</i> <i>(ac) for the purposes of enabling those persons or entities to assist people with disability to realise their potential for physical, social, emotional and intellectual development; or</i> <i>(ad) for the purposes of enabling those persons or entities to assist people with disability, and their</i>

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
				<i>families and carers, to participate in social and economic life; or</i>
7.	Clarify the intent of section 17A (relative to sections 4 and 5).	Agreed	Supported	<p>Add a subsection under section 17A which requires the NDIA Chief Executive Officer (CEO) to take into account the principles outlined in section 4 of the NDIS Act.</p> <p>The proposed subsection 17A(1A) will read: <i>"(1A) In performing the CEO's functions and exercising the CEO's powers under this Chapter, the CEO must have regard to the principles in this section."</i></p> <p>The proposed subsection 17A(4) will read: <i>"(4) The principles in this section are in addition to the principles in section 4 to which the CEO is to have regard in performing the CEO's functions and exercising the CEO's powers under this Act."</i></p>
8.	Amend the legislative framework to include principles on how the disability requirements are intended to operate for people with chronic health conditions.	Agreed	Supported pending further policy development	While there is merit in clarifying the boundaries of the NDIS and chronic health conditions, further policy development is required to support a legislative framework that does not create perverse outcomes for people with disability.
9.	Remove section 24(1)(e) (unless this requirement is amended to support recommendation 8).	Agreed	Supported pending further policy development	While there is merit in clarifying the boundaries of the NDIS and chronic health conditions, further policy development is required to support a legislative framework that does not create perverse outcomes for people with disability.
10.	Amend section 29 to include a 'cooling-off period', during which a participant's	Noted	Out of Scope	In accordance with COAG's view, this review considers the NDIA should consider incorporating the recommendation into

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
	decision to revoke their participant status (under section 29(1)(d) could be reversed.			the Operational Guidelines, instead of amending the legislation,
11.	Amend the legislative framework to align the access request process with bilateral agreements and the phasing rules made under section 32A.	Agreed	Superseded	With the transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
12.	Remove 'where possible' from section 31(d).	Agreed	Supported	The amended paragraph 31(d) will read: <i>"(d) strengthen and build capacity of families and carers to support participants who are children; and"</i>
13	Amend the Supports for Participants Rules to provide further guidance on how value for money could be determined.	Agreed	Supported pending further policy development	Further scheme experience is required before deciding if an amendment in this area is required. It is recommended this issue be considered as part of the next review of the NDIS Act, currently scheduled for 2021.
14	Amend the Supports for Participants Rules to provide greater guidance on the matters that may be used for the purposes of deciding whether a support will be, or is likely to be, effective and beneficial for a participant.	Agreed	Supported pending further policy development	Further scheme experience is required before deciding if an amendment in this area is required. It is recommended this issue be considered as part of the next review of the NDIS Act, currently scheduled for 2021.
15	Add a statement to clause 3.4 of the Supports for Participants Rules to require the CEO to consider 'the extent of any other caring responsibilities'.	Agreed	Superseded	This issue is addressed through recommendation X of this review.

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
16	Amend the legislative framework to provide greater guidance on the rights of participants to request a review of their plan.	Agreed	Superseded	This issue is addressed through recommendation X of this review.
17	Consider amending section 55 to broaden the powers of the CEO to obtain information to ensure the integrity of the NDIS.	Agreed	Supported	Add an additional paragraph under paragraph 55(2)(a), which will read: <i>“(aa) whether a person with disability may be eligible for services or supports under the National Disability Insurance Scheme,”</i>
18	Add a new provision to section 60 authorising the NDIA to collect information that would satisfy the NDIS Act definition of protected information.	Agreed	Supported	Subsection 60(1) should be deleted from the NDIS Act, as the <i>Privacy Act 1988</i> (Cth) already permits the NDIA to collect the information this subsection provided. As such, the subsection is unnecessary. It is also proposed to remove section 61, which is an offence provision relating directly to subsection 60(1) and has no other application. Remove all other references to section 60(1) and 61.
19	Amend the legislative framework to provide greater clarity on the purpose of NDIA registration during the period leading up to full Scheme.	Agree in principle.	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
20	Consider the feasibility of amending the legislative framework to allow for a probationary form of registration.	Agreed	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
21	Operationalise the Australian Law Reform Commission (ALRC)	Noted	Noted	Further consideration of this issue is required before proceeding with NDIS Act amendments.

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
	recommendations relating to the NDIS in the 2014 report <i>Equality, Capacity and Disability in Commonwealth Laws</i> .			
22	Amend section 90 to allow the CEO to cancel or suspend a nominee appointment if the nominee ceases to be the guardian of the participant.	Agreed	Supported	<p>Adding a new subsection 90(3A) which reads: <i>"Nominee no longer has guardianship etc.</i> <i>(3A) The CEO may, by written instrument, cancel the appointment of a nominee if:</i></p> <p><i>(a) at the time the appointment was made, the nominee was a person who, under a law of the Commonwealth, a State or a Territory:</i></p> <p><i>(i) had guardianship of the participant; or</i> <i>(ii) was appointed by a court, tribunal, board or panel (however described) who had power to make decisions for the participant and whose responsibilities in relation to the participant were relevant to the duties of a nominee; and</i></p> <p><i>(b) the nominee no longer has guardianship of the participant or holds the appointment referred to in subparagraph (a)(ii) (as the case requires)."</i></p>
23	Amend the legislative framework to limit the term 'review' to 'review of decisions'.	Agreed	Superseded	This issue is addressed through recommendation X of this review
24	Amend section 104(3)(f) to reference carers.	Agreed	Supported	<p>The proposed amended paragraph will read: <i>"(f) the impact of the requirement to take action on the participant or prospective participant and his or her family or carers."</i></p>

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
25	Amend section 118 to reflect the functions of the NDIA in relation to ILC.	Agreed	Supported	The intention of this recommendation is implemented to the extent that section 14(a) is amended to provide greater definition on ILC (Ref 6).
26	Clarify the intent of section 127(2)(a) in terms of it encompassing 'lived experience with disability'.	Agreed	Out of Scope	NDIS Governance matters are out of scope for this review.
27	Amend the legislative framework to require the Principal Member of the Independent Advisory Council (IAC) to be a Board member as well	Noted	Out of Scope	NDIS Governance matters are out of scope for this review.
28	Consider the legislated timeframes related to the production of the quarterly reports.	Agreed	Supported	As discussed in Chapter X of this report, to allow time for in-depth data analysis in the context of reporting on the Guarantee, it is recommended to remove "1 month" from paragraph 174(1)(b) and replace it with "6 weeks".
29	Amend the NDIS Act to replace the 'National Disability Insurance Scheme Launch Agency' with the 'National Disability Insurance Agency'.	Agreed	Superseded	This issue is addressed through recommendation X of this review
30	Amend section 182(2)(c) to exclude from its application, payments relating to approved supports that have already been delivered.	Agreed	Supported	Replacing the existing paragraph 182(2)(c), with: <i>"(c) the payment was made in respect of reasonable and necessary supports funded under a participant's plan and the participant died before the supports were provided."</i>
31	Conduct a further review of the NDIS Act in two-to-three years.	Agree in principle	Out of Scope	Decisions in relation to the timing of reviews of the NDIS Act is a matter for Government consideration, however, it is

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
				noted that a full review of the NDIS Act is currently scheduled to occur in 2021
32	Amend section 209(3) to reference the objects and principles of the NDIS Act.	Agreed	Supported	Replacing the existing subsection 209(3), with: <i>“(3) When making National Disability Insurance Scheme rules, the Minister must have regard to: (a) the objects and principles of this Act; and (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme.”</i>
33	Consider what, if any, amendments to the legislative framework are required to support the operationalisation of the bilateral agreements between the Commonwealth and the States and Territories.	Agreed	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.

APPENDIX F

Survey data analysis

Overall, 1,740 respondents started the long-form and short-form versions of the survey; however, some people on completed part of the opening questions of each survey. Therefore, 1,273 respondents form the sample for analysis of the long form survey and 467 respondents form the sample of analysis of the short form survey. Five respondents completed the survey using the AUSLAND video survey link. These are included with the long form data.

A third of respondents were people with disability and just over half were family members or informal carers of people with disability. Every Australian state and territory were represented by respondents to the survey.

Owing to the focus of the review on areas that can improve partisan experiences, the Review notes that responses to the survey may not reflect a representative sample of all participants' experience - that is, responses to this survey are likely to have a negative bias.

Section 1: Respondents demographics (combined)

- *Respondents main role of interest in the NDIS*
- *Type(s) of disability reported by respondents*
- *Respondents state or territory of residence*
- *Respondents geographic remoteness*
- *Specific population groups for respondents*

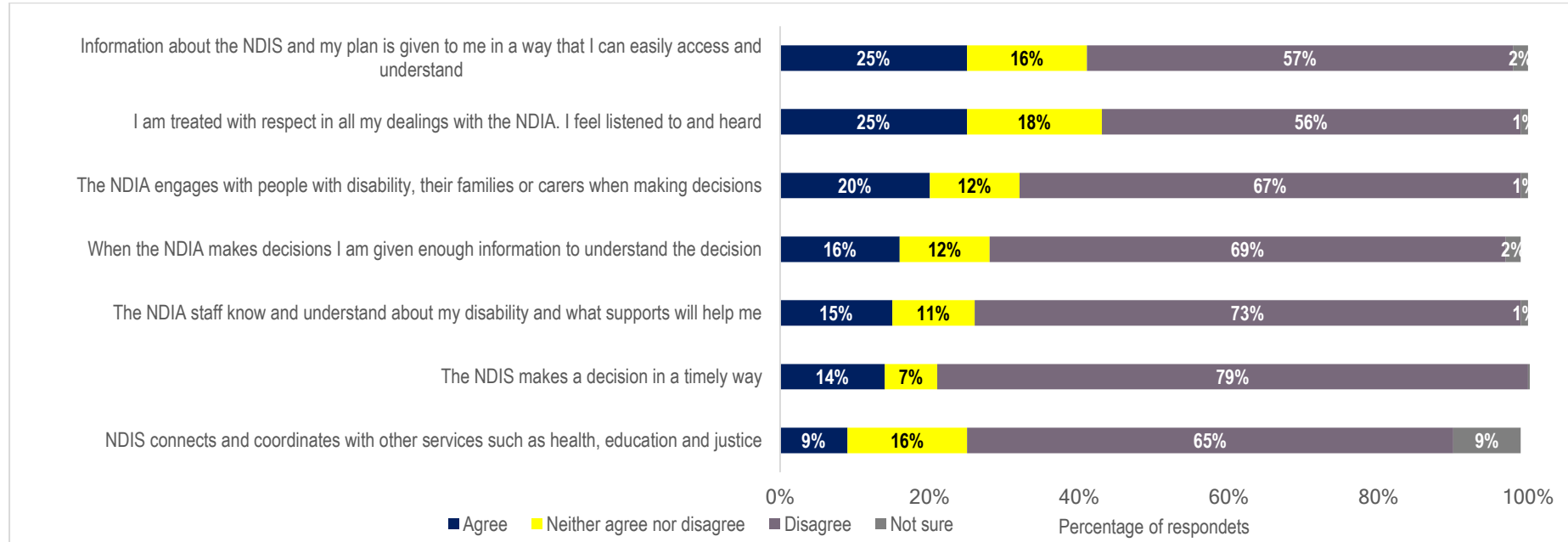
[Awaiting final analysis from the Social Deck on respondent demographic data and short form survey]

As at 20/11

LONG FORM SURVEY – WHAT WE HEARD

Section 2: The Participant Service Guarantee

Figure X: Perceptions of the NDIS (n=1,273)



* Update once received final analysis

Section 3: Applying to the NDIS

Figure X: Respondents who required help to make an application

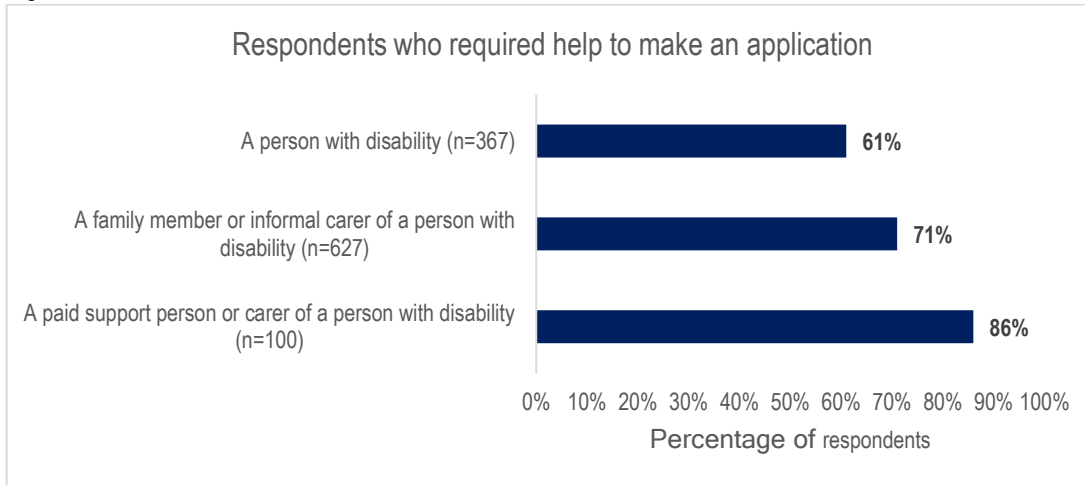
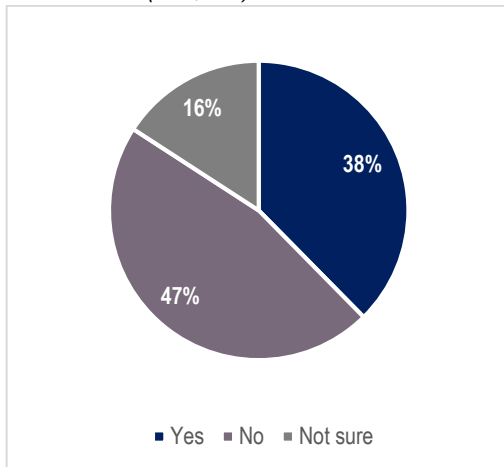


Figure X: Did you find the process of filling out the Access Request form or making a Verbal Access Request easy to understand? (n=1,075)



Section 4: Preparing for planning meetings

Figure X: Once you were told you had been approved to access the NDIS, was there enough information provided to you about what would happen next? (n=1,056)

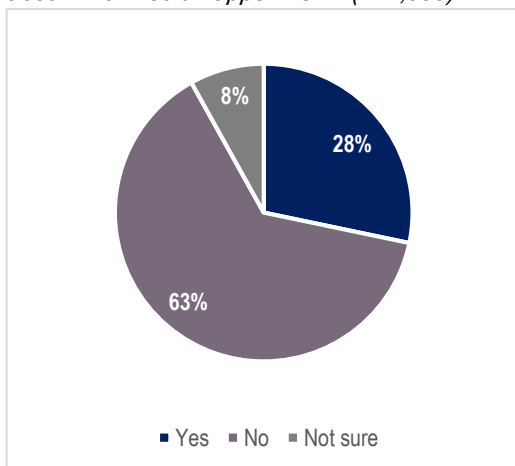
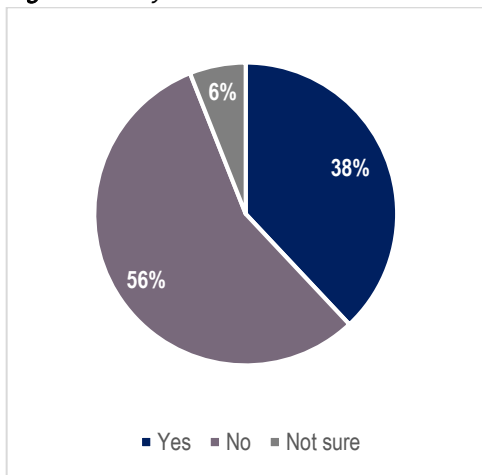


Figure X: Did you know where to find information to help you start preparing for your planning meeting? (n=1,056)



Section 5: Planning meetings

Figure X: Changes in respondents' experience of the planning process since their first plan (n=705)

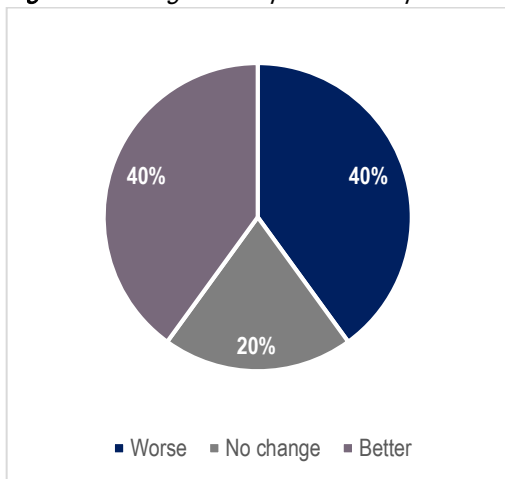


Figure X: Do you think your planner listened to you? (by type of planner)

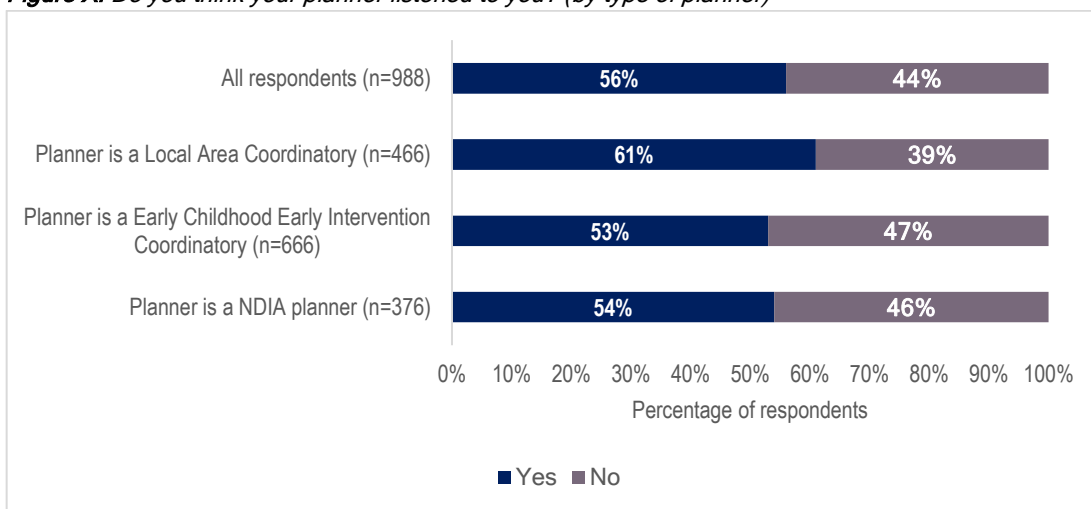


Figure X: Information covered in planning meeting

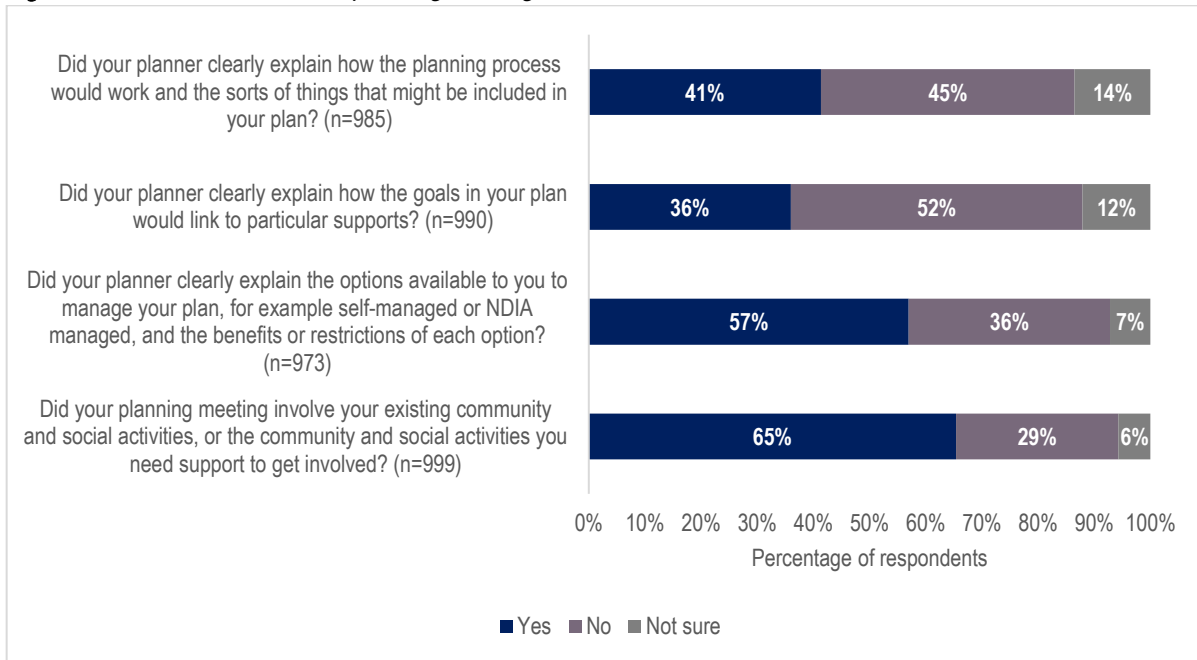


Figure X: Time taken for NDIA to approve plan from first planning meeting (n=994)

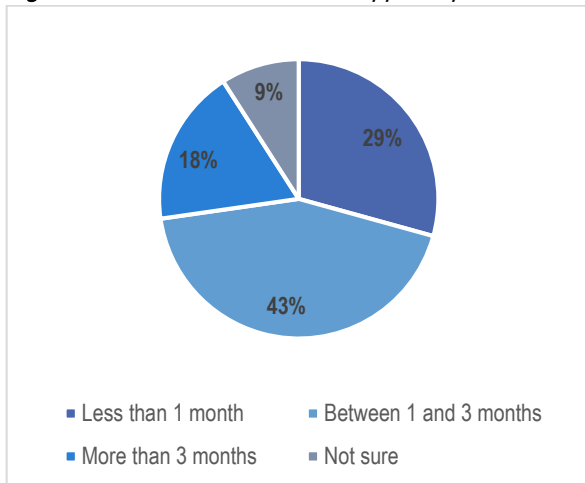


Figure X: Did you receive the level of support you expected in your plan? (n=965)

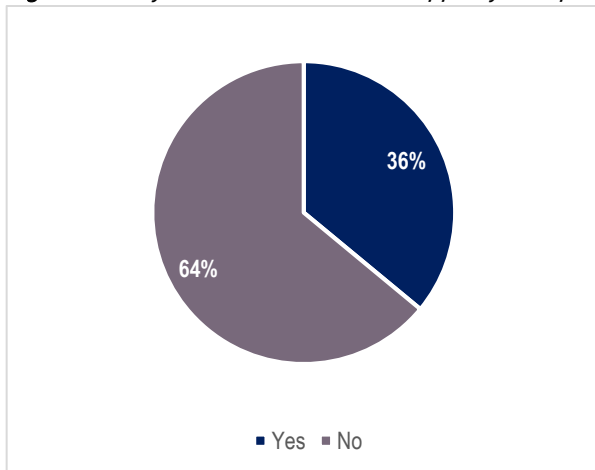
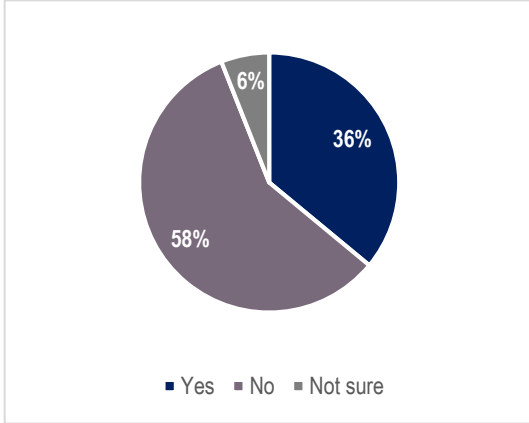


Figure X: Did you understand everything in your plan? (n=963)



Section 6: Using NDIS Plan

Figure X: Are you likely to spend all your money in your plan? (n=961)

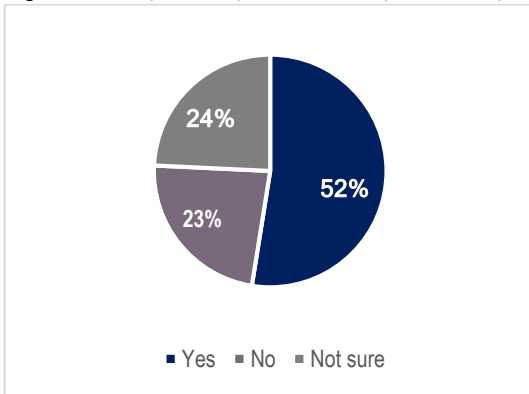


Figure X: Reasons for not being likely to spend all of money in plan (n=224)

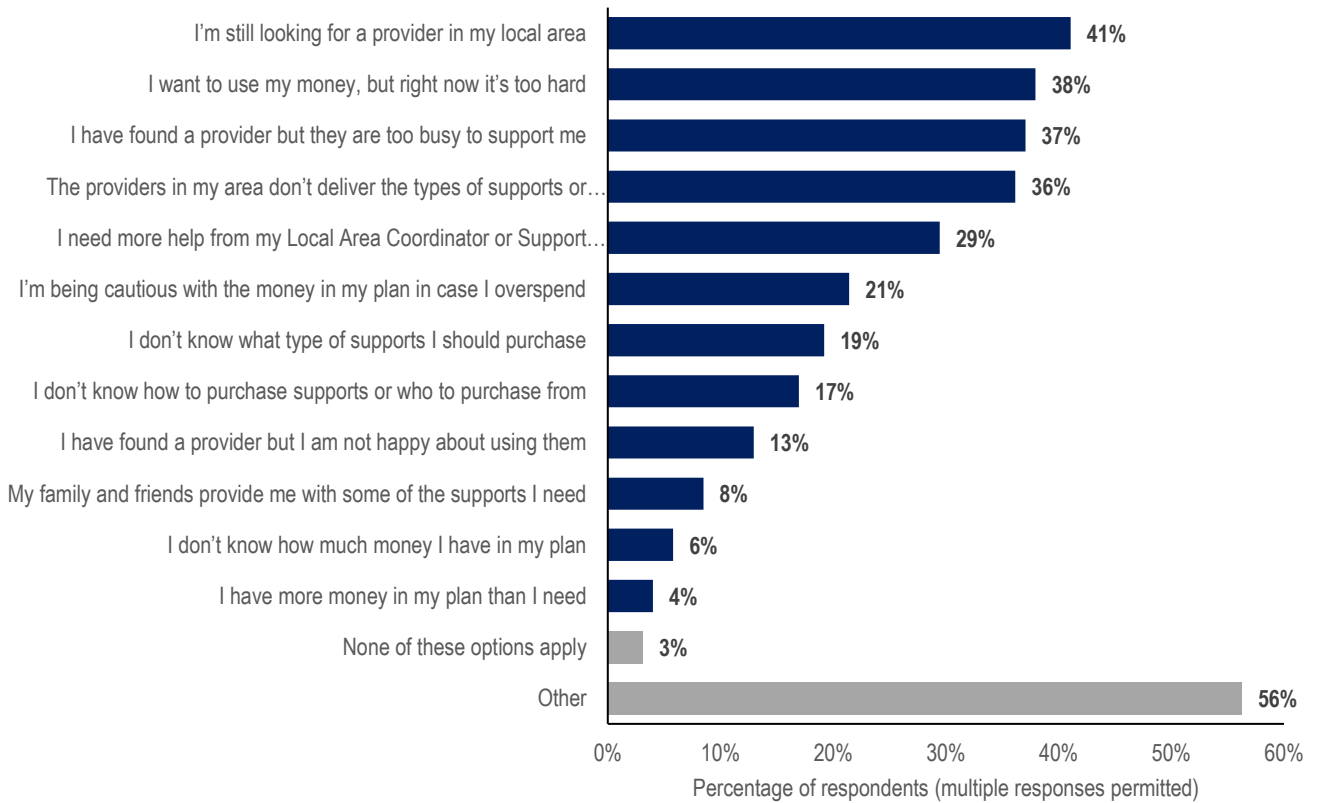
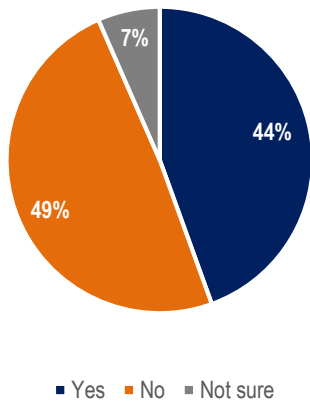


Figure X: Did you get help to use the supports in your plan? (n=960)



Section 7: Changing of reviewing NDIS plans

Figure X: How long before your plan was due to end did someone contact you to make an appointment for your plan review? (n=472)

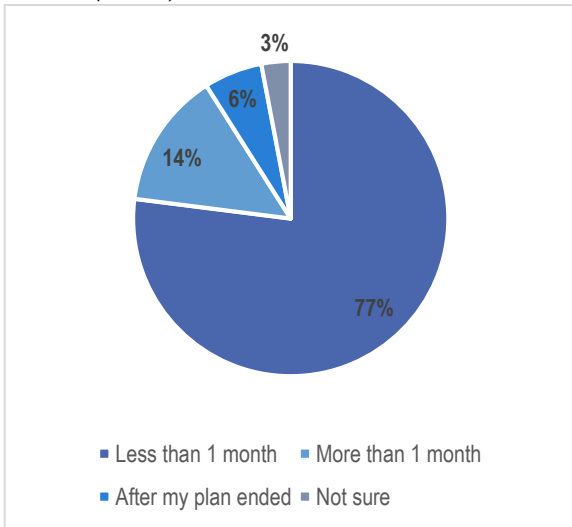


Figure X: Respondents understanding of the scheduled plan review process

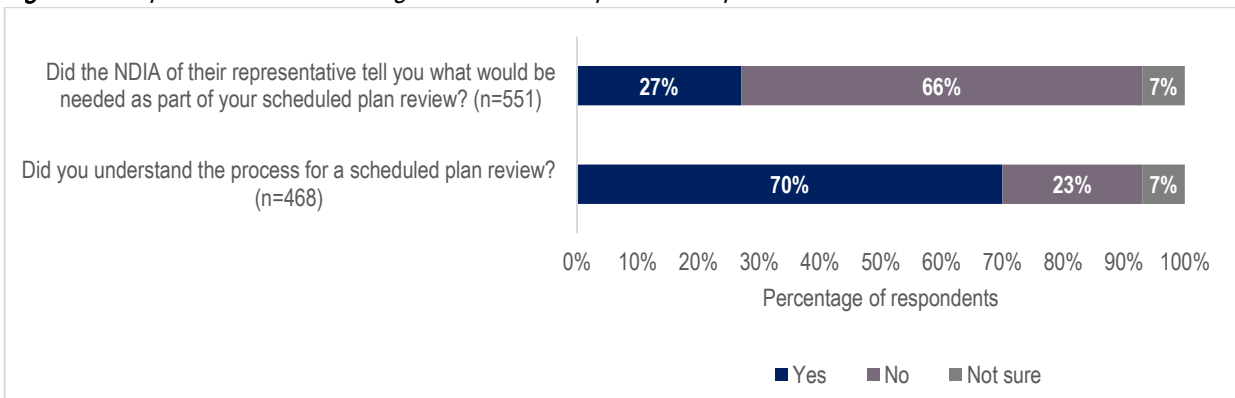
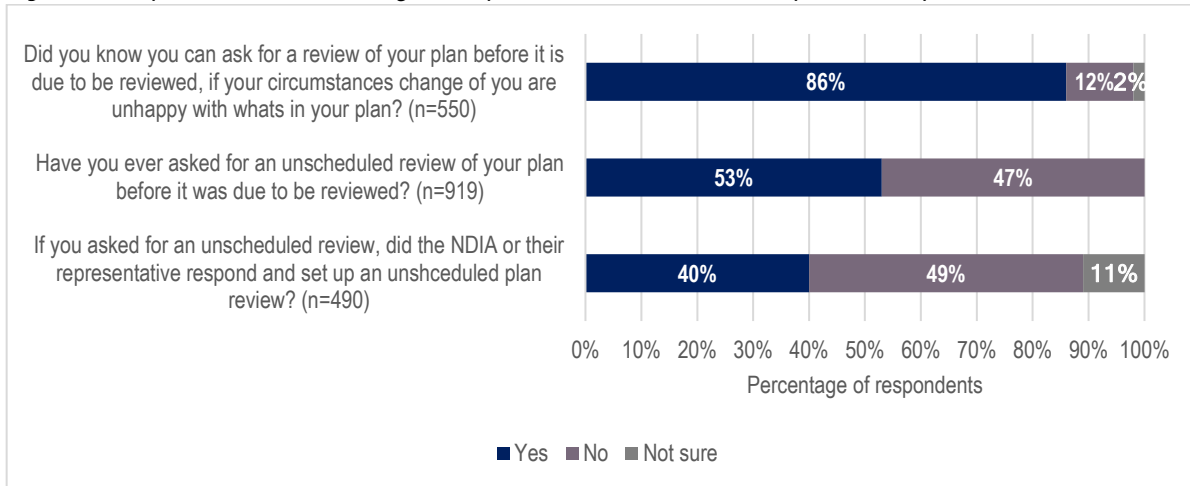


Figure X: Respondents understanding and experience of the unscheduled plan review process



Section 8: NDIA decision-making

Figure X: Respondents understanding of NDIA decision-making and internal review process

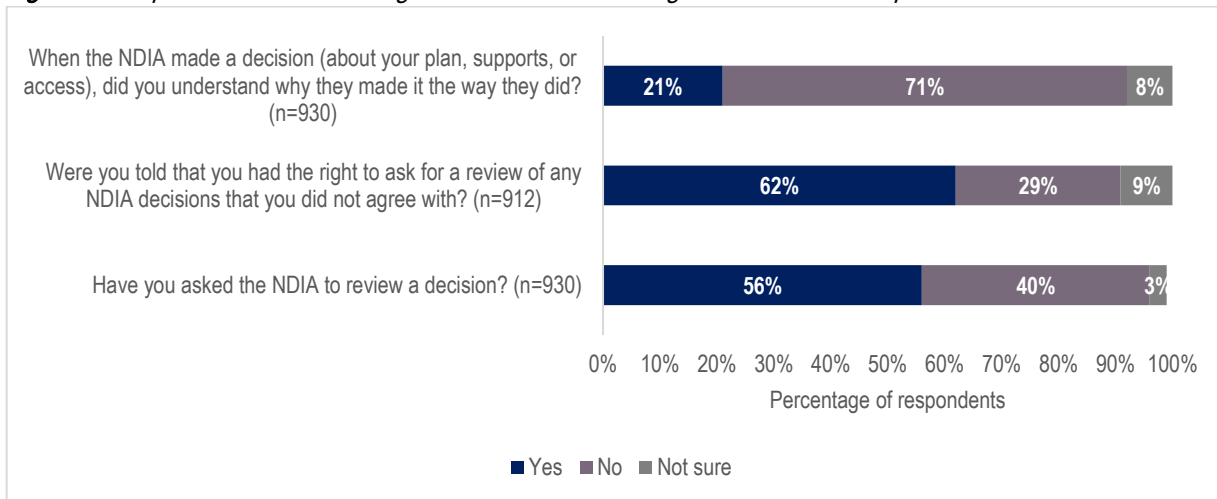


Figure X: Time taken for the NDIA to tell respondents if they would review their decision (n=460)



Figure X: Satisfaction with review decision (n=515)

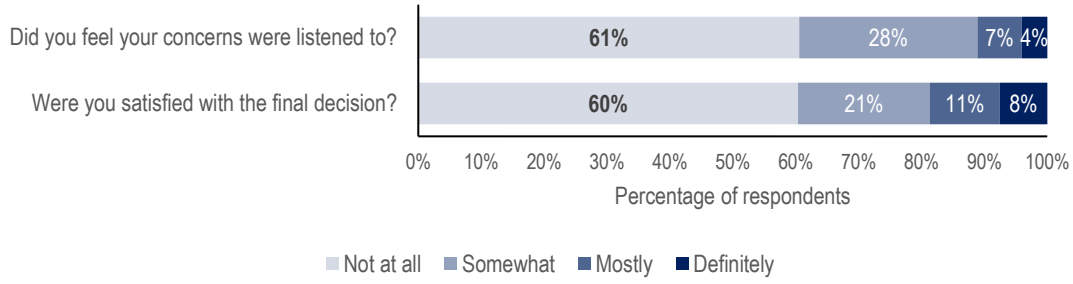


Figure X: If you were still unhappy after the NDIA reviewed the decision, did you make an appeal to the Administrative Appeals Tribunal? (n=232)

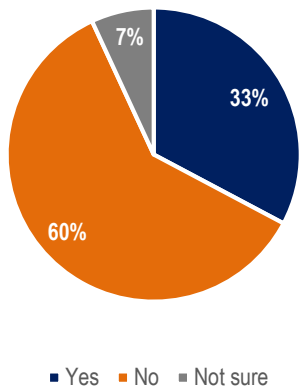
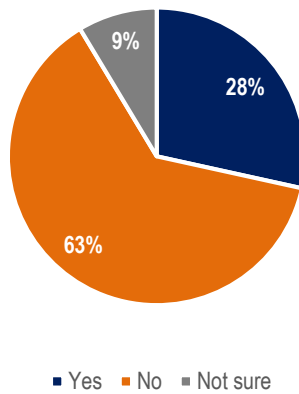


Figure X: Is the review and appeals process for the NDIS clear to you? (n=232)



As at 20/11

Short form survey – what we heard

Section 2 – Applying for the NDIS

Section 3 – Getting your first NDIS plan

Section 4 – Your experience with the NDIA

[Pending analysis from the Social Deck]

s22

From: s22
Sent: Thursday, 24 October 2019 11:42 AM
To: David Tune
Cc: BROADHEAD, Peter; YEEND, Julie
Subject: Review update [SEC=OFFICIAL]
Attachments: Working draft - Tune NDIS Report (not for circulation) - 24.10.DOCX

Hi David,

Welcome back!

Attached for your information is:

- A high level summary of the measures we are currently considering – noting that a couple of them we are considering in parallel with the review, but included for completion; and
- The first draft of a report (noting a few placeholders and gaps sill to be worked through) that I will run you through in detail when you have some time – so that we can work though our current thinking processes and state of play.

Cheers,

s22

s22

Director
NDIS Governance
NDIS Participant and Performance Group
Department of Social Services
P: s22 | **M:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

REVIEW OF THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013

Removing red-tape and implementing the
NDIS Participant Service Guarantee

David Tune AO PSM
December 2019

LETTER OF TRANSMITTAL

DRAFT

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GLOSSARY

AT	Assistive Technology
CALD	Culturally and Linguistically Diverse
COAG	Council of Australian Governments
DRC	Disability Reform Council
ECEI	Early Childhood Early Intervention
ICT	Information and Communications Technology
ILC	Information, Linkages and Capacity Building
LAC	Local Area Coordinator
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/questioning, Asexual or other gender and sexual diversities
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>

EXECUTIVE SUMMARY

Immature. Evolving. Hope

DRAFT

RECOMMENDATIONS

1. That the NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS. [pending advice from NDIA]
2. That the Commonwealth provide a surge of additional independent support for people with disability to navigate the NDIS, and extend and expand the decision support pilot, with a review of need to be undertaken in the next NDIS review of costs in 2023.
3. That the NDIS Act be amended to strengthen the ability of the NDIA to rely on appropriate functional assessments that support high quality and consistent decision-making, and that the NDIA commence a national rollout of the independent assessment pilot.
4. That the NDIS Rules be amended to provide more guidance for the NDIA to consider a psychosocial impairment as permanent.
5. That the NDIS Rules be amended to reflect decisions made by the COAG Disability Reform Council in relation to the interface between the NDIS and other service systems.
6. That the NDIS Rules be amended to reinforce recovery based supports as being reasonable and necessary for people with psychosocial impairments.
7. That the NDIS Rules be amended to:
 - a. strengthen the role of families in early intervention and parental or carers rights to reasonable supports in the home and other forms of respite; and
 - b. recognise the importance of family centred planning for young children to support them in their natural environment and everyday experiences and activities.
8. That the NDIS Act be amended to provide the NDIA with powers to issue an early intervention launch payment following an access decision, pending the establishment of an individualised plan.
9. That the NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they should only be prescribed specifically in limited circumstances.

10. That the NDIS Rules be amended to provide more direction is considering whether support coordination should be funded as a reasonable and necessary support.
11. That the NDIS rules be amended to allow the NDIA to undertake appropriate market intervention through flexible commissioning models on behalf of participants.
12. That the NDIS Act be amended to allow rules to be made about matters that would present an unreasonable risk to a participant in the context of plan management.
13. That the NDIS Act be amended to introduce a new rule making power that includes criteria on when the NDIA should agree to undertake an unscheduled plan review.
14. That the NDIS Act be amended to introduce the ability for the NDIA to amend a plan in limited circumstances. [Yes, with details to go in the rule]
15. That the NDIS Act be amended to resolve confusion surrounding the three types of reviews.
16. That the NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended based on trilateral agreement while a matter is before the AAT.
17. That the Guarantee be legislated through a new Category C rule, to be updated from time to time and:
 - c. relevant existing timeframes for decision-making be moved from the NDIS Act to the new rule; and
 - d. the proposed timeframes and quality indicators included.
18. That the NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Guarantee.
19. That the NDIS Act and accompanying rules be amended to remove trial and transition provisions and updated to ensure they are fit for purpose for a full scheme environment.
20. That the new model for national disability policy that is being developed to replace the National Disability Strategy 2010-2020 should reinforce the complementing role of the NDIS, and that the NDIS Act be amended to reference the NDS as in force from time to time. [May not need to call out the highlighted part of the sentence as a formal rec, as we can pick it up as part of implementing rec 19.]

CHAPTER 1 – INTRODUCTION

- 1.1. In June 2019, the Australian Government commissioned a review of the NDIS Act, with a focus on streamlining NDIS processes and removing red tape for NDIS participants and providers. Specifically, the review was called in acknowledgement that many participant's experiences of the scheme have fallen short of their expectations, and honours a commitment made during the 2019 election campaign.
- 1.2. This review identifies opportunities to amend the NDIS Act to make NDIS processes simpler and more straight forward and will support the implementation of a NDIS Participant Service Guarantee (the Guarantee).
- 1.3. The Guarantee, subject to consideration by Parliament, is intended to be legislated and take effect from 1 July 2020. The Guarantee will, among others, set standards and timeframes for NDIA decision-making as it affects NDIS participants, their families and carers. It will also have a focus on key cohorts, including children, people with psychosocial disability, Aboriginal and Torres Strait Islander people, people from CALD and those requiring assistive technology and home modifications.

[The highlighted cohorts were not included in the election commitment, but good to call out - given the focus of Chp2 (outreach) and Chpt3 (access - psychosocial disability)]

Scope of the review

- 1.4. The Terms of Reference for this review focus on removing legislative impediments to positive participant and provider experiences and supporting the implementation of the Guarantee. Accordingly, this review does not consider broader issues affecting the general operation of the NDIS and is not intended to call into question the fundamental objectives and principles of the NDIS Act or the scheme.
- 1.5. In undertaking this review, I have considered the experiences of people with disability, their families and carers with the administration of the NDIS by the NDIA, to the extent that those experiences inform any legislative change that gives effect to the Guarantee. **Box 1** outlines the terms of reference for the review.

Box 1: Terms of Reference for the review

The review is to consider:

1. opportunities to amend the NDIS Act to:
 - a) remove process impediments and increase the efficiency of the Scheme's administration; and
 - b) implement a new NDIS Participant Service Guarantee.
2. any other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences.

In undertaking this review, regard should be given to:

1. the objectives and principles of the NDIS Act;
2. the experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes;
3. the roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services;
4. current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation framework; and
5. recommendations agreed by the Council of Australian Governments from the 2015 Independent Review of the NDIS Act.

Within the scope of the review, there should be broad consultation with:

1. people with disability, their families and carers;
2. the disability services sector;
3. Ministers and officials from the Commonwealth and State and Territory governments; and
4. the National Disability Insurance Agency.

Consultation activities

- 1.6. This review was designed to be shaped by the experiences of people with disability, their families and carers. To support this, I undertook a range of consultation activities to seek feedback about their experiences with the NDIS, what should be included in the Guarantee, and what they felt was important to consider in my review of the NDIS Act.
- 1.7. On 26 August 2019, I called for written submissions, which closed on 31 October 2019. I received **XX** submissions from a range of stakeholders, including NDIS participants, their families and carers, service providers, advocates and peak bodies. Of these, **XX** asked their submissions not be published, while all other submissions were published on the review's webpage (the Commonwealth Department of Social Services' Engage website). A list of the submissions received is provided in Appendix **XX**.
- 1.8. On 9 September 2019, an online survey was published to understand how participants and the people who support them experience the NDIS. The survey closed on 31 October 2019. It was available in long-form (up to **96** questions) and short-form (**XX** questions). **XX** responses were received to the long-form survey and **XX** to the short-form survey.
- 1.9. The short-form survey was also available in easy read and AUSLAN formats. The easy read version was also available in 13 languages other than English.
- 1.10. Throughout late September and October 2019, face-to-face community workshops were held in every capital city and in a regional location in each state and territory. Around **XX** people in total participated in these workshops.
- 1.11. Targeted consultations were also conducted with Aboriginal and Torres Strait Islander people so they could have their say in culturally appropriate and safe spaces. **XX** consultations were undertaken for first peoples, led by a peak body representing the interests of Aboriginal and Torres Strait Islander people with disability.
- 1.12. **XX** focus groups for people with intellectual disability, people from CALD backgrounds and people with psychosocial disability were also undertaken. These focus groups were conducted in Sydney, Melbourne, Adelaide, Brisbane and Perth. **[Need to crosscheck locations]**
- 1.13. I also met with the NDIA Board, senior officials from the NDIA, the NDIS Quality and Safeguards Commission, state and territory disability ministers, senior officials from the state and territory governments and key disability agencies, including advocacy

organisations, peak bodies and national providers. A list of all organisations I met is provided in Appendix XX.

- 1.14. In developing recommendations for this review, additional information, data, research and analysis of policy options was sometimes necessary. Where needed, I requested the Commonwealth Department of Social Services undertake that work and provide it.

Reports that have informed this review

- 1.15. This is not the first review of the NDIS Act that has been commissioned since its inception in 2013. In addition, it is not the first report that has made recommendations to improve how participants interact with the NDIA and experience the NDIS.
- 1.16. I have drawn on previous reviews, reports and inquiries where appropriate, including:
- a. the 2015 Independent Review of the NDIS Act, as commissioned by COAG and required by the NDIS Act;
 - b. previous Productivity Commission Inquiries, including its most recent review of NDIS Costs in 2017;
 - c. previous and current inquiries of the Joint Standing Committee on the NDIS;
 - d. the NDIA's 2017 Pathways Review, released in February 2018; and
 - e. the Quarterly Reports provided by the NDIA Board to DRC, which are publically available on the NDIS website.
- 1.17. These reviews provided a valuable reference point, allowing me to consider any outstanding recommendations made that have not yet been implemented in either the legislation or the operational practices of the NDIA. I also drew on other reports and analysis that were made available to me; these are identified in the relevant chapters.

Structure of this report

- 1.18. The structure of this report aligns with how participants engage with the NDIA - from the first point of contact and an access decision to how they implement and manage the funding in their plan.
- 1.19. Chapters 3 to XX explore each connection point in a participant's NDIS journey. Chapter XX considers what should be included in the Guarantee. Chapter XX considers other options to contemporise the legislation to ensure it is fit-for-purpose as the scheme continues to evolve.

CHAPTER 2 – BACKGROUND AND CONTEXT

About the NDIS

- 2.1. The NDIS is the most significant social reform of its kind since the introduction of Medicare. It was established in 2013 through the NDIS Act and represents a social insurance model of care for eligible Australians with disability.
- 2.2. Prior to the NDIS, disability services were administered under a patchwork of block funded and procured services administered by each state and territory government. This system was seen as being 'underfunded, unfair, fragmented and inefficient' with many people with disability not receiving supports or services they required how, when or in the way they needed them¹.
- 2.3. As an insurance-based scheme, the NDIS takes a lifetime approach to a participant's support needs and goals and aspirations. It provides important assurance to both those with permanent and significant disability, and those who may acquire such disability in the future, that they will receive the support they require. The NDIS also seeks to empower them, through providing individual funding, to purchase the services and supports they need from a competitive and consumer-driven marketplace.
- 2.4. The objectives of the NDIS (as outlined in the NDIS Act) include:
 - a. supporting the independence and social and economic participation of people with disability;
 - b. providing reasonable and necessary supports, including early intervention supports, for participants;
 - c. enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - d. facilitating the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
 - e. promoting the provision of high quality and innovative supports to people with disability.
- 2.5. A key principle of the NDIS is that all people with disability have the same fundamental rights as all members of Australian society to participate in the social and economic life of the community and to make their own choices and decisions. However, it does not stand alone in achieving this vision.

¹ Productivity Commission. (2011). *Disability Care and Support Inquiry: Overview and Recommendations*

- 2.6. As outlined in the National Disability Strategy, inclusion of, and access for, people with disability to access the supports they need to realise their full potential is a shared responsibility of all Australian governments, non-government organisations, businesses and the wider community.
- 2.7. The NDIS is not intended to fully replace services provided elsewhere in government or the community. While the NDIS is designed to benefit all Australians with disability, only a proportion will become NDIS participants. Of the estimated 4.3 million Australians with disability, around 500,000 (those people with a 'permanent and significant' disability) will receive individualised supports under the scheme.

Insert triangle diagram - proportion of NDIS participants relative to total population with disability, relative to total population of Australia.

- 2.8. As such, the framework for the NDIS needs to be considered alongside other policies and legislation, such as the *Disability Discrimination Act 1992* (Cwlth), the *Carer Recognition Act 2010* (Cwlth), the National Disability Strategy and the Applied Principles that guide the interaction between the NDIS and mainstream supports. It also needs to be considered alongside state and territory legislation, and in conjunction with other obligations that Australia is a party to, such as the United Nations Convention on the Rights of People with Disability.

Summary of the legislative architecture

- 2.9. The NDIS is established by two tiers of legislation.
- 2.10. The first tier is the NDIS Act itself. The NDIS Act is essentially a framework: it establishes the NDIA as the body responsible for delivering the NDIS, sets out the general definition of eligibility and the governance arrangements that underpin the scheme, including the way governments work together to make decisions and the role of the NDIA Board and Independent Advisory Council. The NDIS Act also establishes the NDIS Quality and Safeguards Commission to oversee the quality and safety of NDIS supports and services.
- 2.11. The second tier is the NDIS Rules, which are legislative instruments that sit under the NDIS Act, set out further laws on matters of detail in relation to the operation of the NDIS, and must be read in conjunction with the NDIS Act.
- 2.12. There are two categories of NDIS Rules:
- rules made by the Commonwealth Minister responsible for the NDIS in relation to the administration of the NDIS by the NDIA; and

- b. rules made by the NDIS Quality and Safeguards Commissioner, as delegated by the Commonwealth Minister responsible for the NDIS, in relation to the roles and functions of the NDIS Quality and Safeguards Commission.
- 2.13. The Rules made for the purpose of the administration of the NDIS by NDIA go to issues such as:
- a. when a person becomes a participant;
 - b. when a support is 'reasonable and necessary';
 - c. when a person should be appointed as a nominee to act on behalf of a participant;
 - d. when a person is responsible for undertaking actions and making decisions on behalf of children;
 - e. how participants can manage the funding in their plan;
 - f. how the NDIS works alongside other service systems; and
 - g. arrangements for the protection and disclosure of NDIS information.
- 2.14. The NDIS Rules made by the NDIS Quality and Safeguards Commissioner are in relation to the NDIS Quality and Safeguards Commission's stated powers under the NDIS Act, including: the registration requirements NDIS providers must comply with, worker screening arrangements and reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.
- 2.15. This review only considers the operation of the NDIS Rules made for the purpose of the administration of the NDIS by the NDIA. It does not consider those made by the NDIS Quality and Safeguards Commissioner, unless there are consequential impacts arising from recommendations made in this report.

The NDIS roll out

- 2.16. From 1 July 2016, the NDIA commenced the full-scale rollout of the NDIS across Australia, with a goal to transition more than 400,000 participants into the NDIS over four years through a mix of phasing arrangements. In some states and territories, participants phased into the NDIS based on the region they lived in and, in others, how old they were.
- 2.17. In Western Australia, the rollout of the NDIS occurred differently, with the Commonwealth and Western Australian governments' first agreeing to a WA-delivered but nationally consistent NDIS from July 2017, before agreeing to the NDIA-delivered model from 1 July 2018.
- 2.18. The NDIS transition period was a unique, and the most complex, period in the life of the NDIS. The transition coincided with the dismantling of existing state and territory

disability support systems and transferring support structures towards a market-based system where eligible participants receive funding based on need and are supported to exercise choice and control in the planning and delivery of their supports.

- 2.19. On 1 July 2018, New South Wales and South Australia were the first jurisdictions to complete their transition and move into full scheme arrangements. Victoria, Tasmania, the Australian Capital Territory and the Northern Territory joined them on 1 July 2019.
- 2.20. The transition to full scheme in Queensland and Western Australia are ongoing, with efforts in Queensland currently focused on transitioning people into the NDIS who have not previously received disability supports from the Queensland Government and were expected to join the scheme before 1 July 2019. Efforts in Western Australia are focusing on the transition of people currently receiving disability support from the Western Australian government. These people are expected to transition to the NDIS by 1 July 2020.
- 2.21. As at 30 September 2019, **XX** participants were being supported by the NDIS. Of this number, over **XX** are receiving supports for the very first time, helping them live active and independent lifestyles and achieve their goals and aspirations.
- 2.22. On 1 July 2020, when the NDIS becomes available for people with disability who live on the Christmas and Cocos (Keeling) Islands, the NDIS will be available across all of Australia. This represents the completion of the transition period, with the NDIS entering a new phase of implementation.

Implementation challenges

- 2.23. The sheer scale and complexity of the transition period inevitably led to implementation challenges, and significant criticism of the NDIA. While there is overwhelming support for the NDIS across all levels of government and the community, it is clear from consultation feedback and submissions made to this review that many of the benefits the NDIS seeks to achieve are yet to be realised.
- 2.24. Feedback to this review indicates that participants:
 - a. are frustrated about delays in, and seeking more transparency and clarity of, NDIA decision-making processes;
 - b. want to have more support to become informed and effective consumers;
 - c. feel the scheme is too complex and difficult to navigate;
 - d. feel they are not recognised as the experts in their disability; and
 - e. feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.

- 2.25. In combination, these issues have resulted in higher than expected requests for unscheduled plan reviews, and participants reporting their engagement with the NDIS has led to lasting negative impacts on their well-being.

I would be happier to go back before NDIS. It is a complicated process and my daughter is much worse off. It has caused a lot of stress for our family.

Families who have endured hardship as a result of inadequate plans may be traumatized by the process. I become unwell each time my daughter has a review meeting. I know my family's ability to stay together is reliant on the NDIS and that's something no parent should have to imagine.

Dealing with the processes from meeting access to having my plan approved - I was on a verge of having a mental and emotional breakdown. The stress it caused for not only myself but also my entire family was not fair.

- 2.26. There are a number of factors that have contributed to how participants have experienced the NDIS to date. These include:
- the pressure to meet the participant intake targets set by all governments as part of bilateral agreements for the transition period;
 - the quality of data provided by all governments to support the transition of people with disability from their existing service systems. In some cases, this data was inadequate to support the NDIA to make timely decisions about a participant's eligibility for the NDIS and the supports in their plan;
 - the quality of the NDIA's enabling systems, including its ICT solutions and workflow management tools; and
 - the need for a rapid expansion of a workforce capable of implementing NDIS processes under the NDIS Act.
- 2.27. The speed and pace of rollout was highly ambitious given the magnitude of the reform the NDIS represents. This review, however, is not the first to raise that there have been trade-offs between scale and pace and quality participant outcomes. Similar concerns have been consistently acknowledged during the transition period (Box 2).

Box 2: Summary of implementation challenges highlighted in other reports and inquiries

Productivity Commission - 2017 Inquiry into NDIS Costs

"It is no surprise, given the size, speed and complexity of the reform, that there are transitional issues with the rollout of the NDIS. All major reforms are followed by a (sometimes protracted) period of disruption and adjustment... most transitional issues are expected to be ironed out as the scheme rollout is completed and the scheme matures... however, if transitional issues are not dealt with quickly and effectively, they can become entrenched problems that endure in the longer term and affect the success and sustainability of the scheme." (p. 76)

"Planning processes are currently not operating well. The speed of transition and performance indicators that focus on participant numbers have placed pressure on the National Disability Insurance Agency to finalise plans quickly, and the quality of plans has been compromised." (p. 181)

Commonwealth Ombudsman - 2018 Report on the administration of reviews under the NDIS Act

"We acknowledge the NDIA's resources are limited and, since commencement of the national rollout, the Agency has been under considerable pressure to ensure it meets its various bilateral targets. This pressure is likely to continue for several years, until the Scheme is fully implemented; however, it should not be used as a reason to deprioritise or delay other work, especially where the decisions in question affect participants' daily lives." (pp. 17-18)

National Institute of Labour Studies - 2018 Final Report, Evaluation of the NDIS

"The evaluation has found that on the whole, the objectives of the NDIS and its high level design are working very well. However, hindsight suggests that the speed of implementation was too fast and that more thought needs to go into the practical aspects of the NDIS rollout. Some of the practical issues appeared to be getting solved during the three-year evaluation period, some remained largely unchanged, and some appeared to be getting worse." (pp. xxiii-xxiv)

NDIA - 2018 improving the NDIS Participant and Provider Experience

"From the commencement of transition in July 2016 and as the number of participants entering the Scheme ramped up, it became obvious that the NDIA's processes and systems had not always resulted in a participant and provider experience of a consistently high standard. Systems and processes migrated to at transition posed Information and Communication Technology (ICT) challenges. This combined with the use of telephone contact to develop participant plans and the very pace of participants entering the Scheme collectively caused many participants and providers to report poor plan experiences." (p. 8)

Current improvement initiatives

[This part in its entirety needs to be cross-checked by the NDIA to ensure we have captured all initiatives correctly]

NDIS Participant and Provider Pathways Reforms

- 2.28. To date, the NDIA has developed a number of strategies to improve the participant experience. Much of this work was generated as a result of the 2017 review of the NDIS Pathways, which the NDIA undertook to address people's feedback about their experience with the NDIS and to identify areas for improvement. Feedback was captured in the 'Improving the NDIS Participant and Provider Experience' report, published in February 2018.
- 2.29. Following the review, the NDIA re-designed the participant pathway to provide more simplified interactions from a participant's perspective and introduced other reforms to improve the participant experience, including:
- a. specific pathways for participants with complex needs, or who enter under the ECEI gateway;
 - b. specific service streams for people with psychosocial disability and hearing loss, to deliver targeted support that provides those participants with an experience more suited to their specific disability needs; and
 - c. service enhancements to meet the communication and engagement needs of people from different backgrounds or areas, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people living in remote and very remote communities, and people who identify as LGBTIQ+.
- 2.30. In June 2019 the NDIA commenced the national roll out of baseline service improvements to give effect to the pathway reforms, including:
- a. a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers;
 - b. a consistent point of contact for participants;
 - c. enhanced planning communication products in a variety of formats;
 - d. face-to-face pre-planning and plan implementation meetings at the discretion of the participant;
 - e. improved linkages between NDIA planners and the Partners in the Community workforce, including LAC's and ECEI Partners; and
 - f. improved training for NDIA planners and Partners in the Community ([para X refers](#)).

[Need to cross check para 2.30 with NDIA. Do we have any provider specific improvements we can mention]

Streamlining AT and SDA approvals

- 2.31. The NDIA has also been working to make it easier and quicker for NDIS participants to access AT with consideration for better tracking to ensure more timely AT outcomes. As a X 2019, the NDIA has already made several process improvements, including:
- a. AT under \$1,500 can be purchased without further quotes or approvals once it is approved in a participant's plan;
 - b. planners have clearer guidance to ensure sufficient funding is included in plans for the repair and maintenance of AT, and the requirements for replacing worn out or outgrown AT have been simplified;
 - c. improved AT assessment templates have been released to support better information sharing between professionals and the NDIA; and
 - d. AT codes were revised with updated, market-based benchmark prices to minimize delay when considering quotes provided by participants.
- 2.32. In addition, the NDIA has developed and is evaluating more complex process improvements, including:
- a. improvements to processes and systems, plus an independent AT assessor panel, to improve the quality and timeliness of recommendations for participants requiring complex and non-standard AT; and
 - b. methods to facilitate flexible access for participants with changing needs to the right AT when they need it. Libraries or loan banks of relevant AT, and safe access to refurbished or pre-used AT are also being explored.
- 2.33. The NDIA has been working to improve access to SDA for eligible participants and working with governments to improve provision of accessible and well-designed housing for people with disability. Reforms already implemented by the NDIA include: establishing a dedicated team to fast-track eligibility decisions and developing an Innovation Plan to detail the actions the NDIA will take to encourage more innovation in SDA and accommodation support models. This work supplements the actions taken by governments to change the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* (the SDA Rules) to give participants greater flexibility in their choice of living arrangements, including who they live with.

Communications, Engagement and ICT

- 2.34. The NDIA is also continuing to review its communications approach and has a range of initiatives in place to improve its communications and engagement practices. These initiatives include:

- a. improving the functionality and accessibility of the NDIS website;
- b. simplifying access to and use of interpreting services for NDIS participants, NDIA staff, the Partners in the Community workforce and providers from CALD backgrounds;
- c. giving participants the option to request their plans in the format of their choice (e.g. large font, audio, e-text and braille); and
- d. reviewing all existing NDIA publications, fact sheets and brochures to ensure the NDIA is providing up-to-date information that is easy to understand and available in a number of accessible formats and languages.

2.35. The NDIA have acknowledged that a good ICT system will facilitate improved outcomes for participants and will reduce administrative burden and ensure consistency of NDIA internal operations and decisions. To this end, the NDIA has been working to simplify and streamline existing ICT arrangements and is providing more assistance to participants and providers to use the portal and make payments and claims.

[Need to check para 2.35 with NDIA. Can we give examples of improvements?]

Training for Planners and NDIA decision-makers

- 2.36. The NDIA has acknowledged that a participant's engagement with NDIA staff, including planners and the Partners in the Community workforce significantly impacts how participants perceive the NDIS. The NDIA has also acknowledged participant feedback that planners do not possess specialist skillsets, particularly in disability awareness, and that there is a need to strengthen communications and training resources, particularly for those planners supporting people with complex needs or who come from vulnerable backgrounds.
- 2.37. To this end, the NDIA has been investing in staff training to support workforce growth and assist in the implementation of the pathways reforms. The NDIA have indicated that their service delivery employees (which includes NDIA Planners and Partners in the Community) undertake a range of training programs prior to supporting participants, including a six week New Starter Program that includes face-to-face, eLearning and on-the-job training. Example modules include:
- a. disability-specific training, including psychosocial awareness;
 - b. agency-specific training, including work health and safety, fraud awareness and NDIA induction; and
 - c. service delivery specific training on the participant pathway. This includes reasonable and necessary supports, mainstream support interfaces, housing, employment support, self-management and AT.

- 2.38. This review understands that ongoing training is provided to maintain and build specialised skillset of planners and partners and that key areas of future focus include:
- a. training in pathways service enhancements and building cultural awareness of Aboriginal and Torres Strait Islander peoples and people from CALD backgrounds, or people who identify as LGBTIQ+; and
 - b. collaborating with the Disability Advocacy Network of Australia and other peak bodies to raise disability awareness and help improve the participant experience, including through:
 - a. learning for planners on Contemporary Disability Rights;
 - b. videos where participants share their lived experience of their disability; and
 - c. and facilitator led workshop focussing on how the NDIA can be more inclusive and respectful with participants, their families and carers.

2.39. [\[Link to why should be included in the Guarantee and feedback below\]](#)

Planners are varied and the system relies on their skill level. We have had fabulous planners and then below average planners. The system should not be reliant on the quality and expertise of planners.

In my first plan felt listened to and supported by planner. Was trauma informed and went slowly and allowed time for me to think and take breaks. For my second plan, the planner was combative and rude, spoke to me in a way that was inaccessible for my disability which caused me distress, didn't accommodate my distress and didn't even show any concern for my well-being.

Staff with experience are critical. A good LAC can create a good plan. Some people cannot advocate well for themselves and need good support. This only comes with experience.

2019 Federal Election Commitments

- 2.40. The NDIA has also increased the size of the planning workforce to assist in the delivery of the pathways reform. As at 30 June 2019, the size of the total NDIA workforce was 11,061 headcount, of which the service delivery component represented 68% (7,521 headcount). In October 2019, the Australian Government announced a further increase in the workforce of around 800 positions to ensure the NDIA can deliver on the pathways reforms, including implementing the improvements that form part of the Guarantee.

- 2.41. During the 2019 election campaign, the Australian Government committed to expand the NDIS Community Connectors program to assist people with disability and their families in hard to reach communities to navigate the NDIS and get the services they or their children need. This proposal is designed to support Aboriginal and Torres Strait Islander people, CALD communities and ageing parents or carers with disability, building on the existing network of Remote Community Connectors currently deployed by the NDIA. The Remote Community Connectors program has proven to be critical in supporting the rollout of the scheme in remote and very remote regions.
- 2.42. The Australian Government and NDIA have also committed to all NDIS participants having a single point of contact with the NDIS, and can choose to be on a longer NDIS plan of up to 3 years if their disability is stable. This work is expected to improve participant's experiences with the NDIA, as they won't have to tell their story multiple times to different people. It is also expected to support participants who are ready to develop longer-term goals to get better outcomes, as longer plans will provide certainty to them and their chosen providers delivering their supports.

[Need status update from the NDIA - is the single point of contact reforms being rolled out as part of plan review?]

A half-finished plane

- 2.43. A 2014 review stated the NDIS was *"like a plane that took off before it had been fully built and is being completed while it is in the air"*. Five years on, it is clear that the NDIS is still being built, with some of the above improvements yet to be rolled-out nationally, or evaluated for their effectiveness. [Reference needed]
- 2.44. It is important to note, however, that NDIS implementation has not been helped by ongoing negotiations between the Commonwealth and state and territory governments to resolve outstanding policy issues, including the boundaries between the NDIS and other service systems such as Health, Education and Transport. DRC has recently made significant headway in resolving these issues - opportunities to continue this momentum is further discussed in [Chapter X](#).

Future focus

- 2.45. 1 July 2020 is an important milestone for the rollout of the NDIS across Australia. It reflects a change of focus from transitioning state and territory disability service systems towards an environment focused on resolving outstanding implementation issues and working towards a mature NDIS.

- 2.46. During the transition period the NDIA's focus was on access decisions and implementing first plans. With the transition of people previously receiving support from state and territory systems (or were anticipated to transition into the scheme during the transition period) expected to be concluded by 30 June 2020, the amount of administrative effort associated with access and first plans will begin to materially reduce. However, the emphasis on plan reviews will become the most significant part of NDIA business, which is an important mechanism on ensuring that the funded supports in participant's plans remain fit-for-purpose and continue to help them achieve their goals and aspirations.
- 2.47. [Insert NDIA data - activity under the transition period; split between access decisions, plan reviews, vs future expectation of plan reviews and access decisions to show change in business.]
- 2.48. Despite the operational reforms currently underway, the NDIA has acknowledged that they are still not yet getting it right the first time for each and every participant and that more concerted effort is needed to realise the expected benefits of the NDIS. In order to ensure NDIA is able to deliver an efficient and effective scheme, the next phase of NDIS implementation will need to have a focus on:
- a. building the trust of participants, their families and their carers when engaging with NDIS processes;
 - b. activities to support remaining eligible participants to access the NDIS; and
 - c. expediting access to funded supports and reducing the number of unscheduled or unnecessary plan reviews.
- 2.49. While substantial efforts are underway to make improvements in these areas, the NDIS is already a large and complex system, meaning that improvements will take time to embed within NDIA operations, including changes to ICT systems. It is therefore reasonable to expect that it will take several years before the NDIS is operating efficiently.
- 2.50. In addition, there are many policy and practice challenges that will need to be addressed to ensure the NDIA can deliver on its promise to people with disability, particularly in respect to:
- a. overcoming delays in decision-making, to ensure timely access to supports when people with disability actually need them;
 - b. resolving ambiguity in the construction of supports so that plans meet participant expectations and always have a clear link to the participant's goals and aspirations;
 - c. actively supporting people with disability to build their capacity to identify their support needs, goals and aspirations, self-advocate and navigate the market;
 - d. improving the capability and capacity of the NDIA workforce, including their Partners in the Community; and

- e. supporting the development of a robust marketplace of disability service providers that keeps pace with demand.

Issues out-of-scope for this review

- 2.51. This report does not consider all aspects of the NDIA's service delivery. This is because I was specifically asked to evaluate the particular legislative changes that would be required to improve participant experiences with the scheme. Nevertheless, one of the intentions of this report is suggest areas where operational changes would support legislative changes that impose timeframes or other requirements as part of the Guarantee.
- 2.52. In addition, I do not consider the effectiveness of the NDIA's current approach to ILC investment as the Terms of Reference are focused on the experience of NDIS participants with the administration of NDIA decision-making. I do, however, acknowledge that ILC is a fundamental aspect of the NDIS that seeks to build the capacity of mainstream services and community programs to create connections between all people with disability and the communities in which they live, encouraging inclusion and participation, while also building a more inclusive, diverse and accessible Australia.
- 2.1. I also acknowledge feedback that calls into question the scope of the NDIS, as set out in the NDIS Act, and feedback that suggests that the role of the NDIS, and the NDIA in delivering the NDIS, is not well understood. For example:
 - a. There is confusion about when a support is determined 'reasonable and necessary', and how the NDIS makes that assessment based on the provisions set out in section 34 of the NDIS Act;
 - b. The principles of 'choice and control' was seen by participants as reinforcing a view that they, as experts in their own lives and needs, would be able to receive funded supports through the NDIS of the type and at the level they felt was appropriate, without the NDIA having authority to make decisions to that end; and
 - c. There is confusion around who the NDIA 'speaks for', acts 'on behalf of' or ultimately, 'serves' - is it people with disability or government interests?
- 2.2. I also note feedback that indicates the role of governments in providing policy stewardship of the NDIS is not clear, including its ability to influence NDIA decision-making. Here, some submissions referred to policy announcements by governments or stated objectives in Intergovernmental Agreements and considered them binding upon the NDIA. Others indicated they felt that the NDIA had "broken their promises" when the NDIA acted in ways they perceived was inconsistent with political undertakings.

- 2.3. Some of these frustrations will be addressed by effective implementation of the proposed Guarantee as outlined in **Chapter X**. However, questions that go the role and function of the NDIS itself, and of the NDIA in delivering it, is outside the remit of this review. Accordingly, I do not make any recommendations to this end, and instead suggest that the most appropriate vehicle for such consideration is the next review of the NDIS Act, currently scheduled for 2021.

DRAFT

CHAPTER 3 – ENGAGEMENT WITH PARTICIPANTS

KEY FINDINGS

- ✓ The first point of contact with the NDIA is critical as it shapes the confidence and trust that many people with disability, particularly those who face other barriers in engaging with government service systems, have in the scheme.
- ✓ Effective implementation of the scheme is being undermined by a lack of freely available and accessible information, inconsistency and a lack of transparency over NDIA decision-making.
- ✓ Reputational damage results if there is a disconnect between the administration of the scheme and community ties. This is driving disengagement, particularly for Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial disability.
- ✓ Participants who have independent support or the help of an advocate can achieve materially better outcomes than participants who seek to navigate the system by themselves. Additional supports should be provided for people with disability to navigate the NDIS to ensure they get the best outcomes.

- 3.1. The NDIS is having a positive impact for many participants. Satisfaction with support quality and access, opportunities for social participation and levels of choice and control is steadily rising. These outcomes become particularly evident the longer a person is in the scheme, as they continue to develop their confidence in navigating the market and implementing their plan. However, the complexity of NDIS systems is causing significant frustrations.
- 3.2. Feedback to this review is that participants find it difficult to navigate through “the bureaucracy of the NDIA” and that they are feeling increasingly disempowered by how the NDIA engages with them. Unclear language, lack of transparency and lack of consistency in decision-making are significant issues. Consultation feedback is that finding information, applying for the scheme and talking to the NDIA is ‘confusing and frustrating’, that language and terminology is inconsistent, and that there is a lack of guidance about how to apply to become a participant, develop a plan and implement it.

My biggest issue is understanding the NDIS-ese.

There is a HUGE level of bureaucracy.

It has been a frustrating experience... I need more support to understand navigate the system.

Simple step by step guides that hold all the information don't seem to be available to the degree I needed them. I did a quick document for my plan manager to put together everything I found so that it could help other clients that had been struggling the same ways I have been. I had to go to several places on the NDIS website to gather all the information I needed. It was tedious, time consuming and most frustrating.

Accessible information

- 3.3. A significant number of participants indicated that the information they could access about the NDIS was not disability-friendly or available in alternative formats, such as easy read, AUSLAN, braille or in languages other than English. Others stated that NDIA assumed participants had a high degree of digital-literacy and that planners would point them to find the information on the NDIS website, but that they could not find the information they needed, sending them on a cyclical loop.

From the information I could find [on the NDIS website]... there was not one fact sheet or web page that showed a clear path for the NDIS process from approved plan to working with the plan. For example, there was nothing that said 'now that the plan is approved you need to contact your LAC for help and guidance, and then connect with your planner if you have chosen plan management, and then contact your preferred providers to arrange for service agreements.

- 3.4. Many respondents asked for an improved online experience, with the ability to download and print forms and any other documentation they may need to apply for the NDIS, including an option to upload required evidence to support NDIA decision-making. While it cannot be assumed that all people have access to the internet and/or be digitally literate, there is merit in the NDIA making better use of information technology and digital transformation to provide a service delivery platform that enables more readily available information and referrals online for those who prefer to use such technologies. Such functionality is already established best practice in other service systems, including... **[examples]**

- 3.5. As a first step, this could mean that a copy of the form a person needs to complete to apply for access to the scheme should be freely available on the NDIS website, along with detailed information about what a person will need to provide to support an access decision. This review understands the NDIA is exploring new options to make it easier for people to apply for the scheme online, while mitigating risks that people apply on a person's behalf without consent or misunderstand the requirements that are needed to support decision-making.

[Note: NDIA indicated the reason why forms weren't available online was:

1. To stop people applying before the NDIS rolled out in their area
2. Stopping others applying without consent
3. Some were to be offered face-to-face support to complete access
4. To encourage a verbal conversation with planners as a means to stop people spending money to produce unnecessary assessments
5. ARF version control.

Probably not helpful to go into the details on WHY the form wasn't available online. So have focused on what the NDIA is planning to do now that transition period has concluded.]

- 3.6. [Website analysis - how accessible is it? Is it easy to navigate?]
- 3.7. Clear, consistent, easy to understand and accessible information is critical to allow people with disability to make informed decisions about their supports. Notwithstanding the NDIA's work to date in improving its communication and engagement practices (Chapter 2 refers), neither changing the NDIS Act to remove red-tape or legislating the Guarantee will be effective in improving participant experiences with the scheme unless the NDIA equips participants to become informed consumers.
- 3.8. [Need link to why should be included in the Guarantee]

Outreach

[Waiting on NDIA information for this whole part - what they are doing now to outreach to these cohorts]

- 3.9. There are a number of people with disability in Australia who were anticipated to benefit from the NDIS but have not yet become participants. As at 30 September 2019, there are XXX receiving supports through the scheme, but over XXX will still need to

come into the scheme over the next few years in order to meet the estimate of 500,000 Australians by 2023.

- 3.10. With the transition of people who previously received support from Commonwealth and state and territory programs almost complete, a focus needs to be on reaching out to people with disability who have not previously accessed disability support services, or are reluctant to engage. The NDIA cannot rely on people willingly approaching the scheme.
- 3.11. It also cannot be assumed that people with disability have the capacity or confidence to know how to navigate the NDIS by themselves. It needs to be acknowledged that there is a significant number of people with disability in the Australian community who may fear or distrust government, stemming from a history of trauma, social discrimination and isolation, either because they have a disability or because of their cultural background.
- 3.12. Outreach activities needs to build the capacity of vulnerable people with disability to engage with the NDIS, particularly those who are at risk of falling through the gaps because their needs are complex, challenging or who may be resistant to asking for support. Outreach activities should include a dedicated focus on Aboriginal and Torres Strait Islander people, people from CALD backgrounds and those with psychosocial disability.

Aboriginal and Torres Strait Islander people

[Need to amend the narrative of this part in line with FPDN feedback]

- 3.13. While awareness of the NDIS has grown over time, knowledge of the NDIS remains limited for people with disability in regional and remote communities, particularly those communities include a higher proportion of Aboriginal and Torres Strait Islander peoples.
- 3.14. Feedback to this review reinforces the importance of assessment of NDIS eligibility and NDIS processes more broadly being undertaken in a culturally appropriate and holistic manner incorporating Indigenous definitions and perspectives of health and disability. Stakeholders stated that current assessment tools were culturally inappropriate and that considerations of “eligibility” for Indigenous people should be framed around core cultural values, such as family, culture and country.

Quote

- 3.15. Engaging with Aboriginal and Torres Strait Islander people in the “proper way” is critical to supporting them to navigate NDIS processes. Any engagement and work with Aboriginal and Torres Strait Islander communities needs to begin with a process of establishing trust within the community and acknowledging that there are diverse understandings and levels of awareness of disability among Aboriginal and Torres Strait Islander peoples. Further, it must be acknowledged that different issues are present in urban, rural, remote and very remote populations and that these communities cannot be homogenised.
- 3.16. Though not specific to the NDIS, Aboriginal and Torres Strait Islander people may have a rational fear or mistrust of government agencies and service providers, resulting from racially based intergenerational and historical mistreatment, social exclusion and discrimination. Outreach activities need to recognise that discussions about disability may not be easy for Indigenous people and that historical perceptions, past experiences and beliefs may hinder engagement. The task ahead for the NDIA in overcoming these issues is significant.

Quote - trauma approach

- 3.17. Submissions also raised uncertainty around the impact of the NDIS on existing payments. For example, there is common misunderstanding in some Aboriginal communities that the NDIS will affect the value of a person’s disability support pension or carers pension. There is evidence that this confusion has had negative implications for engagement with and uptake of the NDIS.

[Unsure about para 3.17. If we keep, need more of a narrative or supporting evidence - reconsider as part of FPDN report.]

People from culturally and linguistically diverse backgrounds

[Need to amend the narrative of this part in line with TSD feedback on CALD focus groups]

- 3.18. Historically, Australians from culturally diverse backgrounds have been underrepresented in the disability sector and face additional challenges in terms of inclusion in their communities. This extends to their ability to access and navigate the NDIS.
- 3.19. The various ways CALD communities understand and approach disability can influence whether or not individuals access the NDIS, or see the need for it in their

lives. The availability of easily understood information in a person's preferred language, medium and format has a significant impact on their confidence in engaging with the NDIS, and then in turn, drawing down on the supports in their plan.

- 3.20. Once the NDIS is fully rolled out, it is expected that around 20 per cent of NDIS participants across Australia will be from a CALD background. The proportion of participants with a CALD background in the NDIS at 30 September 2019 was XX per cent or XX people. While the proportion of participants from a CALD background is growing, evidence suggests that current participation rates are significantly below what was anticipated.
- 3.21. In this regard, a number of submissions recommended increasing assertive outreach programs to help locate and connect people from CALD backgrounds with the NDIS, particularly those experiencing isolation or disadvantage.

Quote - examples

- 3.22. Effective engagement and relationship building takes time. The NDIA is continuing to build its understanding of the interests and needs of people with disability from CALD backgrounds and is continuing to enhance the quality of the NDIS experience for participants in a way which supports and is responsive to cultural and language needs. This includes through enhancing cultural competency within the NDIA and the Partners in the Community workforce, collaborating with local CALD organisations, leaders and role models to share information on the NDIS.

[Need NDIA input - is this working/helping?]

People with psychosocial disability

[Need to amend the narrative of this part in line with TSD feedback on psychosocial focus groups]

- 3.23. Australians living with mental health conditions and/or psychosocial disability are among the most disadvantaged people in our community. They experience challenges with communication and social inclusion, finding suitable housing and employment and maintaining their physical health. The lack of community awareness and support can have major bearing upon their lives. This extends to their understanding of, and their ability to access, the NDIS.

- 3.24. The Productivity Commission estimated that approximately 64,000 of the 600,000 Australians living with severe and persistent mental health conditions will be eligible to access the NDIS once it is fully rolled out. While the proportion of participants with psychosocial disability is growing, there was still less than XX participants with a primary psychosocial disability at 30 September 2019. This indicates that there is still a long way to go in reaching out to this cohort.
- 3.25. Feedback suggests that people with psychosocial disability require particularly high levels of support to engage with the NDIS and face some specific challenges understanding and accessing the Scheme. These include:
- a. information and marketing programs are not well targeted to people with mental health issues as they do not associate with the disability community;
 - b. participant's mental health circumstances can limit their capacity to understand their need for additional support;
 - c. the requirements of putting together the evidence to navigate the scheme is seen as too burdensome or beyond the skills and abilities of some people living with psychosocial disability, particularly for people who do not have support from an existing service provider or informal supports;
 - d. many people with severe mental health issues do not self-identify as having a lifetime disability associated with their mental health issues. The language of disability and permanency is unfamiliar to many people with mental health issues;
 - e. many submissions stated that it can be very expensive and time consuming to obtain the required information to demonstrate their eligibility, with professionals indicating it can take up to 20 hours to prepare the required documentation; and
 - f. many health professionals are reluctant to determine permanency with their vulnerable clients, particularly as health professionals see themselves as working in a strengths recovery-based rather than a deficit model.
- 3.26. These issues have the result of disempowering people with psychosocial disability from engaging with the NDIS. Indeed, a small number of submissions indicated that some people, who would otherwise likely be found eligible, are choosing to withdraw or defer their application for these reasons.

Quote

- 3.27. There is a clear need for assertive outreach strategies to support people with psychosocial disability to access the NDIS. This may include strengthening existing relationships and networks with community mental health providers. This is not a new idea - it has been well documented for many years that more concerted and targeted

efforts need to be applied to the management of pre-access and access processes to successfully engage people with psychosocial disability.

- 3.28. The NDIA has already implemented a number of pathway enhancements for participants with psychosocial disability and has been working with all governments, Mental Health Australia and other sector stakeholders to examine what further improvements could be made to improve outreach and referral services to bring people with psychosocial disability into the NDIS. This work includes:
- a. improving the interfaces and co-ordination between the NDIS and the clinical mental health systems;
 - b. looking at data quality of the existing records held by state and territory governments and Commonwealth mental health providers;
 - c. examining and understanding reasons for lower than expected eligibility for psychosocial disability, with findings reported to DRC at its December 2019 meeting and actions to address findings to the DRC March 2020 meeting;
 - d. improving linkages and referrals to mainstream mental health supports and the community mental health sector for people not eligible for the NDIS, with new arrangements commencing from March 2020;
 - e. enhancing the role of Partners in the Community and Community Connectors to undertake outreach and support to increase access to the NDIS for people with psychosocial disability, with role specifications completed by April 2020, following which new information and marketing strategies will be rolled out;
 - f. enhancing the NDIS' planning approach to better respond to the episodic nature of psychosocial disability;
 - g. establishing a new psychosocial disability recovery framework, including a new psychosocial recovery coach support pricing item by 1 July 2020, to better support NDIS participants towards wellness and independence, with the role of the Sub-group to guide implementation and public release of the framework by September 2020;
 - h. strengthening information sharing and working arrangements between Commonwealth, state and territory governments and the NDIA, including the provision of NDIS six-monthly data reports (June and December) on psychosocial disability for jurisdictions to monitor developments; and
 - i. developing operational protocols to support better linkages, referral and coordination of supports through the NDIS, mental health and other relevant service systems by September 2020.

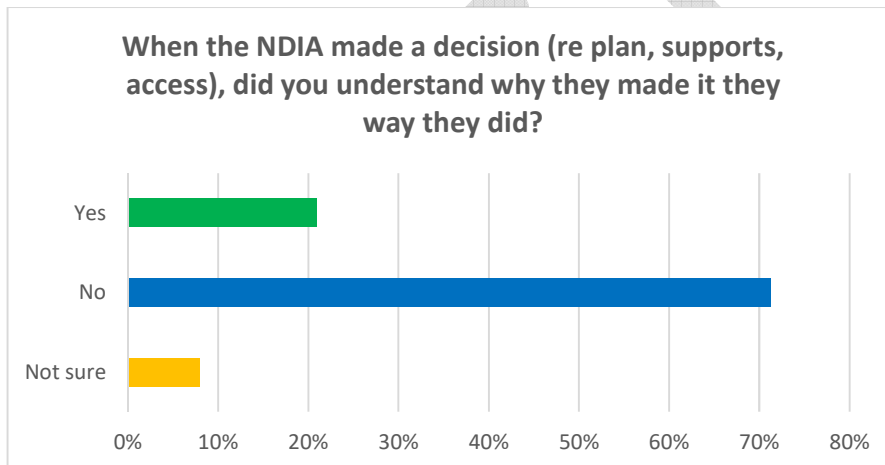
[Long list - consider putting in a box]

- 3.29. Notwithstanding.....[link to why outreach is important - doesn't appear to have a holistic strategy; should have one]

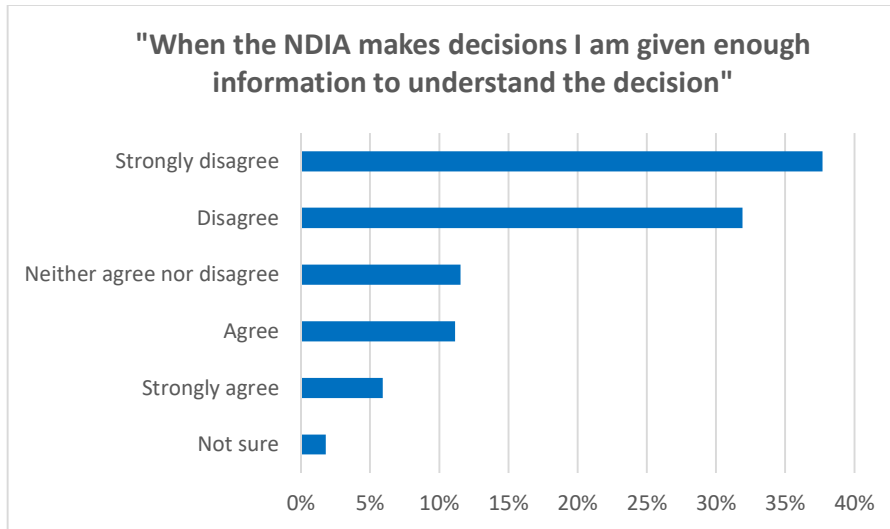
Recommendation 1: That the NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS.

Transparency and consistency of decision making

- 3.30. Consultation feedback suggests that the NDIA is not effectively explaining its decisions to participants and that this is leading to participants requesting plan reviews to seek explanations, correct errors or otherwise results in lack of trust in NDIA processes. More than **XX** per cent of survey respondents did not understand why the NDIA made certain decisions, even if those decisions were legitimate.



- 3.31. This data is consistent with feedback in response to another question in the survey, asking participants whether they agreed with the statement: “When the NDIA makes decisions I am given enough information to understand the decision” with **XX** per cent of respondents strongly disagreeing, and **XX** per cent disagreeing.



- 3.32. Unsurprisingly, qualitative feedback from the survey also indicates that participants want explanations of why access was not granted, supports not funded or why funding levels were reduced from previous plans.

The decisions made during plan reviews need to be explained to the participant. We need to know why services, equipment or home modifications are denied.

They [NDIA] should be required to explain the plan - e.g. give a breakdown of what has been agreed to be funded; to be accountable & provide explanation of why they say 'no' to things.

Actually explain why supports were not included, or hours of support were reduced, then listen and offer advice or next steps.

- 3.33. There would appear to be a link between participants' reported experience of NDIA decision-making and the rapid scale up of participants entering the scheme. A number of participants reported that planners 'quickly moved on' to the next person and that planners did not work with them to ensure they understood why certain supports were included in the plan, or not.

[Cross check survey data to year the respondent transitioned in. Need evidence to justify link to scale up. E.g. were the majority of strongly disagrees associated with participants who transitioned in during peak year?]

- 3.34. To the extent that pressure to meet participant intake targets has influenced the NDIA workforce, it appears this has influenced the quality of NDIA decision-making.

When we did get a rushed new plan instead of including all of our daughter's new goals and changes of circumstances, they copied and pasted her original plan from 2017 onto her new 2019 plan! No changes, no updates.

We were rushed in our planning process this time because our plan was due to expire and we had not been called up for a review - I had to chase it up. We did not have all the people at the meeting we wanted because of the late notice.

We believed that in the planning meeting the LAC would listen to our needs and goals and create a plan to reflect these things. That did not happen.

- 3.35. The NDIS is still evolving. As the NDIA and Partners in the Community workforce continue to mature and NDIA processes are further embedded, it is reasonable to expect the NDIA explain how they made their decision. This should include how the supports in the plan relates to both the participant's functional impairment/s as well as their individual goals and aspirations, in a way that is accessible for the participant.
- 3.36. Requiring the NDIA to explain its decisions would reinforce more robust planning practices and ensures that the scheme remains accountable to the people it is designed to support. Understanding the reasons why a particular decision was made (and how it was made, including what information was taken into account) is important to enable participants to decide whether or not to exercise their right of review or appeal if they disagree with an NDIA decision, and if they do, that they can do so in an informed manner.
- 3.37. Failing to provide explanation of its decisions disempowers participants and impacts their capacity to exercise informed choice and control. While this review understands that the NDIA is currently providing formal statements of reasons for participant's who have requested an internal (merits) review of an NDIA decision, it would be consistent with the intent of the scheme that a participant should have the right to seek an explanation of NDIA decisions without needing to progress to internal (merits) review.
- 3.38. This review considers an explanation to people with disability should be a routine operational process for the NDIA when making access, planning and plan review decisions. However, in the event this does not occur, the Guarantee should empower the participant to require the NDIA provide this information in a manner that is accessible to the participant.
- 3.39. On balance, this review considers that it would be reasonable to expect the NDIA to provide this information within four weeks, following receiving the request from the participant.

The importance of navigation support

- 3.40. Regardless of how the NDIS matures and the level of information that is available to support people with disability to engage with the NDIS, there will always be a need for independent support to assist participants to navigate the scheme, exercise informed choice and control and to have their voice heard in matters that affect them.
- 3.41. Consultation feedback suggests that those who have support to navigate the NDIS from initial entry to being able to fully and access and implement their plans tend to achieve better outcomes than those who do not have the help they need to navigate the system by themselves. This reinforces the view from participants that the NDIS is too bureaucratic and hard to navigate.
- 3.42. This review has also heard that people with disability are often reliant on other third parties, including disability service providers or other community and social networks. This supports a view that the complexity of the NDIS is not empowering many people with a disability to the point that they are at risk of losing the control the NDIS was intended to provide.

Quotes

- 3.43. Complementing this feedback, advice from the disability advocacy sector suggests the demand for advocacy and support has increased significantly over recent years to help people with disability engage with the NDIS, particularly with pre-access, access, planning and plan review processes.

[Qualify with evidence - e.g. % increase in demand]

- 3.44. While the NDIS continues to be implemented and refined, demand for advocacy style supports will be greatest. Indeed, many advocacy organisations across the county are reporting the establishment, or a significant expansion of waiting lists because of the NDIS, with evidence some people with disability are being turned away.

[Qualify highlighted with evidence, as above]

Quotes

- 3.45. [However, in keeping with the principles of the NDIS, it may not always be the responsibility of, or appropriate for, the NDIA to provide supports to both prospective and current participants to navigate the NDIS.... *Link to request in with Jaimee/Carolyn -*

details on supported decision-making pilot which ends 30 June 2020; evaluation, and plans to scale up]

- 3.46. Through the next phase of implementation, this review considers there is a need for the Australian Government to provide additional navigation and decision-making support to both prospective and current participants. This review notes, however, that current demand for these services are not likely to expand at current rates and may not be indicative of a structural deficiency as the NDIS is still being established. As we move into a new phase of implementation, it would therefore be sensible for additional supports should be reviewed in the context of the next scheduled review of NDIS costs in 2023.
- 3.47. Providing this support, however, is not without risk, and it will be important to ensure that implementing such supports does not result in dependency that is at odds with the principle of increasing the capacity of people with disability.

Recommendation 2: That the Commonwealth provide a surge of additional independent support for people with disability to navigate the NDIS, and extend and expand the decision support pilot, with a review of need to be undertaken in the next NDIS review of costs in 2023.

CHAPTER 4 – EVIDENCE TO SUPPORT DECISION-MAKING

KEY FINDINGS

- ✓ Strengthening the use of standardised functional assessments at the point of access would drive increased engagement and improve participant's experiences at all stages as they progress through the NDIS, by improving the quality and consistency of NDIA decisions.
- ✓ The financial impact on both prospective participants and participants to provide evidence should be minimized and greater clarity provided on the form and type of information required to support decision-making.

- 4.1. Scheme experience has shown that evidence, and the quality of evidence, provided by prospective participants and participants is diverse, and at times does not assist the NDIA to make decisions. To improve the quality of decision-making, the NDIA must have access to the best and most relevant evidence. This will assist the NDIA in properly discharging their functions where the statutory criteria requires them to be satisfied of certain matters - for example, whether or not a person meets the eligibility criteria or that the supports in their plan are reasonable and necessary
- 4.2. This review has heard there is significant confusion as to what evidence is required to support decision-making and considers there is merit in improving the operational and legislative architecture surrounding the requirement and use of evidentiary material. This review also supports removing the current administrative and financial burdens felt by prospective participants and participants in providing the required information to support decision-making.

Strengthening the use of functional assessments

- 4.3. Functional assessments support processes that ensure people who would be eligible for the scheme become participants and get the right level of support in their plan. If done properly, an appropriate functional assessment that is evidence based and meets the NDIA's needs at the point of access will reduce future administrative burden participants during the planning process. It will also result in plans being developed and approved faster and help ensure that access and planning decisions are made consistently and directed towards improving functional capacity (where possible).

- 4.4. As there is no actively promoted standardised format to support assessors in providing evidence to support an access decision, the quality of evidentiary material varies in quality and consistency. Many are not fit for purpose, requiring a back-and-forth process to obtain the required information. Ultimately, this further disempowers and disengages people with disability and those involved in assessment and planning.
- 4.5. The reliance on operational guidelines to streamline access decisions (refer Chapter 5) has also led to downstream problems for some participants because the NDIA does not have enough evidence of the functional impact of their impairment to make planning decisions. Some participants reported that they needed to provide the NDIA with more information and/or undergo examinations or assessments when developing their plan in order to ensure they got all the supports they needed. Understandably, those participants found this process frustrating because they didn't understand why further information was required when the NDIA had already decided they had an impairment that met the access criteria, and in some cases.
- 4.6. In addition, this review has heard evidence that some participants who had already had a first plan were required to provide further information about their functional impairment in order to develop and approve their second plan, even if their circumstances had not changed and it was not apparent that their needs had neither improved nor deteriorated.

Why does the NDIS require participants or their advocates to prove annually why they or their children require the support they need. This causes huge amounts of stress and anxiety to both participant or parent and is not necessary especially when the nature of the participant's disability mean that their condition will not improve and in most cases will worsen with age.

It was embarrassing to have to keep proving disability, when evidence was already provided during the initial application, particularly in relation to my psycho-social disability.

All information had already been supplied with the original application. Having to provide more evidence just so the original information could be confirmed was both unnecessary and stressful, not to mention, costly.

- 4.7. These issues are not helped by the loose and discretionary way an “assessment” is defined in the NDIS Act. It is not clear that the purpose of any information a person with disability must produce or any assessment or examination they must undergo for the purpose of access or planning processes, is to demonstrate the functional impact of their impairment.

- 4.8. In addition, the existing legislative framework does not expressly allow for information collected for the purposes of one decision point to be used for another. For example, allowing information collected for the purposes of deciding whether a person meets the access criteria, to also be used for the purposes of preparing, approving and reviewing a participant's statement of participant supports.
- 4.9. When combined, these issues create significant confusion as to what evidence is required to support NDIA decision making. There is merit in reinforcing the purpose of functional assessment, and what it can be used for. To improve the participant experience and make it more streamlined, it would also be logical to allow the NDIA to use information, assessments and reports collected about the person to be used for various purposes throughout the NDIS pathway.
- 4.10. However, in reinforcing the importance of functional assessments, the NDIA need to appropriately consider and make decisions guided by the outcomes of those assessments. Evidence from participants has indicated that some planners are either not fully considering the reports they are provided or are not taking into account the recommendations of experts.

In my experience, while the NDIA requests supporting documentation from various disability/healthcare professionals to determine whether a service or piece of equipment is necessary, it does not appear to listen to the professional opinions of these individuals, but prefers to leave the decision making process wholly up to its delegates and other associated NDIA individuals.

"If the NDIA actually looked at the information we provided with access request and the conditions and what they do to someone's body they would've realised there was no need for putting me or someone like me through and extremely tedious, stressful and complex situation of gathering supporting documentation and evidence.

- 4.11. Planners need to recognise that they are not the experts on the functional impact of a person's impairment/s. Planners must always carefully consider any information that a person provides when making a decision and should not fill gaps in assessments with their own judgements. While planners may bring expertise and evidence about appropriate supports that could be funded by the NDIS to help the participant overcome the functional impact of their impairment/s, planners should not make decisions about a person's functional impairment without supporting evidence.
- 4.12. More generally, understanding and appreciating that the person with disability and the people providing functional assessments on their behalf are the experts in their

disability needs to be embedded throughout the culture of the NDIA and Partners in Community workforce. This would be in keeping with the general principles guiding actions of the NDIA in implementing the NDIS, as set out in section 4 of the NDIS Act.

Mitigating cost as a barrier to producing information

- 4.13. During consultations, concerns were raised about the financial capacity of both prospective participants and participants to pay for the cost of assessments/examinations that the NDIA may require they produce to support decision making.
- 4.14. Stakeholders maintained that this cost is beyond the financial capacity of many and that, as a result, there is a significant number of people with disability who would otherwise be eligible, are being priced out of the scheme. Anecdotal evidence suggests that a participant and their family may incur out-of-pocket costs of several thousand dollars, with no surety that they will be found eligible for the scheme, or that they will have sufficient funding in their NDIS plan to offset the impact of those costs.

We were told we needed to have more than one professional write a report to say my son needed services. However, we could not afford to see another professional (we saw an OT through the public system). We were stuck, we had no money to see a therapist but we needed a therapist to help us get access to NDIS funding.

I supplied information personally but they didn't accept it. I provided the same information to an OT who wrote it in a report at a personal cost of \$2,000 out of pocket and the information was then believed.

My daughter was already diagnosed with disabilities that were on the automatic accepted list. It cost me money to get reports, which placed me under financial duress. All therapist now charge NDIS rates even if you don't have funding so suddenly the therapy I was funding privately I could no longer afford.

- 4.15. Several stakeholders suggested amending the NDIS Act to require the NDIA to have regard to the financial impact on the prospective participant for producing information to support NDIA decision making. However, section 6 of the NDIS Act already provides broad powers for the NDIA to provide support and assistance (*including financial assistance*) to prospective participants and participants in relation to doing things or meeting obligations, or for the purposes of the NDIS Act (emphasis added). To the extent that this power could be used to offset the reasonable costs of obtaining a

functional assessment, increased use of this power would go some way to removing cost as a barrier to the NDIS.

A new model – independent sourcing of functional assessments

- 4.16. From December 2018 to April 2019, the NDIA undertook a pilot project to demonstrate the benefit of independently sourcing standardised functional assessments for NDIS applicants or participants going through the planning process to improve consistency, accuracy and reliability of NDIA decisions.
- 4.17. The pilot was deployed in nine metropolitan service delivery areas in NSW. Assessments were offered to 500 people who had applied for Access but needed more evidence, participants who had received an “Access Met” decision but planning had not commenced, and participants who were approaching a scheduled plan review. A single service provider, the Brotherhood of St Lawrence, was engaged to conduct the assessments and the NDIA funded the cost of functional assessments for those individuals participating in the pilot.
- 4.18. Pilot evidence indicated that sourcing standardised functional assessments resulted in higher quality and more consistent decisions by the NDIA, that planners, applicants and participants found the access and planning process simpler to undertake and that they were more confident when developing and implementing their plan.
- 4.19. The benefits that have arisen from this pilot indicate that it is worth implementing on a national basis for every person who would like to test their access for the scheme or who require further evidence to support decision-making about the supports in their plan. This would, if scaled up, be expected to significantly mitigate the current financial barriers that exist for people seeking to navigate the NDIS. It would also decrease the likelihood that a participant would need to undergo further assessments and produce additional information at the plan development and review stage, unless their circumstances had changed.
- 4.20. However, there is inherent conflict of interest in the NDIA mandating that a paid functional assessment can only be provided if the applicant used a particular NDIA-approved provider. People with disability should always retain the right to source functional assessment from other sources - akin to a second opinion in the medical system, even if this is at their own cost.

[Seeking additional information from NDIA on this. Initial comments indicate that they would not pay for the cost of an assessment sourced by the participant that was outside the pre-approved panel arrangement.]

Recommendation 3: That the NDIS Act be amended to strengthen the ability of the NDIA to rely on appropriate functional assessments that support high quality and consistent decision-making, and that the NDIA commence a national rollout of the independent assessment pilot.

DRAFT

CHAPTER 5 – BECOMING A PARTICIPANT

KEY FINDINGS

- ✓ There is significant confusion about the NDIS eligibility criteria, particularly the criterion of “permanency” in the context of psychosocial disability and what evidence is needed to demonstrate the “functional impact” of a person’s impairment/s.
- ✓ The legislative framework should be amended to provide clarity on the intended scope and timings of access decisions and enhance the responsiveness of the NDIS to people with disability.

- 5.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans), Part 1 (Becoming a participant) and Part 2 (Participants’ plans).
- 5.2. I centered my analysis of Part 1 of Chapter 3 in terms of issues relating to the access criteria and issues relating to the process of making an access request. I also considered the requirements set out in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules) to the extent they could be amended to remove blockages to access and confusion about eligibility requirements.

Eligibility criteria

- 5.3. To become a participant in the NDIS, a person may make an access request to the NDIA. On receiving an access request, the NDIA will then determine whether or not the person meets certain access criteria. These criteria include: that the person was under the age of 65 when the access request was made, residence requirements and either the disability or early intervention requirements, as set out in sections 21 to 25 of the NDIS Act.
- 5.4. A small number of respondents indicated that the NDIS should be available to people with disability who were older than 65 after the NDIS rolled out in their area or who acquire their disability after the age of 65 years. A small number also questioned the appropriateness of the residence requirements. However, the view of who should (or should not be eligible) to become a participant is one relating to the broader

parameters and design of the scheme. Accordingly, I do not make any findings or recommendations in relation to the age or residency requirements.

- 5.5. However, considerable feedback was provided on the disability requirements on the current criteria for a person's *'impairment or impairments are, or are likely to be permanent'* (section 24(1)(b)) and that their *'impairment or impairments result in substantially reduced functional capacity'* (section 24(1)(c)).
- 5.6. Key issues raised in this regard was the perceived inadequacy of the concept of permanency in the context of people with psychosocial disability and that there is confusion around whether the presence of a medical diagnosis or condition is (or if it should be) considered a proxy for evidence of functional impairment.

Permanency

- 5.7. In the Becoming a Participant Rules, paragraph 5.4 states that (in relation to section 24(1)(b) of the NDIS Act) *'an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.'* Likewise, clause 5.6 states:

'An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).'

- 5.8. The current legislated requirements around permanency has created particular challenges in relation to accessing the scheme for people with disabilities arising from psychiatric conditions. Specifically, there is confusion in the episodic nature of severe and persistent mental health issues and the nature of 'available' and 'medical' treatment. There is some evidence that indicates health professionals who are engaged in assisting prospective participants to make an access application have reported varying experiences and inconsistency in the assessment of the person's eligibility for the NDIS, and that people with similar clinical and psychosocial disability needs and situations have received different outcomes. In many cases, this is due to the lack of information available to health professionals and varying information provided in support of a person's application for access.

Quote - preferably an extract of a submission from a mental health peak

- 5.9. Stakeholders also reported that the NDIS eligibility criteria is unclear for health professionals supporting people with mental illness. A lack of a working definition and clear guidelines in respect to assessing the permanency of mental health issues in the context of treatment was noted as being problematic for a number of reasons, including:
- a. many people with or supporting people with mental health conditions do not consider their situation as resulting in a 'psychosocial disability that is permanent and ongoing';
 - b. the impact of psychosocial disability can fluctuate, both as a consequence of the condition and in response to factors in the individuals life;
 - c. people with mental health conditions may have limited or sporadic engagement with mental health services that makes it difficult to provide adequate evidence of treatment history;
 - d. some impacts primarily relate to the mental health condition, but others may be related to co-existing physical disabilities or health issues;
 - e. the outcomes of clinical treatments on some functional impairments or in isolation of other factors that contribute to poor mental health is unpredictable and not well-supported by a significant body of evidence; and
 - f. that it has led to a practice of heavy reliance and focus on formal diagnosis and treatment rather than a more holistic approach including the person's functional capacity at a point in time and how to respond more flexibly to changes over time.
- 5.10. It needs to be appreciated that for people with severe and persistent mental health issues, functional impairments can be cumulative and variable, even when the symptoms of the psychiatric condition are not ongoing or permanent. That is, the disability can continue even when the symptoms of the condition are not apparently active or present. Greater weight should be given to functional impairment assessments than diagnosis in determining permanency.
- 5.11. Best practice approaches to coordinated mental health and psychosocial care and support seek to emphasise the person's strengths and abilities and recovery journey. This is to be expected given the relationship between the person, their supporters and mental health teams is strengths-based and directed towards supporting recovery and improved health and wellbeing. However, anecdotal evidence suggests that the provision of strengths-based evidence may adversely affect the outcome of a person's application to access the NDIS in that it tends to indicate that such an approach is directly linked to a lack of 'permanency' in the context of the disability requirements.

- 5.12. In some instances, participants indicated they were encouraged to present “on their worst day” in order to improve their chances of being deemed eligible for supports. This practice undermines the work of the mental health sector in driving systemic reform towards recovery-focused approaches and the intent of the NDIS to support a person to build their capacity to achieve their goals and aspirations.

Quote

- 5.13. There is merit in amending the Becoming a Participant Rules to provide further and more specific clarification of the criteria that should apply, and the evidence that must be provided, when determining the permanency, or likely permanency, of psychosocial disabilities. Such clarification should seek to align with emerging bodies of evidence and best-practice mental health care approaches that emphasise the language of empowerment and capacity building, recovery and ability over that of disability, impairment and illness. It should also seek to differentiate between what is considered when assessing the permanency of a physical disability in the context of recovery and treatment, noting that the current legislated criteria does not take into account the reasons why a person might be able or unable to do certain things.

Quote something to the point of: as a result of my mental health condition, I can not do certain things. Physically I can do those things, but for various reasons, on some days I might not be able to.

Recommendation 4: That the NDIS Rules be amended to provide more guidance for the NDIA to consider a psychosocial impairment as permanent.

Resolving confusion between functional impairment and diagnosis

- 5.14. Section 24(1)(c) states one of the disability requirements to access the NDIS is that a person’s impairment or impairments result in ‘*substantially-reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication; social interaction; learning; mobility; self-care; self-management.*’
- 5.15. There is significant public confusion on what evidence is required to support NDIA decision making in regard to this requirement. This is not helped by the NDIS Act being

silent on the nature of the information required in a relevant assessment for determining whether or not a person meets the eligibility criteria (Chapter 4 refers).

- 5.16. Confusion has arisen particularly with respect to the operational guidelines the NDIA used in the trial and transition period to manage the scale of people transitioning from state systems. These guidelines relied on a medical model and the presence of a diagnosis to help streamline a decision about a person's eligibility for the scheme.
- a. The "List A" operational guidelines set out conditions/diagnosis that are likely to meet the disability requirements in terms of permanency and functional impact. In the vast majority of cases, if a person had a condition/diagnosis on "List A", they would go on to meet access.
 - b. The "List B" operational guidelines set out permanent conditions/diagnosis for which functional impact is variable and where further assessment of functional capacity would generally be required before the access decision could be made.
- 5.17. As a consequence, there is a widespread assumption that diagnosis correlates to impairment, and that if a person has a diagnosis on either of these lists, they will be eligible for the scheme. There is also an assumption that if a person has a diagnosis that is not on either list, they will not be eligible for the scheme. Neither of these statements is true. In all cases, any person can test their eligibility for the scheme by providing the NDIA with evidence of the functional impact of their impairment, irrespective of any diagnosis they may or may not have.
- 5.18. The NDIA need to recognise and make access processes easier to address the confusion that exists around what the NDIA is looking for from functional assessments, and to explain why the presence of a diagnosis alone is not a proxy for eligibility. This information should be freely available on the NDIS website for prospective participants to access.

Timeframes for making an access decision

- 5.19. Under section 20 of the NDIS Act, if a person makes an access request, the NDIA must, within 21 days of receiving it, decide whether or not the prospective participant meets the access criteria or request they provide further information under section 26(1). If further information is requested from the prospective participant, the NDIA must, within 14 days of receiving that information, decide whether or not the prospective participant meets the access criteria.
- 5.20. During the transition period, the NDIS Rules prescribed that the NDIA could double the length of these periods during the first 12 months of a region's rollout - i.e. the NDIA had 42 days to make the access decision or request further information from the

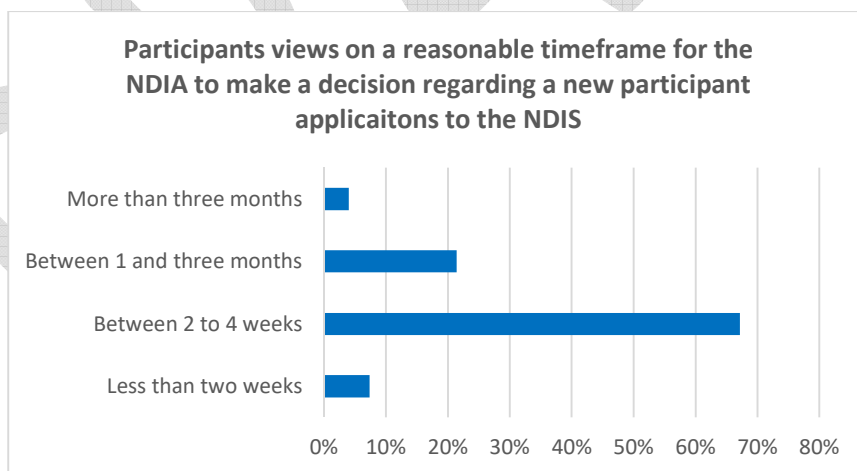
prospective participant, and 28 days to make the access decision upon the receipt of that information.

- a. However, these rules are no longer enforceable in most parts of Australia as the rollout of the NDIS across all states and territories (except Western Australia) is now complete.
- b. The NDIA only has the power to double the length of the period to make an access decision in certain parts of Western Australia and the Christmas and Cocos (Keeling) Islands. This is because some areas of Western Australia only begun transitioning to the NDIS on 1 July 2019 and the Christmas and Cocos (Keeling) Islands will not transition until 1 July 2020.

5.21. During consultations, considerable feedback was provided about delays between applying for the NDIS and having the outcome of their access decision. The majority of survey respondents indicated it took **between X and X** for the NDIA to make a decision about their eligibility for the scheme.

Chart from survey

5.22. In order to inform the timeframes for access decisions to be set out in the Guarantee, this review asked participants what they considered would be a reasonable period. Over **XX** of participants felt that between 2-4 weeks was a reasonable period if the NDIA had all the information required to make the decision.



5.23. On this basis, there is no significant reason to amend the current requirement that the NDIA make a decision about a person's eligibility (or request further information from the person) within 21 days of receiving the access request. There also does not appear to be a case to amend the requirement that the NDIA make a decision about a person's eligibility within 14 days of the participant providing any additional information that had been requested.

Determining when a person does not meet access

- 5.24. In certain circumstances, the NDIA may require a prospective participant to provide further information, or undergo an assessment or examination and provide a report, to decide whether or not they meet the access criteria. Over 55% of survey respondents indicated the NDIA asked them to provide extra information about their disability and functional impairment to support their access request.
- 5.25. Currently, the NDIS Act provides that, should the NDIA request the prospective participant provide additional information to support an access request, the prospective participant must provide the requested information within 28 days. If they do not provide the information within 28 days they are taken to have withdrawn their access request, unless the NDIA is satisfied that it was reasonable for the prospective participant not to have complied with the request. However, the CEO does have the ability to prescribe that the participant has a longer period to provide the information.
- 5.26. Consultation feedback indicates the 28 period for the prospective participant to provide the requested information was inadequate. Some submissions stated that it took between 2-3 months to provide the requested information, owing to lengthy wait times for appointments to see their health professional or to save enough money to pay for the cost of the assessment - and that was without factoring in the time lost in mailing documents through the post. Here, they felt that their access request should not be withdrawn because they were still actively trying to provide the information the NDIA had asked for, or had actually already sent it to the NDIA but it had not yet been received or registered.

The current 28 day timeframe that people have to apply is not currently very fair if you need pediatricians to fill out access request forms. It often take a lot longer than the 28 days to get an appointment and have the forms filled out and returned. I was really worried and needed to ask for an extension but wasn't sure I could do this or that it was possible. Trying to get the information in in 28 days when not everyone has it to hand is stressful.

When given forms to fill in and submit, you [NDIA] only give us 28 days, after that, it gets rejected. However, the NDIA can take 6 to 8 or more months to reply to us. In my case, my Doctor had to go overseas for a family emergency and was gone for a month so I could not get the form filled in by the allocated timeframe, so my application was rejected. Circumstances beyond my control meant I had to wait longer, but there was no way I could get an extension on the 28 day time period.

- 5.27. This review understands that the NDIA is typically doubling the 28 day timeframe to up to 56 days for the participant to return requested information to support their access request. This is in recognition that many difficulties in obtaining the information are not in the participant's direct control. However, given the doubling relies on the NDIA determining when a longer period may be appropriate, this review considers that participants are currently not provided with sufficient assurance that they will be given an appropriate amount of time to provide the requested information. As such, and notwithstanding efforts to streamline functional assessments (Chapter 4 refers), there is merit in extending the timeframe from 28 days to 90 days, with capacity for the NDIA to still specify a longer period. A 90 day period seems sensible when factoring in drivers of the time delays participants have reported.
- 5.28. This review also considers that, should the prospective participant not provide the information within the specified 90 day period, their access request should not be automatically deemed to have been withdrawn. Rather, it should only be withdrawn after the 90 day period has lapsed and the NDIA has taken all reasonable efforts to contact the participant and confirm if they are still trying to get the information they need to support an access decision. Importantly, a prospective participant's access request should only be withdrawn if the prospective participant indicates they do not wish to be a NDIS participant and/or cannot be contacted after all reasonable measures have been made.
- 5.29. The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed that people with disability have the capacity to navigate the access process without help, and that not responding or providing the information within a stated period is representative that they no longer wish, or do not need to, access supports under the NDIS.

CHAPTER 6 – DEVELOPING A PLAN

KEY FINDINGS

- ✓ Delays in commencing the planning process and approving a participant's plan are frustrating participants and preventing access to vital supports aimed to improve quality of life and wellbeing.
- ✓ Operational responses to improve consistency and quality of planning processes are encouraged provided they do not diminish individualisation.
- ✓ Engaging participants, their families and carers in the planning process is critical to ensure that they get the right supports funded in their NDIS plan and that they get those supports when they are needed.
- ✓ There is legal ambiguity around what supports the NDIS should fund, and what is the responsibility of other service systems. There is merit in providing greater clarity for NDIA decision makers about the responsibility for the delivery of supports.
- ✓ Participants will not get the best outcomes if there is a disconnect between the supports funded in their plan and their goals and aspirations and if plans do not consider the broader supports families and carers need to maintain their caring roles.

- 6.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans), Part 1 (Becoming a participant) and Part 2 (Participants' plans).
- 6.2. I centered my analysis of Parts 1A and 2 on three key issues: the individualised planning approach that underpins the NDIS, what would be reasonable timeframes for developing and approving plans, and what should be considered as part of determining the supports to be funded in participant plans - including supports for people with psychosocial disability, the role of families and carers.
- 6.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Supports for Participants Rules), to the extent they could be amended to provide greater clarity on when a support is reasonable and necessary.

Background to planning

- 6.4. A participant's NDIS plan is comprised of two elements:
- a. the participant's statement of goals and aspirations, which is prepared by the participant, or by the NDIA on behalf of the participant, and specifies the participant's goals, objectives, aspirations and circumstances; and
 - b. the statement of participant supports, which is prepared with the participant and approved by the NDIA, and sets out, among other matters, the reasonable and necessary supports that will be funded by the NDIS.
- 6.5. In deciding whether to approve a statement of participant supports (hereafter, referred to as the participant's plan), the NDIA must have regard to the participant's statement of goals and aspirations. The NDIA also needs to be satisfied of a number of other matters including that:
- a. the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
 - b. the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
 - c. the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
 - d. the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide; and
 - e. the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems.
- 6.6. NDIA decisions about what supports are reasonable and necessary are guided by the NDIS Act, the rules made under the NDIS Act, relevant operational guidelines, and the Council of Australian Government's (COAG) agreement on how the roles and responsibilities of the NDIS and other service systems.
- 6.7. There are five steps involved for a participant in developing their plan:
- a. thinking about and deciding on their needs, goals and aspirations;
 - b. meeting with their planner to discuss the goals, activities and tasks they want to achieve and what supports they need. The participant can meet with the planner in person or by phone. In some cases the planner might work for the NDIA, or in other cases they might be a Local Area Coordinator (LAC) or one of the NDIA's Early Childhood Early Intervention (ECEI) Partners;
 - c. considering how to manage their NDIS supports, including deciding whether or not they want to manage their own budget;
 - d. implementing and using their funded supports and choosing service providers; and

- e. reviewing and updating their plan.
- 6.8. The NDIA have published a number of documents to help participants prepare for their planning meeting, including checklists and ideas for thinking about their immediate support needs and their current and future goals. For example, following the Pathways review, the NDIA released three new participant booklets on the NDIS website. These booklets provide practical information for participants and prospective participants, as well as their families, carers and the wider community, to learn more about the NDIS, prepare for a planning meeting and to implement their plan. These booklets are intended for use throughout a person's NDIS journey to record key information, write questions and collect thoughts.
- 6.9. The NDIS website has also published a number of other fact sheets and tools to provide guidance on the process of developing and implementing a plan and identifying opportunities to connect with mainstream and community based services.
- 6.10. At this point it is important to note that the planner supporting the participant to develop their plan is not usually the delegate who has authority under the NDIS Act to approve the plan and the type or value of supports in it. In the majority of circumstances, a participant will work with a LAC or ECEI Partner to develop their plan, who then provides the draft plan to the NDIA for approval. This creates a disconnect between the NDIA and the participant, with the LAC or ECEI Partner being primarily responsible for helping the participant understand what was submitted to the NDIA for approval, and what was or wasn't funded, and why.

Individualised planning

- 6.11. The general principles of the NDIS Act reinforce that the objective of the NDIS is to place individualisation at the heart of planning and to maximise participant's ability to determine their own best interests, including the right to exercise choice and control over the disability supports they need to pursue their goals. The principles also reinforce that people with disability should be supported in all their dealings and communications with the NDIA to ensure their capacity to exercise informed choice and control is maximised.
- 6.12. Notwithstanding this intention, this Review has heard that participants do not feel that the NDIA is taking an individualised approach to planning and the development of their plan. Some participants reported that they felt like the NDIA was using a "formula" based on pre-existing criteria or their diagnosis to determine their supports. Others indicated that what was put in their plan did not reflect what was discussed in their meeting with the planner and that the planner disregarded the information they had provided. Others stated that the plan they received did not link to their goals and

aspirations, looked like a stock plan for a person with a certain type of disability, or contained errors, such as misspelt names or old addresses.

I felt that I was not listened to at all, it was not an individual experience and I was given a horrible plan. It had nothing about my disability in it and ignored all my requests. It included information about my family when I didn't mention them as they do not support me and are not in my life.

In my current plan they couldn't even spell my surname right!

My needs aren't being met and I'm not being seen as an individual or taken seriously, I also did not get asked about my personal problems.

Every plan meeting is very different. You never know what is going to happen in each planning meeting, which is stressful as it makes you unsure of whether you're ready. The last few planning meetings we have had I feel the planners don't listen to us and in some cases have not read reports or evidence we or therapist have given. Sometimes what we have spoken about does not reflect the plan that's been approved and there is absolutely no feedback to why this happens.

- 6.13. The way plans are developed was one of the key complaints heard throughout this review and is driving many participants to call for reviews. Feedback indicates that as a result, some participants are feeling betrayed and misled by a scheme intended to give them choice and control over their disability support needs.

Joint Planning Approaches

- 6.14. Previous inquiries, including the Joint Standing Committee on the NDIS' current review into NDIS Planning, have considered participant involvement in the planning process, including the merits of giving participant's the ability to see their draft plan before it is finalised. These inquiries have suggested that giving participants the opportunity to view a draft of their plan would ensure they would get the "right services" and provide more transparency around how the NDIA constructed their plan.

6.15. [Waiting on NDIA info - outcomes of trial arrangements.]

- 6.16. Instead the NDIA have been focused on efforts to rollout joint planning meetings to ensure participants have an understanding of the reasonable and necessary supports in their plan, including both the funded supports included in the plan and the supports not included. These meetings involve the Planner (which may be a LAC or ECEI

Partner), the participant and their representative and the NDIA delegate who can approve the plan. These meetings are designed to give participants the opportunity to ask questions to both the Planner and the NDIA delegate and to promote transparency in the way information flows between the Planner and the NDIA. Importantly, a key goal of the meeting is to be able to provide an approved plan to the participant during the meeting.

- 6.17. Feedback from an early trial of this approach in Victoria during 2018 suggests that it delivers multiple benefits, including:
- a. the Planner and NDIA have a better understanding of the participant and their needs, which translated to better explanations of reasonable and necessary supports and other elements of the plan to the participant;
 - b. in the majority of cases (85.4 per cent), the plan was able to be approved at the planning meeting and provided to the participant, with a further 10.9 per cent of plans approved within five working days;
 - c. participants and their representatives reported that they felt involved in the process; and
 - d. participants who were unable to have their plan approved at the meeting understood the reason why, and in most instances that did not impact their overall satisfaction with the process
- 6.18. [Waiting on NDIA info - plans to roll out joint planning meetings out nationally]
- 6.19. [Highlight that R&N is NDIA decision and draft plans will solve errors, but wont necessarily solve problem of the final decision being different to expectations. JPM highlights importance of explaining R&N when a decision is made].

Consistency of decision making

- 6.20. Feedback to this review also suggests that NDIA decision-making about what is a reasonable and necessary support is not consistent, with participants with similar disability support needs receiving very different levels and types of supports in their plans, where the differences do not appear to be linked to goals and aspirations. For example, this review heard that a young child with a disability received a low valued package, whereas their twin, who had the same disability and similar level of functional capacity, received a package almost three-times higher in value.

- 6.21. This is a clear demonstration of the tension between consistency of decision-making and the individualised planning approach, and that more work needs to be done by the NDIA to find appropriate operational responses.
- 6.22. The NDIA is doing work in this regard by reforming the use of “typical support packages” during planning, which uses input from guided questions to help determine what kinds of support a participant would ordinarily need to meet their disability support needs, and then adjusting for their goals and aspirations, and other relevant factors
- 6.23. This work is appropriate to the extent it provides more powerful tools for the consistent construction of plans and baseline comparisons, but only to the extent that it remains sufficiently flexible to the specific needs and circumstances of the individual. However, it is important to recognise that these tools will never replace the need for appropriately trained planners who are able to recognise that participants are the experts in their own disability.
- 6.24. Holistically, this review notes that, once rolled out, many of the material concerns regarding quality and consistency of plans are intended to be addressed by the combination of the following operational reforms:
- a. improved training of planners and Partners in the Community;
 - b. improved use of more standardised and appropriate functional assessments;
 - c. improved baseline comparison tools (including typical support packages);
 - d. joint planning discussions; and
 - e. the ability for participants to request the NDIA provide an explanation of their decisions.
- 6.25. The NDIA should minor these reforms and if draft plans remain a point of frustration for participants, then the NDIA should seriously consider this or further reforms to improve transparency of planning processes.

Timeframes for commencing planning

- 6.26. The NDIS currently does not set a fixed timeframe for how long it should take to develop and approve a participants plan. While operational guidelines provide some advice on the priority of plan development for particular cohorts (see for example, **Box X**), the current legislative requirement is that the NDIA commence facilitating the preparation of a participant’s plan “as soon as reasonable practicable”.

Box 3: NDIA Operational Guidelines - List of priority circumstances in facilitating the preparation of a participant plan

Immediate priority - participants who are at risk of harm, or whose stability of accommodation or care arrangements have broken down;

Within two weeks - participants whose stability of accommodation or care arrangements are unsustainable, fragile or at risk of breakdown;

Within six weeks - participants, in or returning to a community setting who has no, or very few supports in place where delay is likely to result in higher scheme costs, poor long term outcomes or a further reduction in functioning, or they require appropriate support arrangements in place to return to the community.

Within six weeks - participants who are children under six years of age with development delay where there is evidence that delay in early intervention supports would reduce the effectiveness of those supports or reduce the child's impairment or if the child is approaching a key milestone and early intervention support the achievement of that milestone.

Within two to three months - participants who have a sibling living in the same household who is already accessing supports under the NDIS where the children's needs are more efficiently and effectively considered together.

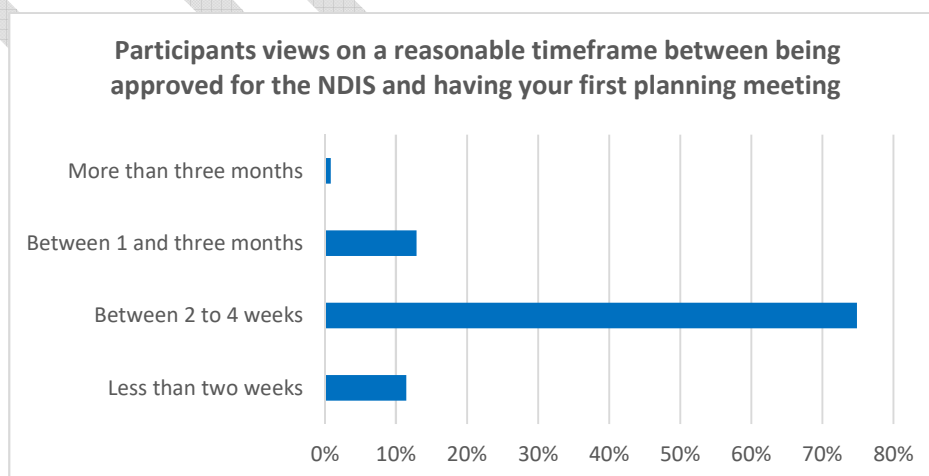
- 6.27. Feedback demonstrates that participants are seeking more certainty around timeframes for planning, including when they will have their first meeting with a planner and how long it will take to approve their plan. Stakeholders reported that planning processes are taking too long to commence and too long to complete and that this is disempowering, frustrating and delaying access to vital supports.

It took more than six weeks for the NDIA to contact me to book in my first planning meeting following receiving notification that I had been granted access to the NDIS. I thought that there might have been a mistake in granting me access because it took so long!

- 6.28. Survey responses indicated over 32 per cent of participants had to wait between one and three months to meet with their planner after receiving access decision. Of concern, over 37 per cent of participants had to wait more than three months, while only 15 per cent said that it took less than four weeks to have their first planning meeting.



- 6.29. Unsurprisingly, the delays reported by participants in starting to develop their plan correlate with the ambitious scale and speed of the NDIS transition period. As has been noted previously, it is reasonable to expect that as the scheme matures, the volume of participants requiring their first planning meeting will reduce and therefore that the NDIA should become quicker in commencing planning after an access decision has been made.
- 6.30. Notwithstanding this, there is merit in providing further clarity in the NDIS Act about when and how planning will commence. In this regard, section 32 of the NDIS Act, which sets out that the NDIA must “facilitate the preparation of a participant’s plan”, should be clarified to state that “facilitation” means the offer of a planning meeting and that the offer should be made and the first planning meeting held within 2-4 weeks of an access decision. This would provide important surety to new participants that the NDIA will be responsive to developing a plan that is fully individualised and tailored to the participant’s goals and aspirations.



- 6.31. However, it must be recognised that the first planning meeting has to be a mutually agreeable time by both the participant and the NDIA. For example, it needs to be

appreciated that the participant may not be available to undertake the planning meeting at the offered time, so the NDIA must be flexible to accommodate the availability of the participant, and to hold the planning meeting at the first available opportunity.

Timeframes for plan approval

- 6.32. Currently, the NDIA is not required to approve a plan within a set time. Rather, the plan is only approved once the NDIA has received the participant's statement of goals and aspirations from the participant and when they are satisfied that the supports in the participants' statement of participant supports are reasonable and necessary. In some cases, the NDIA may require the participant, or another person, provide information for the purpose of making that decision.
- 6.33. This Review heard that participants, their families and carers have experienced lengthy delays in getting their plan approved, often with no communication from the NDIA as to why or when they can expect it. Over 43 per cent of respondents to the online survey said that it took between one and three months for the NDIA to approve their plan following their first planning meeting and 21 per cent of people said it took longer than three months to get their first plan.

[This feedback is broadly consistent with data from the NDIA which indicates that the average time for a plan to be approved was 51 days in the 2018/19 financial year, based on data at 30 September 2019]

Quote

- 6.34. This Review recognises that one driver of these delays in approving a plan comes back to whether the NDIA has requested additional information from the participant, such as a quote for Assistive Technology or home modifications, or that they undergo an assessment to provide further evidence of the functional impact of their impairment. The latter has been an issue for a significant number of participants who transitioned from state and territory disability systems, where the streamlined access arrangements meant that the NDIA did not have sufficient evidence of the functional impact of their disability to make planning decisions.
- 6.35. It is therefore reasonable to expect that the NDIA will become more efficient in developing plans and participants who have been in the scheme for some time will become more experienced in understanding what supports have been effective in helping them overcome social and economic barriers resulting from their impairment.

When partnered with joint planning approaches, which are already proving successful in approving the majority of plans at the planning meeting, this would be expected to expedite the current delays that participants have reported.

- 6.36. However, notwithstanding these efforts to expedite plan approval, as a first principle, this review does not consider that a participant's ability to access NDIS supports should be delayed while they obtain any additional information for a support (such as a piece of equipment) that can be considered in isolation from the rest of their plan. For example, a participant who needs a wheelchair should not have to wait to access their other NDIS supports while they work with the NDIA to obtain and approve a quote for the wheelchair. This is further discussed in [Chapter 8](#).
- 6.37. Participants can and should expect to have certainty about when they will be able to access their NDIS supports, even if all of the supports cannot be funded initially due to the need to produce further information. In this instance, this review considers that a plan of 'relevant supports' should be approved within a particular timeframe, if it cannot be approved in the planning meeting.
- 6.38. Survey feedback suggests that around eight weeks would be a reasonable timeframe for a plan to be approved after an access decision had been made. If a planning meeting is offered within 21 days of an access decision, this would imply that plan development and approval occurs within a further 5 week period.

The interface between NDIS and other service systems

- 6.39. The interactions between the NDIS and mainstream services are guided by the Principles to Determine the Responsibilities of the NDIS and Other Service Systems (the Principles) agreed by COAG in April 2013 and updated in November 2015. The Principles give effect to the intention that the NDIS is not expected to provide for all the supports a participant may need to fully and effectively participate in society on an equal basis as people without disability.
- 6.40. At the operational level, this Review heard that there is a lack of clarity about the respective lines of responsibility between the NDIS and mainstream systems. This is resulting in boundary issues and funding disputes, which is leading to service gaps and confusion for NDIS participants, poor quality planning and inconsistency of decision-making.

- 6.41. As long as people with disability can access supports across a number of service systems, there will be interface issues. It is essential that service systems work well together so people receive the right services and achieve the best possible outcomes.
- 6.42. This Review recognises the significant work undertaken by all governments through the DRC to clarify between the boundaries between the NDIS and other service systems, resolving funding and service delivery issues for the priority areas of: Health, Justice, Mental Health, Child Protection and Family Support, Personal Care in Schools and School Transport.
- 6.43. The most significant outcome to date was the agreement of the Council in June 2019 to how the NDIS interacts with the health system and how the NDIS will support families with children who are unable to live in the family home because of their complex support needs. Further progress was also made at the Council's October 2019 meeting in regard to improving the provision of transport supports under the NDIS and interface issues with mainstream mental health systems.
- 6.44. The Council's momentum needs to be maintained and the respective roles and responsibilities of the NDIS and other service systems for the other priority interface areas resolved as quickly as possible to ensure participants receive the services they need and do not fall through the gaps as the NDIS transitions to maturity.
- 6.45. Having better clarity will help, but only if the NDIS and other service systems are held to account to deliver them. An important consideration for this Review is the extent to which DRC's commitment to specific roles and responsibilities are legally binding. This Review recognises that DRC's decisions, while being made within the context of the current rules are not, in their specificity, binding. Rather the NDIA, under section xx of the NDIS Act only has to have regard the decisions of the council.
- 6.46. Therefore, this review considers that the rules should be amended to be more in line with the recent DRC decisions, so as to remove legal ambiguity for NDIA decision makers about the responsibility for the delivery of supports. On this basis, this review considers that the Supports for Participants Rules, which currently provide an abridged form of the Principles, need to be updated as DRC finalises its position on each interface area.

Recommendation 5: That the NDIS Rules be amended to reflect decisions made by the COAG Disability Reform Council in relation to the interface between the NDIS and other service systems.

Recovery based supports

[Need more for this part. If we can confirm that DRC made good headway at the October meeting on the concept of recovery, we can look to merge with 6.39 - 6.46, and subset rec 6 under rec 5]

- 6.47. Recovery-oriented practice is accepted internationally as a key element of effective psychosocial interventions and is a strong element of the service models delivered by Commonwealth and state and territory government community mental health programs and is widely accepted amongst service providers.
- 6.48. The NDIA already recognises and supports the idea that a recovery approach will be more responsive to the diverse and variable requirements of participants with severe and persistent mental health issues and contribute to financial sustainability for the scheme in the medium and long terms.
- 6.49. However, the NDIS Act and the Supports for Participants Rules do not expressly identify that reasonable and necessary supports should support participants with psychosocial disability to understand and take responsibility for their own recovery and psychosocial wellbeing and to better assist them to define their goals, wishes and aspirations.
- 6.50. Such amendment would be consistent with the principles of choice and control and will build on best practice approaches adopted in psychosocial supports in mainstream mental health services.

Recommendation 6: That the NDIS Rules be amended to reinforce recovery based supports as being reasonable and necessary for people with psychosocial impairments.

Family centered planning

- 6.51. The NDIS Act recognises the role of families and carers in supporting their loved one with disability, including children. For example, one of the guiding principles of the NDIS is to strengthen, preserve and promote positive relations between children and their parents, family members and other people who are significant in their life. The NDIS principles also set out that children's plans where possible, should strengthen and build the capacity of their families and the carers who support them.
- 6.52. When determining the supports that will be funded by the NDIS, the NDIA is required to take into account what is "reasonable" to expect families, carers, informal networks and

the community to provide. The Supports for Participant Rules provide further advice to help the NDIA decide what is 'reasonable'.

- 6.53. In the case of children, the Supports for Participants Rules, amongst others, state that the NDIA needs to consider what is "normal" for parents to provide in terms of substantial care and support for children and the suitability of family members to provide the supports the child requires, including because of factors such as age and capacity of family members. The NDIA is also required to consider the extent of any risks to the wellbeing of the participant's family members or carers as well as and any risks to the child's wellbeing.
- 6.54. Some submissions indicated that in making this decision the NDIA does not appreciate that caring for a child with a disability can be a very challenging and demanding experience that impacts both the physical and emotional capacities of the caregiver, whether this is a parent, informal or paid carer. These impacts can also adversely affect the whole family and their capacity to provide a stable and supportive home environment.
- 6.55. Other submissions indicate that NDIS operational policies place an overreliance on the informal supports provided by family members, including siblings, and that further supports should be provided in the child's plan to maintain consistency and stability in the home environment, including relieving caregivers from any stress they may be experiencing.

"[The NDIS should] recognise family burnout exists and establish protocols for prevention, diagnosis and associated treatment options. The whole family suffers from the child's disability, including siblings.

The NDIS needs to recognise that an only child does not mean they should give that child less funding for social and community activities. Like all children, they need opportunities for socialization. We [carers] deserve to have a life and part of the reasonable and necessary supports for the participant needs to factor in what is reasonable and necessary for the carer!

Support families. For children there needs to be a family centred practice to build the capacity of the parents and you support the child with disability. Many of the group funded or block funded supports for families and siblings have gone. Supporting siblings and families will help prevent future issues and therefore long term costs.

I would like NDIS to take the time to really understand myself and my family's needs and my goals. Help me manage my disability so I can reach my goals and live a normal life. To help support and understand that my siblings need support as well to reach their goals. That my disability impedes all my family members especially my siblings as they miss out on so much emotionally, their education and social activities because my family (informal supports) are always supporting me.

- 6.56. This review acknowledges that before the NDIS was introduced families and carers were able to access supports through a number of national and state and territory programs. These supports provided through these programs was commonly called "respite" but the lexicon of "respite" has not been consistently used under the NDIS. This is in keeping with a philosophy that the word "respite" can be perceived as promoting the incorrect, but unfortunately prevalent, notion that people with a disability are a burden on their families and loved ones. However, notwithstanding the word used to describe such supports, this review considers that improving the capacity of families and carers is critical to supporting them to provide quality care and capacity building support to their loved one with disability.
- 6.57. Evidence suggests that planning outcomes directly relate to the ability of the participant and their family or carer to 'speak NDIS'. This review has heard that if a family asks for "respite" in a plan that request is denied on the basis that the plan is intended to improve the capacity of the person with disability and that the family will get sufficient rest periods because the plan will provide for sufficient services to meet the participant's needs. On the other hand, if they ask for additional paid care support in the family home or "short term accommodation", they will often receive supports that have a similar effect.

Quotes

- 6.58. The other significant challenge faced by families with children and young people with disability is being unable to work because of their care giving requirements. Some submissions to this review indicated parents and carers would like to work, but are unable to, because caring for the person is seen by the NDIA as their “parental” responsibility. To this extent, there appears to be little understanding of the higher-level support families are required to provide to meet their child’s everyday needs, when compared to families or parents of children without disability.
- 6.59. To deny the right of families and carers to support, either in the home or not, works against the broader intent of the NDIS in strengthening the capacity of informal supports to provide a stable and supportive environment for their loved one with disability. The NDIA should seek to ensure participants and their families and carers are informed about what supports can be used to promote and sustain informal care, recognizing that failure to provide adequate support proportionately increases the risk of families being stretched to breaking point, being unable to dedicate the time needed to build the capacity and skills of the child in the home and in extreme circumstances, relinquishing care of their children.
- 6.60. To this end, there is merit in amending the Supports for Participants Rules to reinforce that the determination of reasonable and necessary supports for a child or young person with disability will take into account that the role and capacity of families and carers is critical to maximize the benefits of early intervention.
- 6.61. Submissions also highlighted the importance of supporting families by providing for supports under the NDIS including social and community support, family capacity building, and peer-group learning and support. The experience of having a child with an intellectual or developmental disability almost inevitably has a significant impact on the family, including siblings, and they need support. The Review heard that these activities are not typically funded within NDIS for young children.
- 6.62. The Review heard that the planning principles in section 31 of the Act (**Box X refers**) read well for adults, however is not always directed towards strengthening and building the capacity of families and carers to support young children. Here, feedback indicates that planners are focusing on individual therapy when developing plans for children, rather than considering what other family and community-based supports or activities would be beneficial for the child’s development.

[Insert box with planning principles]

Quotes

- 6.63. This review considers that individual therapy should not be the sole focus of planning for children or young people with disability and acknowledges that what drives development is children's meaningful participation in everyday activities and social and community-based environments.²
- 6.64. The Review heard that it is important to support families as whole entities to provide the best opportunity to support children's learning and development. The importance of a supportive home environment also needs to be taken into account in the context of planning for young children.
- 6.65. The implications of the above submissions and evidence reinforces the importance of amending the Supports for Participants Rules to reinforce that the NDIS considers the supports that are needed to build the capacity and capability of the family in supporting their child with disability.

Recommendation 7: That the NDIS Rules be amended to:

- a. to strengthen the role of families in early intervention and parental or carers rights to reasonable supports in the home and other forms of respite and
- b. recognise the importance of family centred planning for young children to support them in their natural environment and everyday experiences and activities.

Maximising the benefits of early intervention for children

[NDIA have been asked to provide feedback on:

- What the NDIA considers a reasonable timeframe in the context of return on investment
- Any risks they think are associated with legislating launch funding, and alternative suggestions
- Strategies the NDIA is currently implementing to bring kids into the scheme ASAP.]

² Centre for Community Child Health (2011). DEECD Early Childhood Intervention Reform Project: Revised Literature Review. Melbourne, Victoria: Department of Education and Early Childhood Development. <https://www.education.vic.gov.au/Documents/childhood/providers/needs/ecislitreviewrevised.pdf>

- 6.66. Early intervention aims to reduce the impact of a child's impairment on their functional capacity by providing support at the earliest possible stage. It is generally accepted that, the earlier supports are delivered reduces the likelihood that the child will require long-term support. Quick planning decisions for children are critical in the context of the schemes insurance approach.
- 6.67. For many parents of children with disability, the NDIS will be their first engagement with the disability support system. In many cases, and like parents of children without disability, they may be reliant on the support of family members and friends to help adjust to their new lives as parents, and will not necessarily have existing ties with disability support providers. Anecdotal evidence suggests that despite having a plan approved, many families do not know what to do with it, or know which service providers or types of therapies would be best for their child's development. Peak bodies representing the interests of children with disability indicated that, on average, it can take a further 2-3 months for parents to start drawing down on their child's funded supports while they explore the market.

Quotes - confusing, didn't know where to go, what therapies were best etc...

- 6.68. This review considers that an access decision should be made within 21 days, and a plan approved within 35 days of the first planning meeting. In taking into account that it may take a family another two months to start accessing their child's funded supports, it seems reasonable to assume that, at maturity, early intervention supports may not start flowing to children for up to four months or more from their first point of engagement with the NDIS. This review considers that this is not appropriate and efficiencies or alternative approaches are needed to ensure early intervention supports flow as soon as practical.
- 6.69. This Review considers that, at maturity, the process from the child engaging with the NDIS (seeking access) and receiving their first supports should be a maximum of eight weeks.
- 6.70. To the extent that the NDIS could not meet a more truncated timeframe for approving NDIS plans for children that are fully individualised and tailored to individual goals and aspirations, an alternative could be to introduce the concept of an interim standard early intervention payment which would be paid upon an access decision.
- 6.71. This idea of interim funding for children would not be considered as part of, or attached to a plan, in order to ensure the integrity of an individualised planning process is maintained. However, it would provide the child with quick access to funded supports

that would allow them to start accessing early intervention supports while a fully individualised plan was developed.

- 6.72. This recommendation builds on the intent of the Australian Government's commitment in June 2019 to mitigate the impact of delays in plan approval for children who had been found eligible for the NDIS by giving them a standardised interim plan of \$10,000 for six months.

Recommendation 8: That the NDIS Act be amended to provide the NDIA with powers to issue an early intervention launch payment following an access decision, pending the establishment of an individualised plan.

DRAFT

CHAPTER 7 – PURCHASING NDIS SUPPORTS

KEY FINDINGS

- ✓ A key tenet of the NDIS is the participant having flexibility, choice and control over the implementation of their disability supports. Plan budgets are rigid and prevent participants from utilising the full value of their NDIS supports.
- ✓ Understanding, managing and implementing a plan is highly complex and confusing, particularly for new participants who have not previously accessed disability supports. Participants need more help, particularly in the early years of a plan, to maximize the benefits of their NDIS funding.
- ✓ There is merit in providing more defined power for the NDIA to commission flexible service models in areas where choice and control is constrained by a lack of market supply or other regulatory restrictions.

- 7.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans), Part 1 (Becoming a participant) and Part 2 (Participants' plans). Division 3 of Part 2 sets out how a participant can manage the funding for supports in their plan and how NDIS amounts are paid to a participant, or to a person who is managing the funding for supports under the plan on the participant's behalf.
- 7.2. I centered my analysis of Division 3 of Part 2 on three key issues: how participant's can use their plan budget to help them achieve their goals and aspirations and what additional supports could be provided to help participants get the best outcomes out of their NDIS funding.
- 7.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules), to the extent they could be amended to provide greater clarity on how the NDIA can support participants to access the services they need, when, how and in the way they need them.

Background to plan implementation

- 7.4. A participant's plan sets out, amongst others, the reasonable and necessary supports that will be funded by the NDIA and identifies how the participant wishes to manage their plan. A participant has three options for managing the supports in their plan (refer **Box X**).

Box 4: Options for managing the supports in a participant's plan

Self-management:

- The NDIA provides the participant with funding so they can buy supports that will best help them meet their plan goals.
- The participant's support providers may or may not be registered with the NDIS.
- The participant can negotiate the price they pay for a support, provided the cost can be met within the plan funding for the duration of their plan.
- The participant does not need a service booking for their self-managed supports as they pay their providers directly.

Plan-management:

- The NDIA pays the participant's plan manager, who will pay their providers on the participant's behalf.
- The participant's plan manager must be registered with the NDIS.
- The participant's support providers may or may not be registered with the NDIS.
- The plan manager cannot pay more than the NDIA set price limit for specific supports.

NDIA-managed funding:

- The NDIA pays the participant's providers on the participant's behalf.
- The NDIA can only pay providers that are registered with the NDIS and cannot pay more than the NDIA set price limits.

Note: Chapter 2, Part 2, Division 3 of the NDIS Act and Plan Management Rules provide for matters and risks to be assessed in deciding whether a participant may self-manage. These considerations go to whether self-managing their plan would present an unreasonable risk to the participant.

- 7.5. The NDIA currently assign the funding for the participants reasonable and necessary supports into one of three budgets:
- a. Core budget - funded supports that help the participant with everyday activities;
 - b. Capacity Building budget - funded supports that help participant to build their independence and skills to help reach their long term goals; and

- c. Capital Budget - funded supports for higher cost pieces of Assistive Technology, equipment and home or vehicle modifications.

7.6. Within these three separate budgets, a participants' funding is further broken down into a number of sub-categories (**Box X**). While participants have flexibility to spend their funds freely across each sub-category within the same budget, participants currently have limited flexibility to move funds across the budget categories.

- a. The core supports budget is the most flexible and participants can use their funding across all the sub-categories, other than the transport subcategory.
- b. Funding in the capacity-building support budget can only be spent for services and supports within the sub-categories in which the funding is allocated.
- c. Funding in the capital supports budget is a specific purpose allocation and cannot be used to pay for any other supports or services.

Box 5: Current budget construction of participants plans

Core Supports	Capacity Building Supports	Capital Supports
<ul style="list-style-type: none"> 1. Assistance with Daily Life 2. Consumables 3. Assistance with Social & Community Participation 4. Transport 	<ul style="list-style-type: none"> 1. Support Coordination 2. Improved Living Arrangements 3. Increased Social & Community Participation 4. Finding and Keeping a Job 5. Improved Relationships 6. Improved Health and Wellbeing 7. Improved Learning 8. Improved Life Choices 9. Improved Daily Living 	<ul style="list-style-type: none"> 1. Assistive Technology 2. Home Modifications

7.7. Depending on the participant's situation, there a range of people who can help them implement their plan and support them to start receiving supports. For example, the participant can start by themselves if they are self-managing or already have a good idea about what supports they need and which service providers they would like to access. Alternatively, the participant can receive support from their local LAC or ECEI Partner who will assist them to:

- a. understand their plan and the supports and services that can be purchased with their NDIS funding;
- b. find service providers and enter into service agreements and create service bookings with their chosen providers;
- c. connect with other informal, community and funded supports in their community; and

d. answer any questions if participants have any challenges in using the funded supports in their plan.

- 7.8. Some participants may also have “Support Coordination” funded in their plan. Support coordination is a capacity building support and assists participant to build the skills they need to understand, implement and use their plan. A support coordinator will work with the participant to connect with informal, community and funded supports, and increase their capacity to maintain relationships, manage service delivery tasks, live more independently and be included in their community.
- 7.9. The NDIA has published a number of documents to help participant’s understand and implement their plan, including how they can manage the funding in their plan across the three budget categories. This includes guides to using the portal to create service bookings, understanding how prices for supports in the plan are set, and understanding a participants responsibilities should they wish to self-manage all or some of their NDIS funded supports,
- 7.10. A number of other fact sheets and tools are also published on the NDIS website to provide guidance on how to ask for help in starting to access funded supports, choosing service providers and identifying opportunities to connect with mainstream and community based services.

Plan support flexibility

- 7.11. Feedback to this review suggests that the way a participant’s plan is constructed is restricting participant choice and control and takes away from an emphasis on participant goals and outcomes. Whether there are specific pain points relating to particular budget categories is less clear, but the need for more flexibility, particularly being able to move funds between budget categories, was highlighted as a prominent theme during consultations.

The siloing of funds into categories is maddening. A participant (or their carer/delegate) knows what supports are most optimal.

Make the budget more flexible. If I run out of core but have heaps left in capacity building, I should be able to use that money as it has already been budgeted. Or at least have the option to reallocate funds across the budget in consultation with the agency.

Give participants flexibility to move funding within your plan into different categories when needed. More choice and control and flexibility for the participants to use funding in there plan. NDIS needs to accept that if you can't find supports within certain plan categories because of the shortage of community supports workers and allied health professionals you should not lose that funding in your next plan.

- 7.12. The current practice of segregating funding described in plans into core, capital and capacity building budgets is overlaid through NDIA policy and the business systems. There is no documented legislative rationale for the three budget categories, or that they necessarily translate to restrictions in purchasing NDIS supports.
- 7.13. Importantly, the only constraint is at section 33(6) of the NDIS Act which states that, to the extent the funding for supports under the plan is managed by the NDIA, the plan must provide that supports are to be provided only by registered providers. Section 46(1) also states that a participant who receives an NDIS amount, or a person who receives an NDIS amount on the behalf of the participant, must spend the money in accordance with the participant's plan.
- 7.14. Part 6 of the Plan Management Rules (and section 33(3) of the NDIS Act) also prescribe that some supports in the participant's plan may be described generally, whether by reference to a specified purpose or otherwise, or a support may also be specifically identified. For generally described supports, the Plan Management Rules set out that the participant will have a high degree of flexibility over their implementation. For specifically identified supports, the Plan Management Rules set out that those supports must only be purchased or provided in the way described in the participant's plan.
- 7.15. If implemented as intended, the formal legislative architecture already supports the NDIA to implement flexible funding models that would enable all participants to choose the services they feel will best enable them to achieve their goals and aspirations. There are no legislative restrictions that would impede this, however, importantly the legislation does not clearly recognize that plan flexibility should be a key construct of the plan, and that restrictions should only be imposed under certain circumstances.

- 7.16. This Review understands the NDIA has a program of work underway to simplify plan budget arrangements to give participants more flexibility in using their NDIS funding. This work is being undertaken with a view to collapsing existing budget categories and empowering participants to spend their NDIS funds in accordance with their individual needs. The NDIA is also seeking to describe more supports generally, so participants have a greater degree of flexibility over their implementation.
- 7.17. However, to the extent that the construction of the plan budget is overlaid through ICT systems, it is reasonable to expect that it will take some time before participants can benefit from this work. Advice provided by the NDIA indicates they are, subject to the outcome of further design work, expecting to commence ICT build and testing in early 2020, with a view to launching budget changes alongside the national roll-out of joint planning approaches (refer Chapter X).

[Awaiting NDIA information on when joint planning is planned to roll out nationally]

- 7.18. Notwithstanding this plan, there is merit in amending the legislation to reinforce that, as a first principle, a participant's reasonable and necessary supports should always be described generally. This will provide important clarity to participants than plan flexibility is at the forefront of NDIA decision-making and that they will be able to use their NDIS funding in the way they think will help them achieve their goals and aspirations.
- 7.19. There is also merit in providing more guidance to planners about when a support should be described specifically, how to build flexible plans and guide a participant through plan implementation. This review considers that it is reasonable that certain categories should always be described specifically, including capital, assistive technology, home modifications and specialist disability accommodation, and supported independent living payments.

[Need NDIA input on this - what is taken into account when describing a support]

Recommendation 9: That the NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they should only be prescribed specifically in limited circumstances.

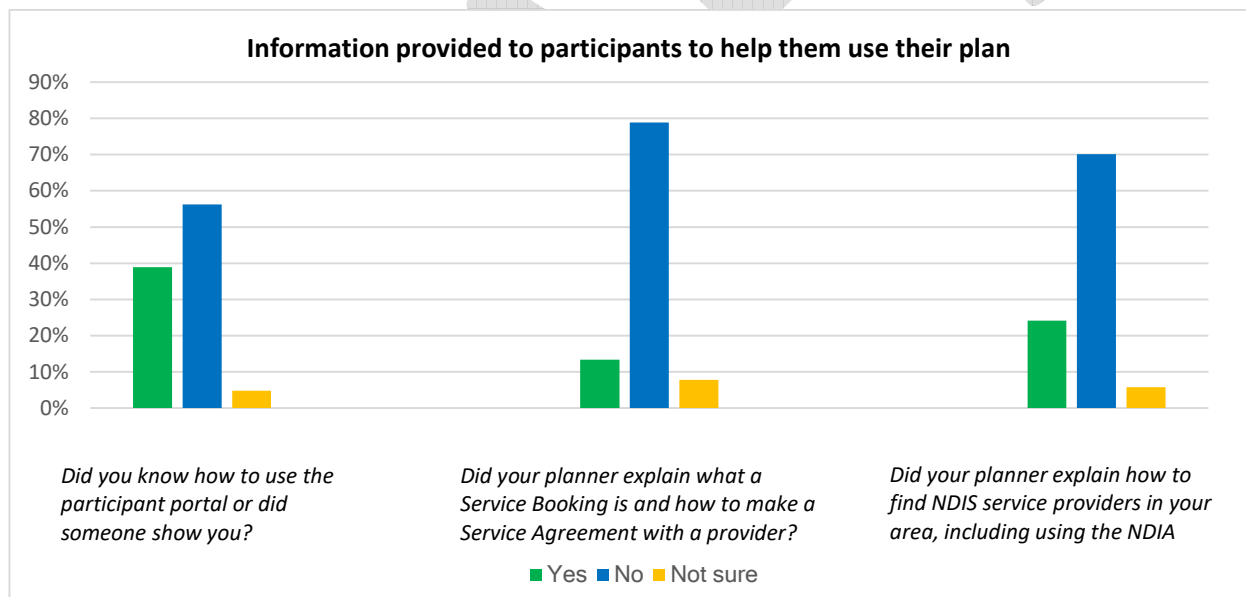
Accessing funded supports

- 7.20. A significant number of stakeholders identified in consultation feedback that they were not provided with information and guidance on how to implement their plan,

including how to find out about the service providers in their community, and what 'quality indicators' they should be looking for in a providers service offering. As set out earlier, this experience may be linked to the rapid scale up of participants entering the scheme, with planners seeking to push through plan approvals in response to pressure to meet the transition intake targets.

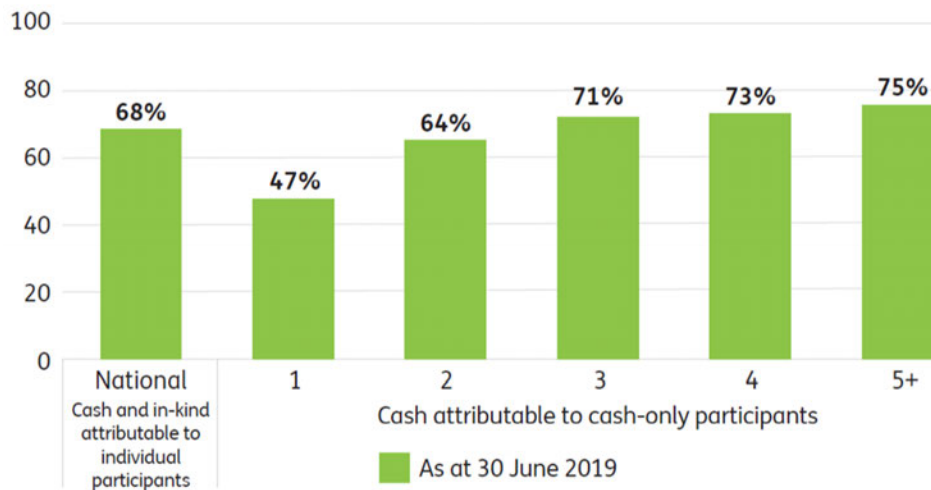
Quotes

- 7.21. Stakeholders also reported that, despite the volume of information and guidance available on the NDIS website, their planner did not tell them it was there, they could not find what they needed, or that what they could find was not accessible. This is supported by strong survey feedback which suggests participants do not know how to implement their plan, find providers, or create service bookings and agreements.



- 7.22. If participants are not provided with accessible information to assist them to understand and implement their plan, this will be reflected in the underutilisation of their funded supports. Utilisation is the proportion of expenditure (both planned and used) against the total plan budget.
- 7.23. At 30 June 2019, utilisation across all participant plans was just 66 per cent. However, when looking over the lifecycle of a participants NDIS plan, it is evident that utilisation grows the longer the participant stays in the scheme, suggesting that

utilisation improves as a consequence of participant's building their confidence in exercising choice and control.



From June 2019 DRC report

- 7.24. While this data also shows that participants become more experience and confident in understanding, managing and using their plan over time, there remains a need for the NDIA to better support participants, especially new entrants to the Scheme, to implement their plan and optimise the benefits of their funded supports. Participants should not be penalised in the early years of a plan because they are not properly informed.
- 7.25. However, low utilisation is not necessarily solely indicative of the participant not being provided with information on how they can use the funding in their plan. It can also be attributed to a range of other reasons, including the inability to connect with providers, more supports than expected being provided informally through family, friends or the community, the late activation of plans, or to thin markets.

Quotes

- 7.26. Following the approval of a plan, the NDIS Act does not require the NDIA to assist the participant to implement it. In keeping with the intent of the Guarantee, there is merit in requiring planners to offer a plan implementation meeting following the approval of the first plan and continue at least for the first few years in the scheme.
- 7.27. This meeting would provide new NDIS participants with a detailed overview on how to use their plan, including how they can spend the funded supports in their plan, how to

find NDIS service providers, make service agreements with providers and how to use the participant portal.

- 7.28. Plan implementation meetings could also be offered to existing participants to provide further information about how they can continue to best maximise their supports within their plan budget and consider alternative service delivery arrangements if they aren't satisfied with the current outcomes they are getting.
- 7.29. The offer of a plan implementation meeting would align with feedback that participants are finding it overwhelming when they receive their NDIS plan, and that they don't understand what their plan means or how they can use it. Despite there being a lot of information on the website to help people understand and implement their needs, this review considers that sometimes the participant needs to talk it through with a planner.
- 7.30. Such an approach would build on the NDIA's current plan to roll out Joint Planning Approaches nationally, which include a follow-up meeting with the participant and their planner that takes place no later than three weeks after the planning meeting.

Support coordination

7.31. [PLACEHOLDER.]

Recommendation 10: That the NDIS Rules be amended to provide more direction is considering whether support coordination should be funded as a reasonable and necessary support.

Alternative commissioning

- 7.32. The intent of the NDIS is that participants will be supported to purchase the supports they need from an open market. For this to work effectively, there is a natural assumption that the provider market will expand supply in high-demand services and respond to participant demands for high quality services that meet their needs. To the extent these adjustments can't or do not occur, or occur too slowly, the market is not able to respond in a timely manner to participant needs.
- 7.33. The primacy of participant's exercising full choice and control over their NDIS supports, including who they receive their supports from, is a key tenet of the NDIS. However, it has been broadly acknowledged that some participants are not able to purchase the supports they need on an individual basis through the market. This is occurs for a range of reasons, including:

- a. gaps between the supply and demand of services (“thin markets”);
- b. difficulties in serving a participant’s complex needs;
- c. location factors (e.g. lack of providers in rural and remote communities);
- d. regulatory constraints of certain settings; and
- e. where the scale of existing efficiencies and service delivery arrangements, as administered by states and territory disability systems, may not be able to be replicated on an individualised funding basis under the NDIS.

The key issues with the NDIS in my experience is that regional areas are poorly serviced by a market-based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service.

- 7.34. Rigid adherence to individualisation can have a negative effect, particularly when it is clear that some participants cannot access the supports they need. To this end, the NDIA does not have a clear legislated power to intervene to ensure the participant does not go without vital supports.
- 7.35. The Plan Management Rules already provides some limited powers for the NDIA to respond flexibly in cases where a participant cannot access the supports by approaching the market on an individualised basis. This includes through enabling the NDIA to enter into funding arrangements with particular providers or entities to deliver the supports in a participant’s plan, if the NDIA is satisfied that the support would more efficiently and effectively provided by that provider.
- 7.36. However, it appears that exercising this provision relies on the NDIA being satisfied that the alternative arrangement represents value-for-money. The NDIS Act and Supports for Participants Rules also do not provide guidance on when it would be appropriate to exercise that power, without diminishing from the primary of the participant’s right to choose who they will receive their disability supports from.
- 7.37. On this basis, there is merit in amending the NDIS legislation to enable the NDIA, in limited circumstances, to enter into alternative funding arrangements in cases where it is clear the participant cannot access the services identified in their plan.
- 7.38. This is particularly important in regional and remote communities where market supply may be thin and where it is evident that community-led service delivery responses would yield greater social and economic outcomes for the NDIS participant. This could also extend to include for the delivery of NDIS supports in settings where regulatory or other controls prevent the delivery of a free market, for instance within schools.

- 7.39. The creation of this power would be intended to enable the NDIA to act quickly to fill service gaps and encourage positive market behavior. It would not, and should not, be used as a proxy or diminish from participant's being able to exercise choice and control over who delivers their NDIS supports, including who provides them.

Recommendation 11: That the NDIS rules be amended to allow the NDIA to undertake appropriate market intervention through flexible commissioning models on behalf of participants.

Choice of plan management

- 7.40. All NDIS participants are able to choose their providers of supports. Some participants may ask someone else to do it for them (a plan nominee), decide to manage the supports in their plan for themselves (self-manage), or use a registered plan manager. This contrasts with the situation where the NDIA and the participant have agreed the NDIA will be responsible for purchasing and managing the funding in their plan.
- 7.41. People who choose to have the NDIA manage their plans for them have the **protection** of only being able to use registered service providers. However, self-managing participants or those who use a plan manager can choose to receive their supports from anyone they wish, whether or not they are a registered.
- [What is protection in the context of this paragraph?]
- 7.42. Unlike self-management for which the NDIS Act and Plan Management Rules provides for matters and risks to be assessed in deciding whether a participant may self-manage, the legislation does not apply any such limitations or risk assessment for deciding whether a support can be plan managed. The rationale for this may in part be that plan managers must be registered NDIS providers and meet the quality and standards set by the NDIS Quality and Safeguards Commission.
- 7.43. The Review has heard feedback that there are potential risks for participants engaging unregistered providers through plan management without the same risk assessment and guidance that is currently available to self-managing participants. These concerns were raised on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to **greater risk** - particularly as the additional protections put in place for registered providers are not required of unregistered providers.

[Confirm - risk of what?]

Quotes

- 7.44. This review considers there is merit in extending the current provisions on determining when self-management would present an unreasonable risk to the participant to also apply to a decision for a support to be plan managed. This amendment would ensure the NDIA protects plan managed participants, particularly those with limited capacity, from procuring unregulated/risky supports and ensures they have the capacity to make informed decisions about the most appropriate supports or services that would meet their needs.

Recommendation 12: That the NDIS Act be amended to allow rules to be made about matters that would present an unreasonable risk to a participant in the context of plan management.

CHAPTER 8 – REVIEWING AND AMENDING A PLAN

KEY FINDINGS

- ✓ A robust, transparent and accountable review mechanism provides an essential safety net for participants. There are a number of areas in which the NDIA can, and should, improve its administration of reviews to deliver a better experience for NDIS participants and create significant administrative efficiencies for the NDIA.
- ✓ The legislative requirements for varying and reviewing plans are overly prescriptive and drives additional complexity, time and considerable stress and anxiety for participants.
- ✓ There is merit in amending the legislation to provide additional guidance on the factors that should be considered by the NDIA when accepting or denying participant-initiated requests to review their plan.
- ✓ Plans should be able to be amended without requiring a full plan review in certain (limited) circumstances where it is clear that the support to be added, or the change to be made, is reasonable and necessary.

- 8.1. Division 4 of Chapter 3 of the NDIS Act sets out that a participants plan cannot be varied or amended once it has been approved by the NDIA. It can only be changed or replaced in two circumstances:
- a. when the participant changes their statement of goals and aspirations - in this instance, a new plan is created comprising the new statement of goals and aspirations and the statement of participant supports in the existing plan; or
 - b. where it is replaced by a new plan, resulting from:
 - i. the participant requesting an unscheduled plan review (under section 48(2));
 - ii. the NDIA initiating an unscheduled plan review (under section 48(4)); or
 - iii. as part of a scheduled plan review - in which the NDIA must conduct a review of the plan by the date in which, and the circumstances in which, are specified in the plan (made under section 48(5)).
- 8.2. As the NDIS continues to mature, a greater proportion of the NDIA's workload will move towards supporting participants to review their plan, ensuring that their funded supports are working and helping them work towards, and achieve their goals and aspirations.

- 8.3. I centered my analysis of Division 4 on options to streamline the barriers currently in the NDIS Act that are driving large numbers of participants to request unscheduled reviews of their plans.
- 8.4. I also considered opportunities to streamline the process for making changes to a plan without requiring a full review of the participant's plan and the efforts required to improve the timeliness of the NDIA's approach and its communication with participants. Without significant efforts in these areas, there remains a risk that participants' right to review will be undermined and the review process will continue to be a driver of substantial numbers of complaints.

Unscheduled and Scheduled reviews

- 8.5. The NDIA's handling of plan reviews has been a consistent theme in consultation feedback. It is evident that poor quality or rushed planning decisions, or where the planner has not provided reasons for why certain supports have or have not been included in their plan, have led many participants to request unscheduled reviews of their plan.

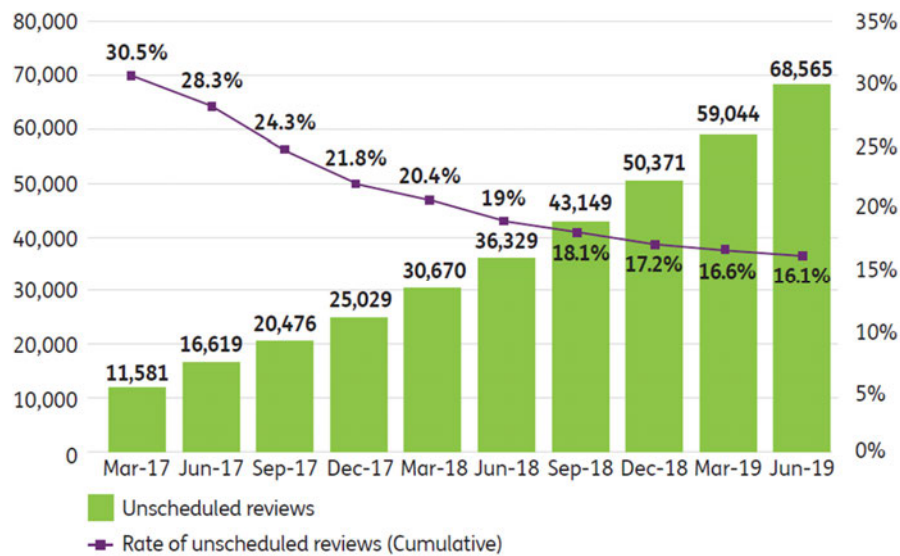
I requested full self-management and they incorrectly made core funding agency managed. I had to submit a review request which was never addressed or rectified.

At the planning meeting for first plan, it was agreed that support coordination would be included in my plan - but when plan was issued later that day, no support coordination was included. I spent the next 7 months trying to get a review to have support coordination included.

A mistake was made at planning where paperwork was lost by the planner so plan was approved without funding for transport and home modifications for a participant with cerebral palsy. The participant is still waiting for a review 10 months later.

- 8.6. Feedback indicates that participants have three major concerns with NDIA's administration of plan reviews:
- that the NDIA did not acknowledge their requests for an unscheduled review;
 - that they were not kept informed about the status or progress of the review; and
 - that the review process took too long, delaying access to much needed supports.

- 8.7. The NDIA have previously acknowledged that the bilateral targets for access requests, plan approvals and scheduled plan reviews were often prioritised over unscheduled planned reviews, and that the demand for these exceeded what had been anticipated.
- 8.8. [Need to include NDIA information - work underway to improve review processes - e.g. quality of planning, changes to ICT, quick add of AT, implementation of national team to address the backlog.]



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- 8.9. As discussed in [Chapter X](#), providing more transparency around planning decisions, giving participants more support to implement their plans and providing more flexibility over their plan budget will help build on the NDIA's current initiatives to improve the administration of reviews.

Timeframes for decision making

- 8.10. Under section 48(3) of the NDIS Act, if the NDIA agrees to a participant's request to conduct an unscheduled review of their plan, the NDIA must commence facilitating the review within 14 days after so deciding, and must complete the review 'as soon as reasonably practicable'. In regard to scheduled plan reviews, section 48(5) of the NDIS Act only sets out that it must be conducted before the date specified in the plan. It does not impose a timeframe for when the review should commence or when it should be completed.
- 8.11. Stakeholders provided consistent feedback that both scheduled and unscheduled plan reviews are not being completed in a timely manner. Over 40 per cent of respondents

indicated it took more than 3 months for the NDIA to complete the review of their plan and this delay had material impacts on their health and wellbeing.

[Note: NDIA data indicates that unscheduled review decisions are made 18 days after the request (on average) - but this data is patchy and I'm not sure we can rely on it enough to include here. NDIA also don't have data indicating how long it took to complete reviews, why it takes longer in certain circumstances, or whether the participant needed to provide further information to support the process.]

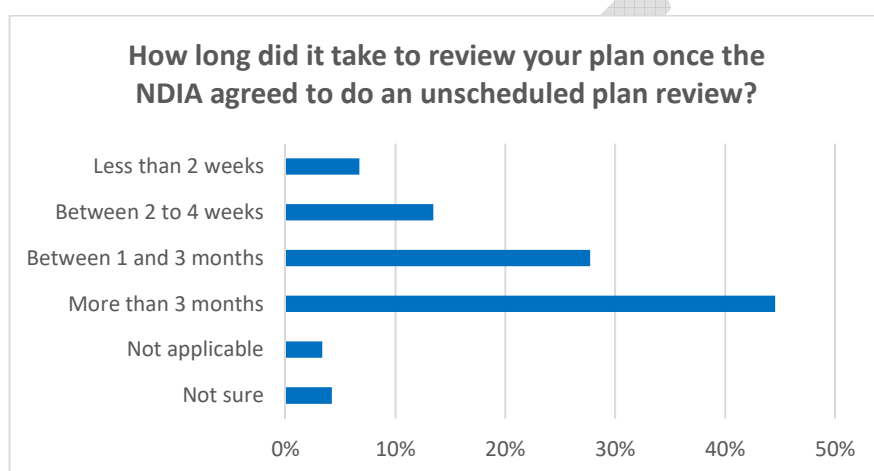


Chart - scheduled plan review experience/timeframes

- 8.12. In some cases, participants reported that the impact of their disability worsened as a result of a significant change in circumstances, and that the review process was not able to respond in an appropriate timeframe.

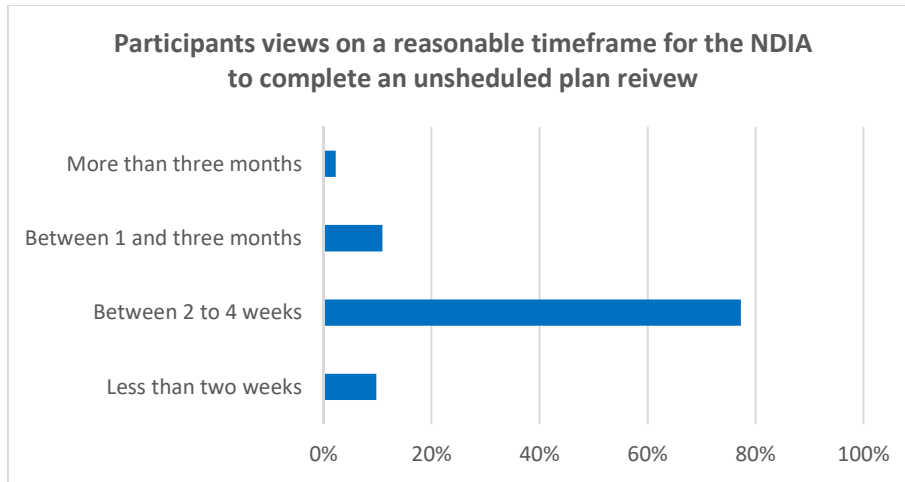
"I was not happy with my plan as it read. There were significant mistakes due to the cut and paste option used by the LAC. My condition is deteriorating and this is not accounted for in my current plan. I wish to have more supports but this was denied."

"I had to apply for a review because the intensive capacity funding application was "overlooked" by someone at the NDIA. Whenever I called, no one could tell me what was happening with the application and why it was overlooked. I had to go through the whole review application process and had to pay for more reports. Sadly, she has now regressed as we await the decision."

"The whole plan was done incorrectly and not suitable for my daughters needs. Wasted a whole year complaining and waiting for a review. While my daughter received no transport funding and no support."

"My daughters second plan contained a number of errors and nine months down the track they have yet to be fixed. The effects of this on my daughter's wellbeing has been significant and are of great concern to our family".

- 8.13. While the 14-day timeframe for the NDIA to decide whether to agree to conduct a participant-initiated unscheduled plan review appears reasonable, this review considers that participants must be provided with assurance that the review will be completed in a timely manner following the NDIA agreeing to conduct it. Participants who are approaching a scheduled plan review should also be provided with clarity about when the review will commence, and how long it will take to complete.
- 8.14. On this basis, there is merit in amending the legislation to stipulate that an unscheduled plan review should be completed within 28 days after the NDIA has agreed to conduct it. This is consistent with survey feedback that indicates a timeframe of between 2-4 weeks would be appropriate for a plan review to be completed, assuming the NDIA had all the information needed to conduct the review and approve the plan.



- 8.15. There is also merit in amending the legislation to give participants more assurance around when a scheduled plan review will commence, noting the NDIS Act does not currently prescribe a timeframe for this. Feedback from participant feedback from participants that the scheduled plan review process was rushed and they were not given time to prepare for the planning meeting.

Quotes

- 8.16. Given the recommendation that a plan be approved within 35 days of a planning meeting ([Chapter X refers](#)), it would be in keeping that a scheduled review commence no later than 35 days before the scheduled review date and be completed before it.

Guidance for decision makers

- 8.17. Aside from timeframes for reviews to be completed, stakeholders reported they do not understand how section 48(2) operates, including the circumstances in which they should request an unscheduled review of their plan, or the things that the NDIA will consider when deciding whether or not to conduct it.

Quotes

- 8.18. There is merit in prescribing the factors the NDIA will consider in determining whether or not to conduct an unscheduled plan review. This review notes the NDIA's Operational Guidelines already outlines some factors that could be elevated into a NDIS rule for this purpose. However, on balance, it is recommended that the factors to be considered would include:
- a. Where the participant has changed their statement of goals and aspirations;
 - b. Where the participant has had a significant change in circumstances;
 - c. Where the participant's functional capacity has deteriorated, or improved;
 - d. Where the participant has a degenerative condition, any change to their condition; or
 - e. After a period of early intervention supports.
- 8.19. The inclusion of these considerations in a rule would provide participants with greater clarity on the circumstances in which the NDIA would ordinarily agree to conduct a plan review, enabling planners and delegates to make the decision faster. It would also work in well with my proposal to allow the NDIA to amend a plan in certain (limited) circumstances (refer [paragraphs X to X](#)).

Recommendation 13: That the NDIS Act be amended to introduce a new rule making power that includes criteria on when the NDIA should agree to undertake an unscheduled plan review.

Deemed decision making

- 8.20. Under section 48(2) of the NDIS Act, should a participant request an unscheduled review of their plan, the NDIA must decide whether or not to conduct it within 14 days of the participant making that request. If the NDIA does not make that decision within 14 days, the NDIA is taken to have decided not to conduct the review and that automatically progresses to an internal (merits) review process. The merits review process is further discussed in Chapter 8.
- 8.21. Stakeholders expressed frustration that the way this deeming provision operates disadvantages the participant and does not incentivise the right behavior of NDIA planners and delegates. For many participants, they were forced to undergo an internal (merits) review of that deemed decision, instead of focusing on the material issue in question - that is, whether or not the NDIA should have decided to review the plan and the appropriateness of the current supports in it.

Quotes - NDIA knows people wont ask for internal review, so don't decide within 14 days

- 8.22. First principles would suggest that a participant should not be penalized as a result of a delay in NDIA failing to decide whether or not to do something in a certain number of days. The participant has no control over the action or inaction of the NDIA delegate making that decision.
- 8.23. Therefore, in keeping with the participant-centered approach of the Guarantee and to improve the participant experience with the administration of plan reviews, there is merit in inverting the deeming provision, so that if the NDIA does not respond to the participant's request within 14 days, the NDIA will be taken to have agreed to conduct the review. This would be uncontroversial noting that operational guidance would be elevated so participants know when the NDIA would ordinarily agree or not to their request.

Amending a plan

- 8.24. As set out earlier, a participant's plan cannot be varied unless a new plan is created under Division 4 of the NDIS Act. In short, this means to make any change to the plan - including making the most minor administrative change to a plan (such as fixing a typo or changing the participant's contact details) - requires the participant to undergo a full plan review. Understandably, this has caused significant frustrations for participants.

"We had to go through the plan review process because of errors made by the NDIS in relation to the miscalculation of money amounts. NDIS basic mistakes should be easy to correct instead of my daughter being dragged through the plan review process."

"The second time [requested a plan review] was due to many errors in my plan, including incorrect goals, incorrect information and insufficient funding for transport".

- 8.25. Feedback also indicates participant's feel this process might otherwise reassess or materially reduce all the supports in their NDIS plan, rather than just consider the matter in contention. A significant number indicated they, despite needing additional or new supports, are choosing not to request a review of their plan for this reason.

I have heard early reviews can take ages and there's no point as you can lose funding and will take 12 months to happen. This is why I haven't done one. Also the stress of it all is too much.

We were told that we couldn't ask for a review as the plan had only just been given. We had to cut our therapy by 30 per cent I again asked for a review & we were threatened that money could be removed from the plan & not to proceed.

The review process takes so long that it seems not worthwhile and the fact that when participants have sought a review the entire plan gets reviewed and not just the issues of concern has been used to reduce money in other sections of the plan and in some cases people have been kicked off the scheme.

- 8.26. The NDIA have acknowledged this issue, and has been implementing a "light touch plan review" process in circumstances where only minor amendments need to be made to the participant's plan. This has been used in circumstances such as:
- to implement the result of an internal review decision;
 - where the participant requested to change their plan management type;
 - to make administrative changes to a plan or correct data entry errors; and
 - to add new supports following receipt of a quote.
- 8.27. The light touch process involves the planner and the delegate having a conversation with the participant, their plan nominee or child representative, to inform them of the light touch plan review process, ensuring that they agree to undertake a light touch plan review and ensure they understand the changes which will be made to their plan.
- 8.28. The NDIA have not been implementing a light touch process where there is evidence of a significant change in the participants circumstances, or where:
- the participant is seeking additional funding to support a new goal;
 - there are already sufficient funds in the plan that can be used flexibly; or
 - there is insufficient supporting evidence.
- In these instances, a full plan review is completed.
- 8.29. While the "light touch" process has enabled the NDIS to reduce the time some participants are waiting to make certain changes to their plan, it is still burdensome for the participant and the NDIA. This is because the decision to approve the plan requires a formal delegate decision and because a new plan is created as a result, the participant needs to re-establish service bookings with their providers.
- 8.30. On this basis, there is merit in allowing a plan to be amended, without constituting a plan review or automatically creating a new plan, in certain (limited) circumstances,

where the NDIA is satisfied that the change to be made (or the new support to be added) could be considered in isolation from the other supports in the plan. For example:

- a. if a participant changes their statement of goals and aspirations and there is no change to their statement of supports;
- b. if a participant requires crisis/emergency funding as a result of significant change to their support needs and the CEO is satisfied that the support is reasonable and necessary;
- c. if a participant has obtained information, such as assessments and quotes, requested by the NDIA to make a decision on a particular support, and upon receipt of the information the NDIA is satisfied that the funding of that support is reasonable and necessary;
- d. if the plan contains a drafting error;
- e. if plan management type is changed, subject to the completion of appropriate risk assessments; and
- f. to allow supports to be determined as reasonable and necessary to be added to a plan if the relevant statement of participant supports is under review by the AAT.

8.31. This idea of amending a plan would enable the NDIA to make quick adjustments to plans, reserving the formal review process for participants who have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal. Importantly, it would provide participants with timely access to supports and reduce administrative burden on the NDIA to allow more resources to be dedicated to supporting quality planning and plan implementation processes.

Recommendation 14: That the NDIS Act be amended to introduce the ability for the NDIA to amend a plan in limited circumstances.

Plan review gaps and service bookings

- 8.32. Once a participant has an approved plan, they can create service bookings in the NDIS portal. Service bookings are used to set aside funding for an NDIS registered provider for a support or service they will deliver in accordance with the participant's plan. Generally speaking, a service booking will show the type of support to be provided, when it will be provided and the length of time it is needed.
- 8.33. Many participants create their service bookings in advance, and have expressed frustration that when a new plan is approved, this ends all their current service bookings, and requires new service bookings to be put in place.

Quotes

- 8.34. Stakeholders also provided feedback that suggests their access to their NDIS supports stops if the review of their plan was not completed and a new plan created by the date specified in their plan.

Quotes

- 8.35. Both of these issues are artificial and arise out of the way the ICT system is built. There is no legislative reason for why participants should have their access to NDIS supports stalled because of plan review delays, or need to recreate service bookings once they have been given a new plan. Understandably, these are causing significant frustrations for both participants and providers.
- 8.36. The NDIA is identifying IT solutions to both issues. In September 2019 the NDIA launched a new process that means the NDIA will start identifying participants with plans expiring within seven days, and, in certain circumstances, automatically extend the end date of the plan. This will mean participants will be able to receive supports regardless of a delay in their new plan being approved. It also means providers will continue to be able to claim for supports delivered in accordance with the plan until the new plan is approved.
- 8.37. Notwithstanding this work, there is merit in the NDIA continuing to explore more permanent solutions, including the ability for service bookings to carry across subsequent plans.

Those with periodic support needs

- 8.38. [Placeholder - revoking status/suspending plans - concept of maintenance]

CHAPTER 9 – REVIEWABLE DECISIONS AND AAT APPEALS

KEY FINDINGS

- ✓ Review processes do not work as intended. Despite efforts to expedite decision-making, participants are experiencing uncertainty and delays and have limited options to exercise their right of appeal.
- ✓ Changes to appeal processes are needed to provide clear and streamlined pathways for participants to resolve issues in relation to their plans and reduce administrative red-tape.
- ✓ Parameters need to be established to provide clearer guidance as to when the AAT has jurisdiction to hear a case, and as well as provide clarity of the nature of the decision in question and all of the surrounding circumstances.

- 9.1. Part 6 of Chapter 4 of the NDIS Act outlines what decisions made by the NDIA are reviewable decisions, and the process of administrative review, including both internal review by the NDIA, and external review by the AAT.
- 9.2. While there are many types of decisions that are subject to internal review, I have centered my analysis on those which involve decisions relating to the approval, development or review of a participant's plan. I also considered the jurisdiction of the AAT to review NDIA decisions, including opportunities to provide clarity on what decision is before the tribunal and what happens to a plan where the review date occurs during the tribunal process.

Triple use of the word “review”

- 9.3. As outlined earlier, participants can seek two types of review under the NDIS Act: a review of their plan (in accordance with section 48) and a review of a decision (in accordance with Part 6 of Chapter 4). A third type of review is created when the participant appeals an internal review decision to the AAT for consideration.
- 9.4. Concerns over this duplicative terminology has been raised by the NDIA, AAT, disability peak organisations and their participants on multiple occasions, including as early as 2015 when the first review of the NDIS Act was conducted. To date, no amendment has been made to address the confusion.

- 9.5. Some stakeholders maintained that this twin, if not triple use of the word 'review' is confusing participants, and, in turn, potentially hindering their rights to pursue a internal review of NDIA decisions that affect them.

Quotes - too hard; confusing

- 9.6. The NDIS Act should be amended so that the word 'review' has only one meaning. One way it could be implemented is to reframe 'review of participant's plans' as 'XX of participant's plans', as suggested by the NDIS Participant Reference Group.

Recommendation 15: That the NDIS Act be amended to resolve confusion surrounding the three types of reviews.

Internal reviews

- 9.7. Section 100(2) of the NDIS Act sets out that a person may request the NDIA to review a decision they made that the person did not agree with. If they choose to do this, they must make the request within three months after receiving the notice of that decision. Section 99 of the NDIS Act sets out that the decisions related to access and planning that are reviewable are:
- a decision that a person does not meet the access criteria (sections 20(a), 21(3) and 26(2)(c));
 - a decision to revoke a participant's status as a participant (section 30);
 - a decision to approve the statement of participant supports in a participants plan (section 33(2)); and
 - a decision not to undertake an unscheduled plan review (section 48(2)).
- 9.8. Under s.100(6) of the NDIS Act, should a person request an internal review of a NDIA decision, the reviewer must 'as soon as practicable', make a decision to either:
- confirm the decision;
 - vary the decision; or
 - set it aside and replace it with a new one.
- 9.9. XX of survey respondents indicated they had asked the NDIA to review a previous decision it made in relation to their plan. Of those, the majority reported that they experienced stress and anxiety during the process, that the process was unclear, that they felt their concerns were not being listened to, and that they were unhappy with the outcome.

The first time I applied [for an internal review] I didn't understand what was required and nobody could help me. I saw two LACs but they were new and didn't know what was required either. I applied again and got help from my GP and a Social Worker. The whole process took nine months and was a nightmare, I nearly gave up and I am not a quitter usually.

I had an extreme lack of funding in first plan and I phoned the NDIA and asked for an internal review but no one could tell me exactly how to do it.

My original plan identified my need for a motorised wheelchair. My O/T application was rejected and I was informed of this by phone. I proceeded to the next stage by requesting a review and providing extra information to support that application, but after 3 months that review hadn't been considered.

*The review process is a legal maze for people with disability and their families to navigate.
(Autism Family Support Association Inc)*

- 9.10. During consultations, stakeholders raised a number of issues relating to the internal review of decisions that I believe are ultimately practice issues. For purposes of transparency, I have listed some of these issues below. I have not, however, sought to validate the comments.

The NDIA have turned me down for services I clearly need relating to my disability and that others with my exact disability are getting. I have also had to ask them to include things they agreed they would and then forgot to include. Although I requested reviews, I never heard back and none were conducted.

They said I wasn't sick enough

Disagreed with decision because planner totally misunderstood reason why assistive technology was requested and needed... their written and verbal response clearly showed that after providing extensive paperwork, specialist reports, emails and phone calls. The planner had not comprehended the complexity of it (nor the final delegate)!

The plan was very poorly written and the goals were reduced in number and re written so that the intent was different from what I originally intended.

- 9.11. [Need further info from NDIA on what they are doing to expedite internal review processes and outcomes]
- 9.12. As a matter of best practice, the NDIA should provide participant's with greater clarity on their right to request a review of their plan at any time, as well as to request an internal review of decisions made by the NDIA in relation to their plan. The NDIA should also ensure that, subject to the participant expressing the contrary, hold a meeting with the participant, their nominee or representative before making an internal review decision. This in direct response to feedback from stakeholders that they were not contacted after lodging their request for an internal review and were not invited to provide further evidence to support their claim that the original decision made by the NDIA was the incorrect one.

The review of a reviewable decision was never looked at for a whole year. Despite numerous phone calls and time wasted was finally contacted by someone and told that it would be closed as now due for scheduled annual review. Also repair quote sent to AT, despite numerous phone calls and escalations never received a reply in 12 months.

The NDIA have turned me down for services I clearly need relating to my disability and that others with my exact disability are getting. I have also had to ask them to include things they agreed they would and then forgot to include. Although I requested reviews, I never heard back and none were conducted.

I am still waiting on a response to my internal review request after nine months and numerous phone calls.

Timeframes for decision making

- 9.13. There is no way for the participant for the participant to be certain that a decision maker has not made a decision 'as soon as reasonably practicable', other than to request an AAT consideration of the matter.
- 9.14. If the NDIS Act were to provide a set timeframe for an internal merits review to be completed and an explicit provision that failure to make that decision in the stated time would give rise to a deemed decision, then this would give participants certainty and a clear avenue for meaningful review of NDIA decision-making.
- 9.15. This Review sought feedback from participants about what would be a reasonable period for the NDIA to finalise an internal review decision. Over **XX** of participants felt that between 2-4 weeks was a reasonable period given the NDIA was not considering

the substance of the plan or their request, but merely affirming that a previous decision it made was the correct one based on the facts of the circumstances.

- 9.16. Prescribing a timeframe for the making of the decision also overcomes issues around AAT jurisdiction. Here, I acknowledge that the AAT has previously concluded that the words “as soon as reasonably practicable” constituted a deemed decision under s.25(5) of the AAT Act, such that if a decision under s.100 of the NDIS Act was not made as soon as was reasonably practicable, it would be deemed that the decision had been made.
- 9.17. The NDIA is seeking to avoid the jurisdiction where possible by assisting participants by making expedited internal review decisions. However without further clarity around what “as soon as reasonably practicable” might be, the NDIA and participant will continue to lose the opportunity to address and resolve the substantive issues by first conducting an internal review.
- 9.18. [Concerning, over XX were unhappy with the internal review outcome chose not to exercise their right to appeal that decision to the AAT. Need to seek information from the NDIA about what they are doing to inform participants of their appeal rights.]

AAT review

- 9.19. Under section 103 of the NDIS Act, a participant may make an application for the AAT to review an internal review decision made under section 100(6). The AAT does not have jurisdiction to review a decision that has not been internally reviewed by the NDIA, nor can it review every decision that the NDIA makes.
- 9.20. AAT lodgements increased from 186 in 2016-17 to 744 in 2017-18 and 1,220 in 2018-19. This rate of growth, although seemingly significant, is in large part expected and consistent with the rate of participant transition as the NDIS has progressively rolled out across Australia.
- 9.21. The NDIA takes a conciliatory approach to AAT matters, with the focus on resolving matters at the earliest opportunity or to proceed as quickly as possible to AAT hearing on issues that cannot be resolved. Consistent with this approach over 95% of all matters are resolved without a substantive hearing.
- 9.22. Wherever appropriate, the NDIA offers to enter into partial terms of settlement on matters which have been agreed, to ensure the participant can access those supports while the other matters are dealt with in the Tribunal.

- 9.23. Notwithstanding the NDIA's efforts to resolve issues early, evidence suggests issues are being driven to the AAT, in part, because there is some confusion by the participant, and at times the NDIA, as to whether the applicant is seeking a review of the decision to approve their statement of participant supports under section 33(2) or the decision (deemed or otherwise) to not review a participants plan under section 48. Because both processes are called 'reviews', and the considerations are largely the same, there can be confusion by all as to what is actually being sought.
- 9.24. The AAT has previously commented on the confusion involved in determining these matters (emphasis added):

*In this case, I have set out the steps that the NDIA has taken to illustrate the confusion that would seem to permeate the process of review. To a large extent, **the confusion would seem to arise from the structure of the NDIS Act...** To distinguish between decisions regarding the plan and its reassessment and decisions regarding the substance of what it is to which a participant is entitled and which is set out in a statement of participant supports in his or her plan, seems an unnecessary distinction. It is a distinction that leads to cases such as this in which time must be spent to work out what has been decided rather than to work out what it is to which a participant is entitled.*

(LQTF and NDIA [2019] AATA 631)

- 9.25. This review acknowledge that participants simply want a decision about their support needs, not a decision about another decision. The internal review process could be improved through training, clearer and separate forms and a change in terminology. Consideration could also be given to operational guidelines confirming that a request lodged within three months of a plan being approved is a request for a review of a reviewable decision under section 33(2) of the NDIS Act, to distinguish it from a request for a review decision under section 48(2) of the NDIS Act.

Confirming the matter before the AAT

- 9.26. The AAT only has jurisdiction to consider the reviewable decision made at the time of lodgment of the application for appeal. The AAT does not have jurisdiction to consider any subsequent decision that the NDIA may have made in relation to the participants plan, requests that may have been made by the participant or decisions made by the NDIA in relation to the participant. As a consequence, the AAT's decision can quickly become obsolete or outdated if the hearing takes longer than expected.
- 9.27. For example, while the participant is waiting for the AAT decision the participant may have a scheduled plan review, which subsequently changes their plan resulting in the

creation of a new plan. Under these circumstances, the AAT's decision will only take into account the plan at the time the decision was lodged with the AAT and not any subsequent plan. Understandably, this is creating administrative red-tape and frustrations for both participants and the NDIA.

- 9.28. Section 26(1)(b) of the AAT Act allows the AAT, with the trilateral agreement of the participant, the NDIA and the AAT, to alter the application before the Tribunal. However, exercising this provision relies on the NDIA having the power to alter or vary the decision. This power does not currently exist outside the construct of section 100(6). In all cases, the NDIA is prevented from varying a plan under section 37(2).
- 9.29. In circumstances where a statement is before the Tribunal and the scheduled plan review date is imminent, there is merit in allowing the NDIA (where the parties agree, pursuant to s 26(1)(b) of the AAT Act) to vary the plan review date (i.e. push it out until after the AAT has handed down its judgement).
- 9.30. Further, the ability to amend a plan in accordance with section 26(1)(b) of the AAT Act could also be utilised where, for example, the majority of the supports in contention have been agreed or settled between the participant and the NDIA and can be placed into their plan and utilised, while the Tribunal deals with the remaining supports.
- 9.31. These steps are primarily procedural or jurisdictional but would be expected to reduce the number of unnecessary appeals and ensure review processes are focused on the participant and facilitated in a way reduces administrative red-tape and frustrations for participants, the NDIA and Tribunal members.

Recommendation 16: That the NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended based on trilateral agreement while a matter is before the AAT

Timeframes for implementing the AAT decision

- 9.32. The timely implementation of an AAT decision is critical for participants as the decision in question may specifically relate to the 'reasonable and necessary' supports in their plan. However, there is no ordinary timeframe for AAT decisions to be handed down, or any legislative requirement as to what would be a reasonable timeframe. This is generally dependent on the complexity of the matter and the individual Tribunal member.
- 9.33. There are significant operational resources being deployed by the NDIA to improve the experiences of participants undergoing AAT appeal and the administration of reviews,

including the timely implementation of AAT decisions. NDIA data indicates that most AAT decisions are implemented in a participant's plan within 1-2 weeks of settlement or a tribunal decision, unless further information such as a quote is required (e.g. for Assistive Technology).

- 9.34. However, some stakeholders reported that there are lengthy and unexplained delays in amending their plan in line with the AAT's decision.

Quotes

- 9.35. Amending the NDIS Act to give participants certainty on a timeframe for the implementation of an AAT decision provide important assurance to participants that NDIA will honour the AAT decision as stated. However, this should be qualified by the fact that any person (including the NDIA) who is not satisfied with the AAT decisions can appeal it to the Federal Court on a question of law (refer section 44(1) of the Administrative Appeals Tribunal Act)³.

³ To date three NDIA cases have been appealed to the Federal Court of Australia: Mulligan v National Disability Insurance Agency [2015], McGarrigle v National Disability Insurance Agency [2017] and SSBV v National Disability Insurance Agency [2018].

CHAPTER 10 – THE NDIS PARTICIPANT SERVICE GUARANTEE

KEY FINDINGS

- ✓ The Guarantee should be legislated through a new rule that includes a balance of qualitative and quantitative measures.
- ✓ The Commonwealth Ombudsman, in overseeing the service guarantee, should have the ability to compel the release of relevant NDIA information.

- 10.1. This review has been asked to develop options to amend the NDIS Act to introduce a legislated participant service guarantee, which includes legislated timeframes for decision-making by the NDIA.
- 10.2. In assessing NDIS implementation to date, and the underlying drivers for issues being raised by participants, their families and carers, this review considers that a participant service guarantee based solely around timeframes for decision-making is likely to drive perverse outcomes for participants, and risks compromising the quality of the NDIS participant experience.
- 10.3. The Guarantee needs to find an appropriate balance between quality of NDIS processes and the speed of those processes. The Guarantee also needs to take into account that a number of the factors causing issues with the participant experience either are a direct result of the scale and spend of the transition period, or are being addressed through operational reforms currently underway by the NDIA.
- 10.4. Notwithstanding that the Guarantee is anticipated to commence from 1 July 2020, the NDIS as a system will be subject to continuous evolution. As a result, the Guarantee needs to be sufficiently flexible to and be responsive to the prevailing circumstances as they evolve.
- 10.5. Therefore, this review considers it would be more appropriate for the NDIS Act to be amended to introduce new rule making powers that allow the Commonwealth Minister responsible for the NDIS to update the Guarantee from time to time.
- 10.6. The current rule-making power under the NDIS Act around the timeframes for CEO decision-making are Category C - or a rule that must be agreed by a majority of States and Territories and the Commonwealth before the rule is made.

- 10.7. Reflecting on the ongoing role of states and territories in the governance of the scheme, and as agreed through Bilateral Agreements between the Commonwealth and each state and territory for full scheme), it would seem appropriate that the a rule making power relating to the Guarantee would also be a Category C rule.
- 10.8. For the avoidance of doubt, this review also considers that relevant timeframes legislated in the NDIS Act be removed and instead included in a new Guarantee rule, for instance the current 21 day period for the CEO to make an access request decision. This will ensure there is one consolidated location for all timeframes associated with the participant's journey through the NDIS.

Timeframes

- 10.9. In considering timeframes for decision making, it is important to balance NDIA capacity and capability against community expectations, and that the timeframes are included at all appropriate points in the participants journey through the NDIS.
- 10.10. A number of these timeframes have already been discussed in previous chapters to this report, and are included again in this chapter for completion.
- 10.11. As discussed in [Chapter X](#), this review considers the Guarantee should empower an NDIS participant to request an explanation of a decision made by the NDIA in a format of the participant's choice (prospective participant for access decisions). This format could include, for instance, face-to-face discussions, a written document, or via a telephone call.

Decision	Current Timeframe	Proposed Timeframe
Request for explanation of a decision	Nil	28 days, in the format of the participant's choosing

- 10.12. As discussed in [Chapter X](#), this review does not find a compelling reason to amend the current legislated timeframes for the NDIA to make an access request decision. However, this review does consider that a prospective participant should be given more than 28 days to source material relevant to their access request, and that this should be extended to 90 days. The NDIA should also be required to make all reasonable efforts to contact a prospective participant before the access request is deemed to be rejected.

Decision	Current Timeframe	Proposed Timeframe
Initial CEO Access decision, or request for more information	21 Days	21 Days

Participant to provide information	28 days before access request lapses	90 days and access request only lapses after NDIA make all reasonable efforts to contact
CEO decision after more information provided	14 Days	14 Days

- 10.13. As discussed in **Chapter X**, this review considers the Guarantee should include several new timeframes for the planning process, with an underlying expectation that a participant will have a plan put in place no more than eight weeks after an access request decision.
- 10.14. In supporting the proposed new plan amendment process, as discussed in **Chapter X**, this review finds considers that it is reasonable to expect, once supporting information is provided - such as a quote - a decision on whether to amend a plan, and the amendment of that plan will occur within four weeks.
- 10.15. This review does not find a compelling reason to amend the timeframes for providing a copy of a plan to a participant following the approval or update of a participants' plan.

Decision	Current Timeframe	Proposed Timeframe
Commence facilitating the Preparation of a plan for first plan and unscheduled reviews.	As soon as reasonably practicable	21 days and defining facilitating the preparation of plan as 'a planning discussion occurring', subject to the availability of the participant
Approve Statement of Reasonable and Necessary supports for first plan, scheduled and unscheduled reviews	As soon as reasonably practicable	35 days following the first planning discussion. [Need to think about if more information is requested]
Offer Plan Implementation meeting	Nil	28 days following the plan being approved, subject to the availability of the participant
Plan copy provided to participant following approval of statement of participant supports	7 Days	7 Days
Plan copy provided to participant following a change of goals and aspirations	7 Days	7 Days
Amending a plan	Nil	28 days following the provision of information to

		support a plan amendment, such as a quote.
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- 10.16. As discussed in [Chapter X](#), this review considers the Guarantee should include several new timeframes relating to plan reviews. In keeping with the proposed timeframes for facilitating a participant's first plan, a participant should commence their scheduled plan review no less than five weeks from the scheduled review date.
- 10.17. For an unscheduled plan review, this review considers that the process for deeming an unscheduled plan review decision should be reversed, such that if the NDIA does not make a decision in the prescribed period, then the NDIA is taken to have agreed to undertake a plan review. However, and due in-part to the operational resources required to undertake a full plan review, it is reasonable to provide the NDIA with up to three weeks to make an unscheduled plan review the decision before a deemed decision, rather than the current two-week period.
- 10.18. In line with the timeframes for the proposed plan amendment process, it seems reasonable to expect that the NDIA to undertake an unscheduled plan review with a four-week period, on the basis that supporting information would be provided through the participant's application for an unscheduled plan review.
- 10.19. In undertaking an internal merits review, the NDIA consider more than the documentation made available to the delegate responsible for making the decision in question. As such, the merits review process is broader than a simple desktop audit of the decision, which could ordinarily be completed quickly.
- 10.20. On the basis that the NDIA may seek additional information from a participant, or prospective participant, it seems reasonable that an internal merits review should be completed within a period of eight weeks based on the information available to the NDIA by the end of that eight-week period, unless an extended period is agreed mutually between the parties.
- 10.21. In addition, a new timeframe should be introduced to require the NDIA to vary a plan in line with an AAT decision, within four weeks, in line with the proposed new plan amendment process.

Decision	Current Timeframe	Proposed Timeframe
Commence facilitating a scheduled plan review	Nil	No less than 35 days before the scheduled review date and new plan in place by the scheduled plan review date [Need to think about if more information is requested]
Review - deciding to undertake an unscheduled review, prior to deemed decision.	14 Days	21 days - noting an inversion of the deemed decision to yes
Review - undertaking an unscheduled review	As soon as reasonably practicable	28 days following the decision to undertake a plan review
Review - undertaking an internal review	As soon as reasonably practicable	56 days, unless extended by mutual agreement with the participant or prospective participant
Review - implementing a plan variation from an AAT decision	Nil	28 days following the AAT decision [Need to think about the ability to appeal AAT decisions within 28 days]

10.22. If a participant no longer supports their current plan nominee, it is reasonable to expect the NDIA to act quickly to remove the appointment of that nominee to ensure the participant hold the maximum amount of control of their plan. Therefore, this review considers the Guarantee should introduce a new timeframe for cancelling the appointment of a nominee that was made at the request of a participant, and that this be aligned to the timeframes for cancelling a CEO initiated nominee.

10.23. This review does not find any compelling reason to amend the timeframes for nominees to appeal an action by the CEO to suspend their appointment.

Decision	Current Timeframe	Proposed Timeframe
Cancel participant requested nominee	As soon as reasonably practicable	14 Days
Cancel CEO initiated nominee	14 Days	14 Days
Appealing the suspension of a nominee	28 Days	28 Days

Quality Indicators

10.24. In addition to explanation of decision and principles in the NDIS Act - maybe show what is in the act on this.

10.25. treated with respect and must listen

10.26. ATSI/CALD - engagement good

10.27. Training- be better recognize people are experts in their disability and know their own environment

10.28. Right to see statement of goals and aspirations and personal information in plan before being agreed.

10.29. Will work to connect with other systems, taking whole of life approach

Commonwealth Ombudsman

10.30. Stuff on legal/what it can do and then what we recommend re powers

Recommendation 17: That the Guarantee be legislated through a new Category C rule, to be updated from time to time and:

- c. relevant existing timeframes for decision-making be moved from the NDIS Act to the new rule; and
- d. the proposed timeframes and quality indicators included.

Recommendation 18: That the NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Guarantee.

CHAPTER 11 – UPDATING THE LEGISLATION

KEY FINDINGS

- ✓ Elements of the NDIS Act are designed around a scheme that was in a launch or transition phase. As of 1 July 2020, when the transition to the NDIS will be completed in all states and territories, aspects of the NDIS Act will be out of date.
- ✓ The NDIS Act should be amended to ensure it is fit-for-purpose in the context of a maturing and evolving scheme that will be truly national from 1 July 2020.
- ✓ The NDIS Rules should also be amended to remove transitional provisions and reflect best-practice drafting standards.

Updating the NDIS Act

- 11.1. Many provisions in the NDIS Act refer explicitly to trial and transition, or “the NDIS launch”. This includes references to the progressive roll-out of the NDIS across Australia and the different phasing arrangements that were to apply in each state and territory (see, for example section 33A of the NDIS Act). As of 1 July 2020, these references will be out of date following the completion of the transition period.
- 11.2. Currently, the NDIS Act differentiates between a ‘host’ and a ‘participating’ jurisdiction. In short, a host jurisdiction is a reference to a state or territory in which the NDIS is operating and a ‘participating’ jurisdiction is a reference to a state or territory where the NDIS Quality and Safeguards Commission is operating.
- 11.3. As the NDIS had not commenced in each state and territory when the NDIS Act first came into force, the NDIS Act needed to be able to differentiate between them. Using the term ‘host jurisdiction’ was the way this was done.
- 11.4. Similarly, the term ‘participating’ jurisdiction was introduced to reflect that states and territories would not all come under the remit of the NDIS Quality and Safeguards Commission at the same time. The Commission commenced operations in NSW and SA on 1 July 2018, and all other states and territories (except Western Australia) on 1 July 2019. The Commission will commence operations in Western Australia on 1 July 2020.
- 11.5. Because the NDIS is operating across Australia, all jurisdictions are now considered “host” jurisdictions and from 1 July 2020, all jurisdictions will be considered “participating” jurisdictions. It would therefore be appropriate to replace all existing

references to 'host' or 'participating' jurisdictions with 'states and territories'. This will reflect that the NDIS is truly a national system of disability support for people with severe and profound disability.

- 11.6. The NDIS Act also differentiates between the registration requirements that would apply to a NDIS provider in a host jurisdiction that is not a participating jurisdiction, and the arrangements that apply to NDIS providers in host jurisdictions that are participating jurisdictions. The former provisions can be removed from 1 July 2020 as there will be no host jurisdictions that are not participating jurisdictions. From 1 July 2020, the registration of all NDIS providers across Australia will be managed by the NDIS Quality and Safeguards Commission and subject to the Commissioner's registration powers at Chapter 4, Part 3A of the NDIS Act and the NDIS rules made for the purposes of that part.
- 11.7. The NDIS Act also references a number of 'firsts'. For example, arrangements that apply to the appointment of the first CEO of the Agency, the first reviewing actuary, the first report that must be provided to the Board about the scheme's performance and the first review of the NDIS Act to occur in 2015. These provisions can also be removed as these events have already occurred.
- 11.8. While none of these changes are strictly required for the NDIS to operate under full scheme arrangements, amending the NDIS Act to reflect a full scheme environment will reduce complexity and confusion, as well as provide an important signal that the NDIS has moved beyond a the roll out stage.

2015 Independent Review of the NDIS Act

- 11.9. In accordance with existing legislative provisions, the NDIS Act was reviewed in 2015. The purpose of the review was to assess the operation of the NDIS Act, as well as to consider whether or not any amendments could be made to better enable government to further the objects and principles of the NDIS Act.
- 11.10. The 2015 review recommended a number of minor and technical amendments to help governments manage risks proactively, so the NDIS stays on time, on budget and keeps delivering positive outcomes for people with disability. The Review also made a number of recommendations that show there are opportunities to provide greater clarity to the legislative framework. To date, these amendments have yet to be legislated.
- 11.11. This Review considers that any update that is made to the NDIS legislation to give effect to the Guarantee also implements the 2015 Act review recommendations, as

agreed by COAG in December 2016 as there is no compelling reason not to proceed with the proposed amendments. These include:

- a. removing moderating language;
- b. including amendments to reflect the centrality of people with disability and their inclusion in a co-design capacity; and
- c. amending the principles of the NDIS to acknowledge the unique experiences of women and LGBTQIA+ people with disability.

A full list of the amendments to be made to the NDIS Act as a result of the 2015 Review is provided at [Appendix X](#).

Updating the NDIS rules

11.12. A significant number of NDIS Rules were created to give effect to trial and transition periods and will no longer be relevant from 1 July 2020. These include:

- a. The *National Disability Insurance Scheme (Facilitating the Preparation of Participants plans - Australian Capital Territory) Rules 2014* and equivalent rules relating to New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and Western Australia.
- b. The *National Disability Insurance Scheme (Prescribed Programs - New South Wales) Rules 2016*;
- c. The *National Disability Insurance Scheme (Prescribed Program - Western Australia) Rules 2018*;
- d. The *National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*; and
- e. The *National Disability Insurance Scheme (Timeframes for Decision Making) Rules 2013* (to be replaced by a new rule giving effect to the Participant Service Guarantee).

This review considers that these rules should be repealed.

11.13. This review has not considered the SDA Rules as a separate review process is underway to refresh the rule in line with the 2018 review of the SDA Pricing and Payments Framework. In addition, this review does not propose any amendments to the information disclosure or accounting for compensation rules, as these rules are considered broadly fit for purpose at this time.

11.14. For all remaining NDIS Rules, this review considers that that these rules be repealed and replaced with rules that have been drafted in accordance with best practice drafting standards. This will ensure consistency and clarity of interpretation, to correct drafting errors, and remove unnecessary repetition of the NDIS Act, without altering the intention of the rule. In particular, the rules at [Box X](#) should be repealed and replaced:

Box 6: NDIS Rules recommended to be repealed and replaced

Name of Rule	Description
National Disability Insurance Scheme (Becoming a Participant) Rules 2016	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Clarify the permanency provisions that apply in the context of people with psychosocial disability (Chapter X refers) • Strengthen the focus on functional impairment in the context of determining a prospective participant's eligibility for the NDIS. (Chapter X refers)
National Disability Insurance Scheme (Children) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Nominees) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Plan Management) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Expand powers of the NDIA to enter into fee-for-service arrangements to facilitate service delivery in certain (limited) circumstances. (Chapter X refers) • Introduce matters and risks to be assessed in deciding whether a support can be plan managed. (Chapter X refers).
National Disability Insurance Scheme (Supports for Participants) Rules 2013	<ul style="list-style-type: none"> • Repeal and replace based on best practice drafting standards. • Clarify the level of informal supports that can be ordinarily expected of parents and families. (Chapter X refers) • Clarify the boundaries and responsibilities of the NDIS and other service systems following DRC decisions. (Chapter X refers)

Recommendation 19: That the NDIS Act and accompanying rules be amended to remove trial and transition provisions and updated to ensure they are fit for purpose for a full scheme environment.

The National Disability Strategy

- 10.31. The National Disability Strategy 2010-2020 provides a ten-year national policy framework for improving the lives of people with disability, their families and carers. It represents the commitment of all Australian governments to a unified, national approach to policy and program development and has a vision of enabling an 'inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. In giving effect to the objects of the NDIS Act, regard must be had for the Strategy as endorsed by COAG on 13 February 2011.
- 10.32. Importantly, the Strategy plays an important role in incorporating the principles of the United Nations Convention on the Rights of Persons with Disabilities into all the government policies and programs affecting people with disability, their families and carers.
- 10.33. The current ten-year Strategy is due to finish at the end of 2020. This Review recognises that the disability landscape has changed since the launch of the Strategy, particularly with the introduction of the NDIS. This Review also recognises that governments across Australia are working together to design a new national model to guide future disability policy, programs and legislation, to replace the current Strategy from the start of 2021.
- 10.34. Over the last three years, there have been a number of reviews and inquiries that have made recommendations to improve the effectiveness of the current Strategy. These reviews showed that while some things are working well and progress has been made, there is still room for improvement.
- 10.35. Notwithstanding DRC's efforts to provide greater clarity on the roles and responsibility between the NDIS and other service systems, this Review considers that there should be a stronger link between how the NDIS fits into the Strategy. Particularly, a stronger link to how the Strategy builds on and complements the NDIS, to fill service gaps and address inequities in access to the NDIS.
- 10.36. Despite being the most substantial reform driving the disability policy agenda, the NDIS should not take away policy attention on other aspects of the Strategy. The NDIS should not be the sole focus and effort of governments and purported to be the only vehicle in which people with disability receive the services and supports they need to live an "ordinary life".
- 10.37. Rather, it needs to be recognised that the Strategy's focus on improving mainstream services and community access will be vital to ensuring the long-term viability of the NDIS and that other service systems, including states and territories, still have an

ongoing responsibility to support the accessibility and inclusion of people with disability in their community.

10.38. Therefore, this review considers the NDIS Act should continue to have regard for the Strategy as it is updated from time to time.

Recommendation 20: That the new model for national disability policy that is being developed to replace the National Disability Strategy 2010-2020 should reinforce the complementing role of the NDIS, and that the NDIS Act be amended to reference the NDS as in force from time to time.

DRAFT

APPENDIX

DRAFT

s22

From: s22
Sent: Friday, 29 November 2019 5:13 PM
To: s47F(1)
Cc: s22
Subject: RE: Final draft of NDIS Act Review report [SEC=OFFICIAL]
Attachments: NDIS Act Review - compare 2nd with final draft.pdf; NDIS_PSG_final report_25112019_v2.docx

Hi David,

Further to s22 email, and as per your request on Wednesday, please find attached a track changed version of the report.

As we suspected, its hideous – almost unreadable. This is attributed to the fact we did an editorial QA, updated all the quotes and survey references, not to mention update several chapters with new content following discussions with the NDIA.

I have also attached the consultation reports we recieved from The Social Deck and First Peoples Disability Network.

s22

From: s22
Sent: Friday, 29 November 2019 4:46 PM
To: s47F(1)
Cc: s22 YEEND, Julie ; BROADHEAD, Peter ; CARAPPELLUCCI, Flora s22
Subject: Final draft of NDIS Act Review report [SEC=OFFICIAL]

Hi David,

Please see attached the final draft of the Act Review report.

This includes changes you have request and more feedback provided by the NDIA on the second version, including on tone.

This version has undergone a QA, but we are going to do a few more checks over the weekend before the report is finalised, including checking against accessibility standards.

Cheers,

s22

s22

Director
NDIS Governance
NDIS Participant and Performance Group
Department of Social Services
P: s22 | **M:** s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

REVIEW OF THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013

Removing red-tape and implementing the NDIS
Participant Service Guarantee

SECOND DRAFT

David Tune AO PSM
December 2019

DRAFT

LETTER OF TRANSMITTAL

REVIEW OF THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013

REMOVING RED TAPE AND IMPLEMENTING THE NDIS PARTICIPANT SERVICE GUARANTEE

FINAL DRAFT

DAVID TUNE AO PSM

DECEMBER 2019

DRAFT

DRAFT

LETTER OF TRANSMITTAL

The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services
Parliament House
CANBERRA ACT 2600

Dear Minister,

~~As the independent reviewer appointed~~ [Following my appointment](#) to conduct a review of the National Disability Insurance Scheme Act 2013, ~~(the NDIS Act)~~. I am pleased to provide you with my report and recommendations on ~~streamlining NDIS processes, removing red tape for participants, and~~ [how the legislation could be amended to support](#) the introduction of a Participant Service Guarantee.

~~The review concludes that the National Disability Insurance Scheme Act 2013 is broadly fit for purpose, but there are a number of areas that can improved to reflect the policy intent of stakeholders and improve the overall participant experience.~~

In undertaking this review, I have consulted ~~widely~~ with a range of stakeholders within the disability community, including [NDIS](#) participants ~~of the NDIS~~, their family, friends and carers, providers of NDIS services, disability advocacy bodies, the National Disability Insurance Agency and ~~State~~ [State](#) and ~~Territory~~ [Territory](#) governments.

[My review concludes that the NDIS Act is broadly fit for purpose, but there are a number of areas that can be amended to remove red tape and improve the participant experience.](#)



12

As at 20/11

Yours

sincerely

David

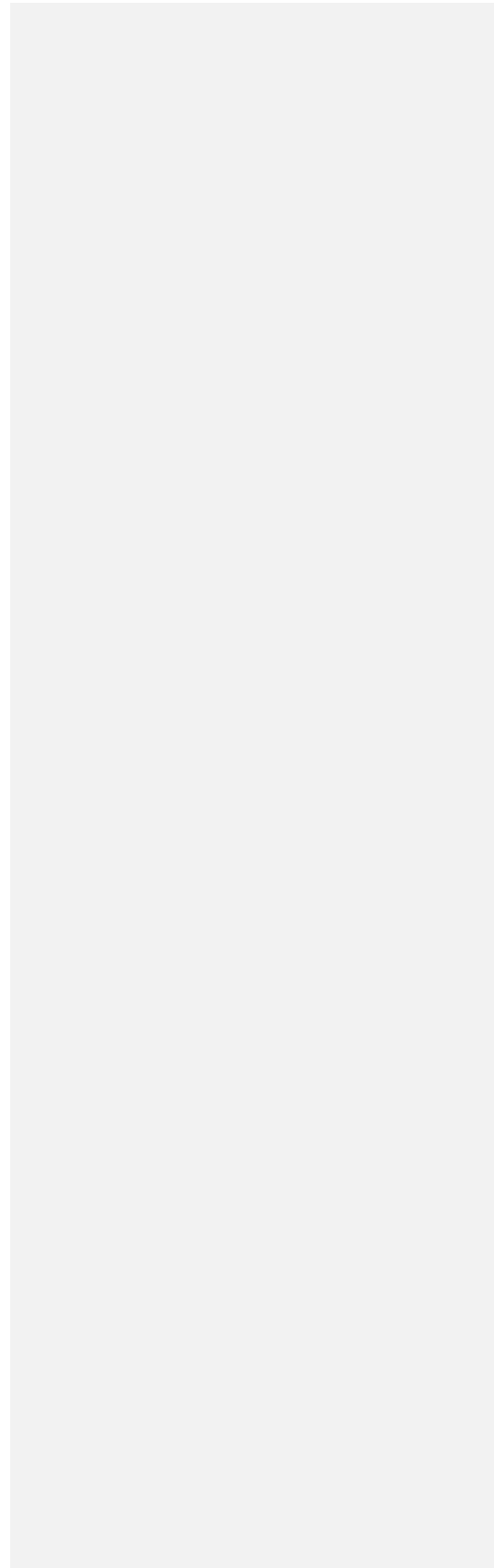
Tune

AO

PSM

____ December 2019

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GLOSSARY

[Note: to be updated once report text is finalised]

AAT	Administrative Appeals Tribunal
CALD	Culturally and Linguistically Diverse
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DRC	Disability Reform Council
ECEI	Early Childhood Early Intervention
ICT	Information and Communications Technology
ILC	Information, Linkages and Capacity Building
LAC	Local Area Coordinator
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/questioning, Asexual or other gender and sexual diversities
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Act	<i>National Disability Insurance Scheme Act 2013</i>
SDA	Specialist Disability Accommodation
SIL	Supported Independent Living
The Guarantee	Participant Service Guarantee
The Strategy	National Disability Strategy 2010-2020

DRAFT

EXECUTIVE SUMMARY

The ~~National Disability Insurance Scheme~~ NDIS Act 2013 was enacted to deliver a world first approach to the provision of disability support by putting people with disability at the centre of decision-making through the principles of reasonable and necessary supports and individual choice and control.

Since its inception, the ~~National Disability Insurance Agency (NDIA)~~ NDIA has been responsible for the once in a lifetime role of completely transforming the disability support sector, with the key focus over the last three years ~~to transition~~ transitioning people with disability from existing state and territory service systems to the NDIS. The nature and speed of this transition was highly ambitious.

For many of its participants, the NDIS is helping to improve their social and economic outcomes, increasing their ability to live an ordinary life and achieve their goals and aspirations. ~~However,~~ However, the implementation of the NDIS has not been smooth and it is evident that the pressure of rolling out the scheme across Australia has directly impacted the NDIA's ability to provide ~~people with disability with a~~ consistent, effective and high quality service ~~delivery~~ delivery offering.

~~For many~~ The intent of what the NDIS seeks to achieve is supported by all levels of government and the Australian community. However, people with disability, ~~the implementation of the NDIS has been far from smooth. Many~~ have reported significant frustrations about the administration of the NDIS by the NDIA ~~and poor experiences stemming from inconsistent decisions, significant delays. Transparency, consistency and timeliness~~ in decision-making, are critical issues and ~~a wide variety of people with disability have reported poor~~ experiences when working with NDIA staff and its Partners in the Community.

The NDIA as an entity is not ~~yet~~ yet mature. Many of its enabling systems are still being developed and the current ICT system has significant limitations. Appropriate workflow management tools are yet to be fully deployed, and significant usability features are in the process of being refined. In addition, more time is needed to strengthen the capability of the NDIA workforce in being understanding and responsive to the needs of people with disability.

1 July 2020 represents one of the most important milestones in the history of the NDIS. ~~This is~~ the date that the NDIS becomes available across all of Australia, and the transition of ~~people with disability from~~ state and territory ~~participants~~ ~~service systems~~ is due to be completed. ~~This new~~ The next phase of the NDIS presents opportunities to deliver and embed improvements in the way the NDIS is delivered, with a stronger focus on improving the participant experience and ~~maximizing~~ maximising the benefits of what the NDIS can offer.

It is clear, however, that it will still take a number of years before the NDIS is delivering consistent positive experiences for people with disability.

The NDIA ~~already~~ has a significant reform program underway, following reviews into the participant and provider experience in 2017, and ~~through recent announcements made~~ new initiatives recently announced by the Australian ~~government, including~~ Government. ~~These new initiatives include joint planning approaches,~~ longer ~~plans~~ plan durations if the participant's support needs are stable and the ability for participants to see draft plan summaries. These reforms are aimed at improving the consistency and quality of decisions, and ~~reducing~~ reducing significant pain points experienced by participants. The NDIA has also developed a significant forward work program of improvements to their ICT systems. ~~Indeed, when considering feedback about, including upgrades to the NDIS, this review considers the vast majority of issues are operational in nature, or are legacy issues driven by a lingering effect of the previous state website and territory disability systems~~ participant and provider portals.

When considering feedback about the NDIS, it appears that the vast majority of issues are operational in nature or are a lingering effect of the transition from state and territory disability systems. That is to say ~~that,~~ the National Disability Insurance Scheme NDIS Act 2013 and its accompanying rules are broadly fit for purpose. However, after more than six years of implementation experience, ~~feedback from participants indicate that there are~~ modest improvements ~~can that could~~ be made to the legislation to support improved experiences, and that all governments can provide more clarity and direction to NDIA decision makers in exercising their role in implementing the NDIS. ~~The fundamentals of the legislation, however, do not need to be changed.~~ improve the participant experience.

The Legislative Framework of the NDIS

The ~~design of the NDIS is generally centered around a model of supporting adult people with~~ NDIS' service delivery response works well for adults with physical disability. ~~The inclusion of~~

, but not so well for other cohorts. In particular, the provision of services to people with psychosocial disability and early intervention criteria (or those with developmental delay) within the NDIS has been challenging, with the NDIA's operational response working around an awkward legislative model. The NDIS constrained by a lack of clarity in the legislation on appropriate service responses. The NDIA can deliver better outcomes for these cohorts through legislating changes that:

- ~~redefine the concept of permanency~~ clarify when an impairment is considered permanent for people with psychosocial disability in order to better reflect the, appreciating that their needs may be episodic nature of their impairments and fluctuate over time;
- ~~move~~ clarify that the ~~concept~~ determination of reasonable and necessary ~~support~~ supports for people with psychosocial disability ~~towards~~ should be aligned with best practice recovery ~~models~~ approaches;
- provide more ~~support~~ flexibility for the NDIA to ~~build~~ support the capacity-building of families, often new to disability, to understand the needs of their child and exercise informed choice and control; and
- ~~maximize the benefits of early intervention through providing access to funded supports immediately upon being granted access to the NDIS; and~~
- move the concept of reasonable and necessary ~~support~~ supports for children towards a family ~~centered~~ centred planning approach.

The concept of reasonable and necessary in the ~~legislation~~ NDIS Act, while not being new to legislative frameworks across Australia, is subject to differing interpretations by ~~NDIS participants~~ people with disability and NDIA decision makers. This is principally ~~caused because there is no~~ the result of the absence of a clear ~~legislative~~ definition of what constitutes a reasonable and necessary support. This ~~drives~~ creates confusion around the role and purpose of the NDIS ~~itself, driving and drives~~ a number of individual cases towards tribunals and courts, ~~where those tribunals and courts seek to interpret the intent of governments when the legislation was put in place.~~

It is, therefore, more appropriate that all governments and the NDIA should take a greater role in ~~determining and~~ defining reasonable and necessary in order to provide additional clarity ~~for all parties. Following feedback from participants and in reviewing decisions of the Administrative Appeals Tribunal and Federal Court, thereon the services that will be funded by the NDIS. There~~ are a number of actions that can deliver improvements in this area, including:

- ~~providing more~~ publicly available and accessible ~~example~~ examples of what types of supports are reasonable and necessary ~~supports, including providing the NDIS Act and its rules;~~
- making the legislation available in accessible versions such as easy read;
- ~~supporting the amending the legislation in accordance with~~ recent DRC decisions ~~by the Disability Reform Council~~ on the interface between the NDIS and mainstream interfaces, ~~by reflecting these decisions in the legislative framework~~ service systems;
- ~~adding the interface between the NDIS and ordinary living costs to the future agenda of DRC, to resolve decision making processes~~ resolving ambiguity where a requested support may overlap, or ~~may~~ have interactions with supports that might ~~ordinarily~~ usually be considered an ordinary living expense;
- clarifying that supports provided in a participant's plan should not be considered in isolation from ~~others~~ other funded supports, reflecting that a plan is a package of supports to help achieve an ~~individual's~~ individual's goals and aspirations; and
- clarifying the role of the NDIS in providing supports when that support is not available through a more appropriate service system.

Importantly, these improvements are ~~not focused on narrowing~~ intended to reinforce the ~~scope~~ boundaries of the NDIS, ~~rather they are focused on reinforcing~~ not narrow its ~~boundaries~~ scope. If implemented properly, the debate around the role of the NDIS and what is reasonable and necessary can be elevated from discussions about individual participant experiences toward a more appropriate debate between governments and people with disability.

Flexibility is key to ~~the~~ positive participant ~~experience~~ experiences and ~~the~~ current implementation of the NDIS is impacted by needless complexity. This ~~can be~~ complexity is ~~largely~~ driven by NDIA operational procedures, however, there are areas of the NDIS Act that are unnecessarily rigid or do not incentivise flexibility. The inability to amend a plan is one of

the biggest key frustrations of participants, and one of the biggest weaknesses of the NDIS Act.

Introducing the ability to amend Allowing a plan to be amended, in appropriate circumstances, would be one of the biggest most effective levers governments can provide to the NDIA to improve the participant experience. This would allow small changes, such as the addition of quotes, or a response to plans to crisis to occur be made quickly, with a low administrative burden, such as adding capital or equipment supports after obtaining quotes, fixing obvious errors or enabling a fast response in crises. It would also help to resolve current jurisdictional issues between the NDIA and the Administrative Appeals Tribunal.

Supporting this change, participants need the ability to use funding provided in their plan across support categories. The Australian Government recently announced changes to collapse new initiatives to give participants more flexibility in using their NDIS funding to achieve their goals and aspirations. This includes through collapsing the 'core' and 'capacity building' budgets into one a single budget to support flexibility. Notwithstanding and giving participants the ability to spend funding across support categories. However, notwithstanding these reforms, flexibility should be enshrined into legislation, with a principle that, subject to certain limited conditions circumstances, the default position is that a participant can use participants should have full flexibility in implementing their NDIS funding flexibly plan.

Long wait times The Participant Service Guarantee

Delays in decision-making and a lack of information is one are two of the most regular complaints about the NDIS, with many participants often indicating they have had to wait many months for the NDIA to contact them or make a decision. As the transition from existing state and territory disability systems comes to a close, and as the workforce of the NDIA and its Partners in the Community continues to mature, the NDIA has made significant inroads into improving its administrative administration. This includes reducing backlogs, with the most September 2019 Quarterly Report to DRC indicating a number of significant improvements to in average access and planning timeframes.

Notwithstanding those improvements, it is reasonable to expect that there will always be some gap between participant's expectations from the NDIA and the reality of what it will be able to achieve. The NDIA's aim should be to reduce this gap as much as is practical.

The The Participant Service Guarantee

However the lack of clear timeframes for participants is driving uncertainty, and thus this review has been legislation is silent on when the NDIA will make decisions. In most instances, it prescribes that a decision will be made 'as soon as reasonably practicable'. Understandably, this uncertainty is causing frustration and anxiety for many people with disability. This review was therefore asked to consider what timeframes would be appropriate to insert into legislation to provide more clarity for participantspeople with disability as to when decisions will be made, in the form of a Participant Service Guarantee.

As the NDIS transition period has demonstrated, there is a clear tension between the speed and ~~the~~ quality of decision-making, and the NDIA's current state of maturity. It is also important to ~~recognize~~recognise that there are risks in providing a one-size-fits-all approach because the circumstances of each individual are different, ~~and so there are risks in providing a one size fits all system of.~~ Therefore, aside from timeframes. This also needs for decision-making, a Participant Service Guarantee should set out engagement principles to be balanced against introducing legislative complexityensure the NDIA remains accountable for the way it engages with and works alongside people with disability in delivering the NDIS.

Firstly, the

The Participant Service Guarantee needs to reinforce high quality engagement principles by the NDIA to ensure the NDIA remains accountable for the way in which it engages with and works alongside people with disability in delivering the NDIS. The legislative framework can should be built around five keyengagement principles:

- TransparencyTransparent - Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, that is easy to understand and presentedavailable in formats that meet their needs.
- ResponsivenessResponsive - Participants and people with disabilityprospective participants are supported, their individual needs, circumstances addressed, and their independence is maximised.
- Dignity by addressing their individual needs and Respectcircumstances.
- Respectful - Participants and prospective participants are valued, listened to and respected.

- ~~Empowerment~~Empowering - Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.
- ~~Connectedness~~Connected - The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.

Secondly, The Participant Service Guarantee should require the NDIA, when requested by a person with disability, to provide an explanation of an access, planning or plan review decision in an accessible format of their choice. This would be consistent with best practice administrative decision-making principles, reinforce robust planning practices, and ensure the scheme remains accountable to the people it was designed to support.

The Participant Service Guarantee should also empower participants to be able to review and consider a full version of their draft plan before it is approved, inclusive of the estimated plan budget. The provision of a whole draft plan is an important mechanism to ensure decision-making processes are transparent and for keeping the participant at the centre of the planning process.

The timeframes included in the legislation Participant Service Guarantee should be ambitious, but achievable and recognise that, due to of current workforce capacity and ICT constraints, business as usual timeframes may not be deliverable by 1 July 2020, and/or requisite changes to the NDIA's ICT systems may not be deliverable by 1 July 2020. To provide certainty for participant participants, the Participant Service Guarantee should have a staged implementation, with including slightly longer timeframes for the 2020-21 financial year.

From 1 July 2020, new legislated timeframes should be introduced ~~to~~for the vast majority of ~~the~~ NDIA's decision-making processes, including:

- extending the timeframe for participants to provide information to support an access decision from 28 days to 90 days;
- a ~~participants~~participant's first plan be put in place within 10 weeks of an access decision; reducing to eight weeks from 1 July 2021, ~~with the exception of children receiving an early intervention initial budget;~~
- a plan implementation meeting to be offered and held no more than four weeks following the approval of a plan;
- a scheduled plan review ~~process~~to commence no ~~less than~~later than eight weeks ~~from the scheduled plan review date, reducing to no less than 6 weeks from 1 July 2020 (noting current practice is 90 days before the scheduled plan review date);~~ from 1 July 2020;
- providing certainty that if the NDIA does not make a decision to undertake an unscheduled plan review within ~~3~~three weeks, ~~they are~~it is deemed to have decided to conduct ~~the review;~~
- ~~an unscheduled plan review process to be completed within six weeks of a decision to conduct it, reducing to four weeks from 1 July 2021;~~
- the new plan amendment process, which covers the quote approval process for ~~Assistive Technology~~assistive technology and ~~Home Modifications~~home modifications, to be completed within four weeks following the provision of information to the NDIA, ~~except for complex circumstances; and~~
- the internal (~~merits~~) review process to be completed within 90 days, reducing to 60 days from 1 July 2021.

However, these timeframes should ~~have two caveats applied. The first~~only apply to ordinary NDIA administrative processes. ~~Where a participant is if gathering additional information, or is required from a participant. Under these circumstances, otherwise unavailable for a period (for instance they are on a holiday), the timeframes~~on applied to the NDIA should be paused, ~~with the NDIA to make a decision within 14 days of the requisite information being provided.~~

~~Secondly, in circumstances where a participant's individual circumstances are on the upper end of complexity, the NDIA should have the capacity to take more time to make the correct decision. Therefore, in limited circumstances, the NDIA should be able to notify a participant that their circumstances are complex, and in this eventuality, the NDIA would be granted~~

~~additional time to undertake a plan amendment, a plan review, an unscheduled review or an internal review, of no more than 50 per cent longer than the proposed timeframes.~~

Finally, the ~~NDIA should be made-Participant Service Guarantee~~ should require the NDIA to report on its performance against these metrics and other relevant ~~indicators of performance through a legislated requirement to report on performance against the Participant Service Guarantee factors~~ as part of its regular quarterly reporting to DRC. ~~In addition, the NDIA should strongly consider introducing a tracking system that provides participants with updates on how~~ This will provide important transparency around the administration and reasoning of NDIA decisions are progressing within the NDIA.

Conclusion

~~Through the proposed-There is still a long way to go before the NDIS is a mature system. However, by implementing the~~ legislative changes outlined in this report and ~~the introduction of~~ introducing the Participant Service Guarantee, ~~NDIS participants~~ people with disability will be provided with more certainty on the role of the NDIS, ~~have clearer understandings over the time the~~ and when and how the NDIA ~~should take to~~ will make decisions, ~~and more support.~~ Service responses will be ~~provided~~ more aligned to best practice, particularly for children and their families and those with psychosocial disability. ~~However, it must still be recognized that there is still a long way to go before the NDIS is a mature system.~~

, and transparency and flexibility enshrined as a key principle underpinning the delivery of this world-leading scheme.

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RECOMMENDATIONS

Recommendation 1:

1. DRC add, to its forward work program, the resolution of the following outstanding policy matters:
 - a. the treatment of chronic health conditions under the NDIS;
 - b. the role of nominees, guardians and support-decision making under the NDIS, including the intersection between the NDIS and state and territory guardianship legislation;
 - c. the role of the NDIA in undertaking fraud detection and enforcement activities, in consult with the NDIS Quality and Safeguards Commission; and
 - d. the operation of compensation provisions under the NDIS Act.
2. The NDIA undertake a trial where all planning ~~related~~ functions are undertaken by NDIA delegates, ~~to~~with person who has delegation to approve the plan, and compare the benefits of that approach with ~~current operational reforms underway~~the roll out of joint planning meetings.
3. ~~Recommendation 2:~~ The Commonwealth provide additional funding for people with disability to navigate the NDIS, with a review of demand to occur as part of the next review of NDIS costs, currently scheduled for 2023.
4. Provide more certainty/clarity around the definition of 'reasonable and necessary', with:
 - a. the NDIA publishing information about how it determines when a support is provided to NDIA delegates and NDIS participants when considering the concept of reasonable and necessary, with:in accessible formats;
 - a. ~~the NDIA to provide clearer guidance on how it makes reasonable and necessary decisions;~~
 - b. updating the NDIS Rules ~~be updated~~ to reflect ~~recent and upcoming decisions by the~~DRC ~~in relation to~~agreements on the interface between the NDIS and ~~other~~mainstream service systems;
 - c. DRC ~~adding, working~~ to ~~its forward work program, resolving~~resolve the interface between the NDIS and ordinary living costs;
 - d. amending the NDIS Act to ~~be amended to~~clarify ~~the interaction among individual~~that reasonable and necessary supports ~~with~~are considered together as a ~~plan~~package; and

- e. amending the NDIS Act ~~to be amended~~ to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

5. ~~Recommendation 3:~~ The NDIA give priority to ICT upgrades to enable online access processes and allow people with disability to track the status of NDIA processes relating to them.

6. The Commonwealth ~~and NDIA produce~~ publish accessible versions of the NDIS Act and NDIS Rules, to ensure all people with disability understand the legislative basis of NDIS.

~~Recommendation 4:~~ That the NDIS Act be amended to strengthen the emphasis on functional assessments to support high quality and consistent decision making, by:

7. ~~clarifying the purpose of an "assessment" under the NDIS Act is to provide~~ The NDIS Act be amended to:

~~a. allow~~ evidence of functional capacity;

~~b.a. allowing evidence of functional capacity able~~ provided to the NDIA about a prospective participant or participant to be used for multiple purposes under the NDIS Act, including access, planning and plan review processes; and

~~e.b. providing that provide discretionary powers for the NDIA may to~~ require a prospective participant ~~undertake a functional~~ or participant to undergo an assessment for the purposes of decision-making under the NDIS Act, using NDIA-approved providers and in a form set by the NDIA.

8. ~~Recommendation 5:~~ The NDIS Act and Rules be amended to:

a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent; ~~-, recognising that some conditions may be~~ episodic or fluctuating; and

b. remove references to 'psychiatric ~~conditions~~ conditions' when determining eligibility and replace with 'psychosocial disability'.

9. ~~Recommendation 6:~~ The NDIS Act be amended to ~~extend the timeframe for~~ give a prospective participant up to 90 days to provide information requested by the NDIA to support an access decision, before it is deemed they have withdrawn their access request.

- 10. Recommendation 7:** The NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS, with a dedicated focus on Aboriginal and Torres Strait Islander peoples, Culturally and Linguistically Diverse communities, and people with psychosocial disability.
- 11. Recommendation 8:** The NDIS Act be amended to reflect that a plan must be facilitated and approved in accordance with the rules made for the purpose of the timeframes outlined in the Participant Service Guarantee.
- Recommendation 9:** The NDIS Rules be amended to:
- 12. ~~to strengthen~~ reinforce that the ~~role~~determination of reasonable and necessary supports for children with disability will:**
- a. recognise the additional informal supports provided by their families in early intervention and parental or and carers rights to reasonable, when compared to children without disability;
 - a-b. provide families and carers with access to supports in the home and other forms of respite; and
 - b-c. recognise build the importancecapacity of family centred planning for children families and carers to support themchildren with disability in their natural environment and everyday experiencessettings such as the home and activitiescommunity.
- 13. Recommendation 10:** The NDIS Act be amended to provide more flexibility for anthe NDIA to fund early intervention payment following an access decisionsupport for children under the age of seven years outside a NDIS plan, in order to support the develop the family capacity of families new to disability, including theirand ability to exercisedexercise informed choice and control.
- 14. Recommendation 11:** The NDIA undertake a review of its operational guidelines when funding Supported Independent Living, with an emphasis on increasing the involvement of participants, families and carers in the decision-making process and in line with the principles of choice and control.
- 15.** The NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they

~~should only be prescribed specifically, except~~ in limited circumstances, such as capital supports.

16. **Recommendation 12:** The NDIS Rules be amended to ~~outline:~~
- a. ~~set out~~ the ~~considerations factors~~ the NDIA will ~~have regard to~~ consider in ~~providing funded~~ funding support coordination in a participant's plan; ~~and~~
 - b. **Recommendation 13:** ~~outline circumstances in which it is not appropriate for the providers of support coordination to be the provider of any other funded supports in a participant's plan, to protect participants from conflicts of interest.~~
17. The NDIS rules be amended to ~~clarify the ability for~~ give the NDIA ~~more defined powers~~ to undertake ~~more appropriate~~ market intervention ~~through flexible commissioning models on on~~ behalf of participants.
18. **Recommendation 14:** The NDIA work with governments, researchers and experts in the provision of disability support to establish ~~a dynamic repository of an accessible source of publically available~~ information about evidence based best practice approaches, to assist ~~participant exercise~~ participants in exercising informed choice and control.
- Recommendation 15:** The NDIS Act be amended ~~so a participant who requests to~~ ~~redefine the 'plan managed' management type as a form of 'self management'.~~
19. **Recommendation 16:** ~~That the 'manage' their~~ NDIS Act funding be ~~subject to the same considerations that apply when a participant seeks to 'self-manage'.~~
20. The NDIS Act ~~be~~ amended to introduce a new Category D rule making power that ~~includes criteria on when sets out the NDIA should agree matters the NDIA must consider when deciding whether~~ to undertake an unscheduled plan review.
- Recommendation 17:** The NDIS Act be amended to:
- a. ~~21.~~ introduce a new Category D rule making power giving the NDIA the ability to amend a plan in ~~limited~~ appropriate circumstances; ~~and,~~
 - b. ~~require all matters a plan can be amended for to be considered reviewable decisions under section 99 of the NDIS Act.~~

Recommendation 18:

22. The NDIS Act be amended to ~~resolve confusion surrounding~~remove the ~~duplication and twin-duplicate~~ use of the word “~~review~~” ‘review’.

Recommendation 19:

23. The NDIS Act be amended to clarify the AAT’s jurisdiction, including the power for a plan to be amended ~~based on trilateral agreement~~ while a matter is before the AAT.

Recommendation 20: ~~That the Guarantee be legislated through a new~~

24. ~~That a new independent participant satisfaction survey be developed, with reporting included in the NDIA’s quarterly reporting to DRC.~~

25. ~~That the NDIS Act be amended to legislate the Participant Service Guarantee as a~~ Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision-making ~~move~~removed from the NDIS Act to the new rule;
- b. ~~the proposed new~~ timeframes, ~~quality indicators for decision-making, engagement principles~~ and performance metrics;
- c. ~~participants (and prospective participants)~~ and participants being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- ~~d. a new, independently designed participant satisfaction survey to be introduced; and~~
- d. the Guarantee to be reviewed participants being empowered to receive a full draft plan before it is approved by the NDIA; and
- e. a review within two years of being enacted.

26. ~~Recommendation 21: That the~~The NDIS Act be amended to clarify the Commonwealth Ombudsman’s powers to monitor the NDIA’s performance in delivering against the Participant Service Guarantee.

27. ~~Recommendation 22: That the~~The NDIS Act and ~~accompanying rules~~Rules be amended to:

- a. remove trial and transition provisions; ~~and~~
- b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act-
; and

c. ~~Recommendation 23: That the~~ reflect current best-practice drafting standards, and other amendments as proposed in this review.

28. The NDIS Act be amended to reference the National Disability Strategy as in in force from time to time.

29. The new National Disability Strategy being developed for beyond 2020 make reference to how it compliments and builds on the NDIS.

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CHAPTER 1 – INTRODUCTION

~~1-1.1.~~ In June 2019, the Australian Government commissioned a review of the NDIS Act, with a focus on streamlining NDIS processes and removing red tape for ~~NDIS~~ participants and providers. Specifically, the review ~~was called in acknowledgement many examines~~ participant's experiences of the scheme ~~have fallen short of their expectations,~~ ~~opportunities for improvement~~, and honours a commitment made during the 2019 election campaign ~~to introduce a Participant Service Guarantee~~.

~~2.~~ ~~This review identifies opportunities to amend the NDIS Act to make NDIS processes simpler and more straight forward and will support the implementation of a NDIS Participant Service Guarantee (the Guarantee).~~

The Participant Service

~~1-3.1.2.~~ ~~The~~ Guarantee, subject to consideration by Parliament, is intended to be legislated and take effect from 1 July 2020. ~~The Guarantee~~ will, among others, set standards and timeframes for NDIA decision-making as it affects NDIS participants, their families and carers. It will also have a focus on ~~key~~ specific cohorts, including children and people with disability requiring assistive technology and home modifications.

Scope of the review

~~1-4.1.3.~~ The Terms of Reference for this review focus on removing legislative impediments to positive participant and provider experiences and supporting the implementation of the Participant Service Guarantee. Accordingly, this review does not consider broader issues affecting the general operation of the NDIS and is taking the fundamental objectives and principles of the NDIS Act ~~or~~ and the scheme as given.

~~1-5.1.4.~~ In undertaking this review, ~~I have considered~~ the experiences of people with disability, their families and carers with the administration of the NDIS by the NDIA, ~~have been considered~~ to the extent those experiences inform or complement any legislative change that gives effect to the Participant Service Guarantee or contribute to increasing the efficiency of the ~~schemes~~ scheme's administration. Box 1 outlines the ~~terms~~ Terms of ~~reference~~ Reference for the review.

Box 1: Terms of Reference for the review

The review is to consider:

1. ~~opportunities to amend the NDIS Act to:~~
 - a. ~~remove process impediments and increase the efficiency of the Scheme's administration; and~~
 - b. ~~implement a new NDIS Participant Service Guarantee.~~
2. ~~any other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences.~~

In undertaking this review, regard should be given to:

1. ~~the objectives and principles of the NDIS Act;~~
2. ~~the experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes;~~
3. ~~the roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services;~~
4. ~~current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation framework; and~~
5. ~~recommendations agreed by the Council of Australian Governments from the 2015 Independent Review of the NDIS Act.~~

Within the scope of the review, there should be broad consultation with:

1. ~~people with disability, their families and carers;~~
2. ~~the disability services sector;~~
3. ~~Ministers and officials from the Commonwealth and State and Territory governments; and~~
4. ~~the National Disability Insurance Agency.~~

Box 1: Terms of Reference for this review

The review is to consider:

1. opportunities to amend the NDIS Act to:
 - a. remove process impediments and increase the efficiency of the scheme's administration; and
 - b. implement a new NDIS Participant Service Guarantee.
2. any other matter relevant to the general operation of the NDIS Act in supporting positive participant and provider experiences.

In undertaking this review, regard should be given to:

1. the objectives and principles of the NDIS Act;
2. the experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes;
3. the roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services;
4. current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation framework; and
5. recommendations agreed by the Council of Australian Governments from the 2015 Independent Review of the NDIS Act.

Within the scope of the review, there should be broad consultation with:

1. people with disability, their families and carers;
2. the disability services sector;
3. Ministers and officials from the Commonwealth and state and territory governments; and
4. the NDIA.

Consultation activities

~~1-6-1.5.~~ This review was designed to be shaped by the experiences of people with disability, their families and carers. To support this, I undertook a range of consultation activities to seek feedback [from participant's](#) about their experiences with the NDIS, what should be included in the [Participant Service Guarantee](#), and what they felt was important to consider in my review of the NDIS Act.

~~1-7-1.6.~~ On 26 August 2019, ~~the review~~ called for written submissions, which closed on 31 October 2019. ~~The review~~ received ~~xx201~~ submissions from a range of stakeholders, including ~~NDIS~~ participants, their families and carers, service providers, advocates and peak bodies. Of these, ~~xx asked their 152~~ submissions ~~not be published, while all other submissions were~~ [have been](#) published on the review's webpage (the Commonwealth Department of Social Services' Engage website). A list of ~~these~~ [published](#) submissions ~~received~~ is at Appendix A.

~~1-8-1.7.~~ On 9 September 2019, an online survey was published to understand how participants and the people who support them experience the NDIS. The survey closed on 31 October 2019. It was available in long-form (up to ~~96~~[109](#) questions) and short-form (~~46~~[up to 49](#) questions). ~~1,273~~ usable responses were received to the long-form survey and 467 to the short-form survey. [A breakdown of the survey responses is at Appendix B.](#)

~~1-9-1.8.~~ Throughout late September and October 2019, 15 face-to-face community workshops were held in every capital city and in a regional location in each state and territory.

~~1-10-1.9.~~ Targeted consultations were also conducted with Aboriginal and Torres Strait Islander people so they could have their say in culturally appropriate and safe spaces. Six consultations were undertaken for first peoples, led by a peak body representing the interests of Aboriginal and Torres Strait Islander people with disability.

~~1-11-1.10.~~ Seven focus groups for people with intellectual disability, people from CALD backgrounds and people with psychosocial disability were also undertaken. These focus groups were conducted in Sydney, Melbourne, Adelaide, Brisbane and Perth.

~~1.12.1.11.~~ ~~I also met with the~~The NDIA Board, senior officials from the NDIA, state and territory disability ministers, senior officials from the state and territory governments and key disability agencies, including advocacy organisations, peak bodies and national providers. ~~met with the Reviewer or a member of the secretariat.~~ A list of ~~all these~~ persons and organisations ~~I met~~ is at Appendix ~~B~~C.

~~1.13.1.12.~~ Across all engagement platforms, responses to this review were materially consistent, with ~~a high degree of~~frustration and ~~sometimes~~ anger being expressed in the way the NDIS is currently being implemented. This is consistent with the Terms of Reference for this review, which were designed to examine issues ~~driving negative experiences with~~that could lead to improvements in the performance of the NDIS.

~~1.14.1.13.~~ Implicit in this approach is that responses to this review may not reflect a representative sample of all participant experiences – that is, responses to this review are likely to have a negative bias. ~~This~~However, ~~this~~ does not diminish the relevance of those responses. Instead, it provides for a focused examination of areas that can be improved in order to strengthen the participant experience across the whole NDIS eligible population.

Reports that have informed this review

~~1.15.1.14.~~ This is not the first review of the NDIS Act that has been commissioned since its inception in 2013. In addition, it is not the first report that has made recommendations to improve how people with disability interact with the NDIA and experience the NDIS.

~~1.16.1.15.~~ ~~I have drawn on previous~~Previous reviews, reports and inquiries ~~have been considered~~ where appropriate, ~~including~~. These include:

- a. the 2015 Independent Review of the NDIS Act, as commissioned by COAG and required by the NDIS Act;
- b. previous Productivity Commission Inquiries, including its most recent review of NDIS ~~Costs~~costs in 2017;
- c. previous and current inquiries of the Joint Standing Committee on the NDIS;
- d. the NDIA's 2017 Pathways Review, released in February 2018; and
- e. the Quarterly Reports provided by the NDIA Board to DRC, which are publically available on the NDIS website.

~~1.17.1.16.~~ These reviews provided a valuable reference point, allowing ~~me to~~ ~~consider~~ ~~consideration of~~ any outstanding recommendations ~~made~~ that have not yet been implemented in either the legislation or the operational practices of the NDIA. ~~The review~~ also drew on other reports and analysis ~~that were made available to me;~~ ~~these areas~~ identified in the relevant chapters.

~~1.18.1.17.~~ In developing recommendations for this review, additional information, data, research and analysis of policy options was sometimes necessary. Where needed, ~~I~~ ~~requested~~ the Commonwealth Department of Social Services ~~undertake~~ ~~undertook~~ that work ~~and provide it,~~ ~~in consultation with the NDIA.~~

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Structure of this report

~~1.19-1.18.~~ Chapter 2 provides background to the establishment of the NDIS, the experience of trial and transition [period](#) and the actions undertaken by the NDIA to date to improve participant and provider experiences with the scheme.

~~1.20-1.19.~~ Chapter 3 considers how the scheme engages with people with disability and the participant experience. It also recommends actions to improve the transparency of ~~how the NDIA makes decisions~~ [decision-making](#), including when determining a support is reasonable and necessary.

~~1.21-1.20.~~ Chapters 4 considers the evidence required to support NDIA decision-making and opportunities to reduce the burden on prospective participants and participants in producing or obtaining information required for the purposes of becoming a participant and developing or reviewing ~~their~~ [a](#) plan.

~~1.22-1.21.~~ Chapters 5 to 9 explore each connection point in a participant's NDIS journey, from navigating the access process to their experience of developing, implementing and reviewing their plan, or appealing an NDIA decision.

~~1.23-1.22.~~ Chapter 10 sets out what should be included in the [Participant Service Guarantee](#), including ~~the~~ timeframes for decision-making ~~referred to in previous chapters,~~ and ~~the qualitative indicators~~ [engagement principles](#) to support positive participant experiences with the scheme. It also considers reporting arrangements to ensure the NDIA delivers on the requirements set out in the [Participant Service Guarantee](#).

1.23. Chapter 11 considers other options to contemporise the legislation to ensure it is fit-for-purpose as the scheme continues to evolve.

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CHAPTER 2 – BACKGROUND AND CONTEXT

About the NDIS

- 2.1. The NDIS is the most significant social reform of its kind since the introduction of Medicare. It was established in 2013 through the NDIS Act and represents a social insurance model of care for eligible Australians with disability.
- 2.2. Prior to the NDIS, disability services were ~~administered~~ delivered under a patchwork of block funded and procured services administered by each state and territory government. This system was seen as being ‘underfunded, unfair, fragmented and inefficient’ with many people with disability not receiving supports or services they required how, when or in the way they needed them¹.
- 2.3. As an insurance-based scheme, the NDIS takes a lifetime approach to a participant’s support needs and goals and aspirations. It provides important assurance ~~to both~~ to those with permanent and significant disability, and those who may acquire such disability in the future, that they will receive the support they require. The NDIS also seeks to empower them, through providing individual funding, to purchase the services and supports they need from a competitive and consumer-driven marketplace.
- 2.4. The objectives of the NDIS (as outlined in the NDIS Act) include:
 - a. supporting the independence and social and economic participation of people with disability;
 - b. providing reasonable and necessary supports, including early intervention supports, for participants;
 - c. enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - d. facilitating the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and

¹ Productivity Commission. (2011). *Disability Care and Support Inquiry: Overview and Recommendations*, p 2.

e. promoting the provision of high quality and innovative supports to people with disability.

- 2.5. A key principle of the NDIS is that all people with disability have the same fundamental rights as all members of Australian society to participate in the social and economic life of the community and to make their own choices and decisions. However, it does not stand alone in achieving this vision.
- 2.6. As outlined in the National Disability Strategy, inclusion of, ~~and access for,~~ people with disability in their community and enabling them to access the supports they need to realise their full potential is a shared responsibility of all Australian governments, non-government organisations, businesses and the wider community.
- 2.7. The NDIS is not intended to fully replace services provided elsewhere in government or the community. While the NDIS is designed to benefit all Australians with disability, only a proportion will become NDIS participants. Of the estimated 4.4 million Australians with disability, around 500,000 (those people with a 'permanent and significant' disability) will receive individualised supports under the scheme (Figure 1-1 refers).

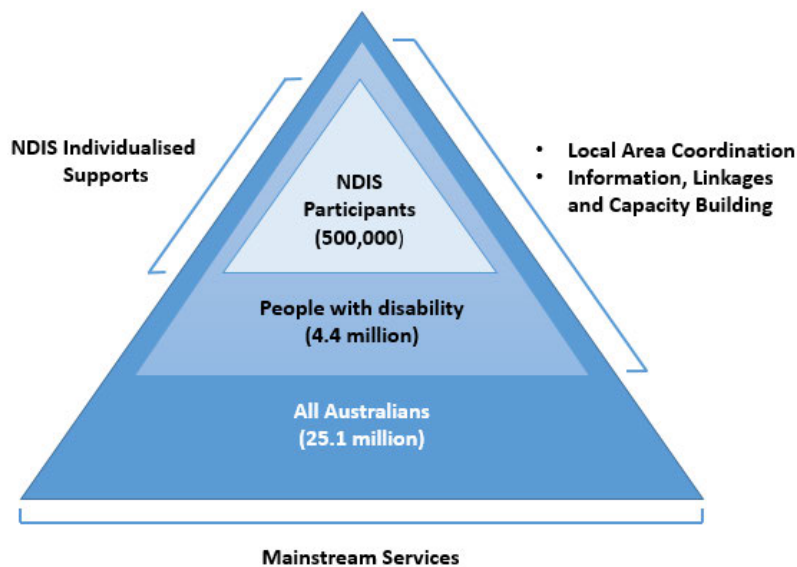


Figure 1: The NDIS and other service systems²

- 2.8. As such, the legislative framework for the NDIS needs to be considered alongside other policies and legislation, such as the *Disability Discrimination Act 1992* ([CwthCth](#)), the *Carer Recognition Act 2010* ([CwthCth](#)), the *Disability Services Act 1986* (Cth), the National Disability Strategy and the COAG agreed “Applied Principles”² that guide the interaction between the NDIS and mainstream supports. It also needs to be considered alongside state and territory legislation, and in conjunction with other obligations Australia is a party to, such as the [UNCRPD](#), [United Nations Convention on the Rights of People with Disability](#) (UNCRPD).

² Number of Australians and those with disability statistics, including disability statistics, are based on 2018 ABS data. The number of NDIS participants are the projected number of participants as at 2022-23.

- 2.9. It is also important to acknowledge the NDIS only gives effect to the ~~UNCRPD~~UNCRPD in part. The ~~Convention~~ UNCRPD does not address how the Australian Government should implement it, nor does it assign responsibilities to particular service systems to provide people with disability the supports they need to fully and effectively participate in society on an equal basis as their non-disabled peers. Rather, all governments, including the states and territories, have ~~an~~ important role in ensuring service systems remain inclusive, accessible, and designed for all Australians.

Summary of the legislative architecture

- 2.10. The NDIS is established by two tiers of legislation.
- 2.11. The first tier is the NDIS Act ~~itself~~. The NDIS Act is essentially a framework: it establishes the NDIA as the body responsible for delivering the NDIS, sets out the general definition of eligibility and the governance arrangements that underpin the scheme, including the way governments work together to make decisions and the role of the NDIA Board and Independent Advisory Council. The NDIS Act also establishes the NDIS Quality and Safeguards Commission to oversee the quality and safety of NDIS supports and services.
- 2.12. The second tier is the NDIS Rules, which are legislative instruments that sit under the NDIS Act, set out further laws on matters of detail in relation to the operation of the NDIS, and must be read in conjunction with the NDIS Act.
- 2.13. There are two categories of NDIS Rules:
- rules made by the Commonwealth Minister responsible for the NDIS in relation to the administration of the NDIS by the NDIA; and
 - rules made by the NDIS Quality and Safeguards Commissioner, as delegated by the Commonwealth Minister responsible for the NDIS, in relation to the ~~roles~~role and ~~functions~~function of the NDIS Quality and Safeguards Commission ~~as set out in the NDIS Act~~.
- 2.14. The NDIS Rules made for the purpose of the administration of the NDIS by the NDIA go to issues such as:
- when a person becomes a participant;
 - when a support is ~~reasonable~~ and ~~necessary~~necessary;

- c. when a person should be appointed as a nominee to act on behalf of a participant;
 - d. when a person is responsible for undertaking actions and making decisions on behalf of children;
 - e. how participants can manage the funding in their plan;
 - f. how the NDIS works alongside other service systems; and
 - g. arrangements for the protection and disclosure of NDIS information.
- 2.15. The NDIS Rules made by the NDIS Quality and Safeguards Commissioner are in relation to the NDIS Quality and Safeguards Commission's stated powers under the NDIS Act, including: the registration requirements NDIS providers must comply with, worker screening arrangements and reporting and oversight arrangements to reduce and eliminate the use of restrictive practices in the NDIS.
- 2.16. This review only considers the operation of the NDIS Rules made for the purpose of the administration of the NDIS by the NDIA. It does not consider those made by the NDIS Quality and Safeguards Commissioner, unless there are consequential impacts arising from recommendations made in this report.
- 2.17. The NDIS Act provides for the role of states and territories in the making of NDIS ~~rules~~Rules. There are four categories of rules requiring different levels of consultation or agreement with ~~jurisdictions~~states and territories before the Commonwealth Minister for the NDIS, or the NDIS Quality and Safeguards Commissioner, may make or amend them:
- a. Category A rules are those that relate to significant policy matters with financial implications for the Commonwealth and states and territories, or which interact closely with relevant state and territory laws. The unanimous agreement of the Commonwealth and all states and territories is required for ~~the~~their making ~~(or amending)~~of these rules;
 - b. Category B rules relate to an area, law or program of a particular state or territory, or to the commencement of the facilitation of the preparation of plans of participants identified wholly or partly, and directly or indirectly, by reference to that state or territory. These rules cannot be made ~~(or amended)~~without the agreement of that state or territory;
 - c. Category C rules require the agreement of the Commonwealth and a majority of states and territories as they still relate to policy issues, but are not expected to have a financial impact; and

d. Category D rules are considered to be more administrative than policy in character, ~~and~~with states and territories ~~need~~needing only ~~to~~be consulted before ~~their~~making (or amending) ~~these rules~~.

2.18. Where this review makes recommendations in relation to existing NDIS ~~rules~~Rules or the rule making powers set out in the NDIS Act, it considers the intention of these consultation requirements and the roles of states and territory governments in their making or amending.

The NDIS ~~roll-out~~rollout

2.19. From 1 July 2016, the NDIA commenced the full-scale rollout of the NDIS across Australia, with a goal to transition more than 400,000 participants into the NDIS over four years through a mix of phasing arrangements. In some states and territories, participants phased into the NDIS based on the region they lived in and, in others, how old they were.

2.20. In Western Australia, the rollout of the NDIS occurred differently, with the Commonwealth and Western Australian ~~governments'~~governments first agreeing to a Western Australia-delivered but nationally consistent NDIS from July 2017, before agreeing to the NDIA-delivered model from 1 July 2018.

2.21. The NDIS transition period was a unique, and the most complex, period in the life of the NDIS. The transition coincided with the dismantling of existing state and territory disability support systems and transferring support structures towards a market-based system where eligible participants receive funding based on need and are supported to exercise choice and control in the planning and delivery of their supports.

2.22. On 1 July 2018, New South Wales and South Australia were the first jurisdictions to complete ~~their~~the transition ~~of their existing clients~~ and move into full scheme arrangements. Victoria, Tasmania, the Australian Capital Territory and the Northern Territory joined them on 1 July 2019.

- 2.23. The transition to full scheme in Queensland and Western Australia is ongoing, with efforts in Queensland currently focused on transitioning people into the NDIS who have not previously received disability supports from the Queensland Government and were expected to join the scheme before 1 July 2019. Efforts in Western Australia are focusing on the transition of people currently receiving disability support from the Western Australian government. These people are expected to transition to the NDIS by 1 July 2020.
- 2.24. As at 30 September 2019, ~~around 310,000~~[311,744](#) participants were being supported by the NDIS. Of this number, ~~over 114,069~~ (37 per cent) are receiving supports for the very first time, helping them [to live active and independent lifestyles and achieve their goals and aspirations](#)³.
- 2.25. On 1 July 2020, when the NDIS becomes available for people with disability who live on the Christmas and Cocos (Keeling) Islands, the NDIS will be available across all of Australia. This represents the completion of the transition period, with the NDIS entering a new phase of implementation.

Implementation challenges

- 2.26. The sheer scale and complexity of the transition period inevitably led to implementation challenges, and significant criticism of the NDIA. While there is overwhelming support for the NDIS across all levels of government and the community, it is clear from consultation feedback and submissions made to this review that many of the benefits the NDIS seeks to achieve are yet to be consistently realised.
- 2.27. Feedback to this review indicates [some](#) participants:

³ [NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.17.](#)

- a. have found the ~~shift~~transition to the NDIS confusing and frustrating, with many citing they 'missed' the supports offered under state and territory systems, particularly active case management;
- b. are frustrated about delays in, and seeking more transparency ~~and clarity of, around how the~~ NDIA ~~decision-making processes~~ makes decisions;
- c. want to have more support to become informed and effective consumers;
- d. feel the scheme is too complex and difficult to navigate;
- e. feel they are not recognised as the experts in their disability; and
- f. feel NDIA staff do not understand disability or appreciate the challenges they face as part of their everyday life.

2.28. This review heard that, in combination, these issues have resulted in some participants reporting their engagement with the NDIS has led to lasting negative impacts on their well-being.

"I would be happier to go back before NDIS. It is a complicated process and my daughter is much worse off. It has caused a lot of stress for our family."
Carer of NDIS Participant, Regional New South Wales

"Families who have endured hardship as a result of inadequate plans may be traumatized by the process. I become unwell each time my daughter has a review meeting. I know my family's ability to stay together is reliant on the NDIS and that's something no parent should have to imagine."
Carer of NDIS Participant, Metropolitan South Australia

"Dealing with the processes from meeting access to having my plan approved – I was on a verge of having a mental and emotional breakdown. The stress it caused for not only myself but also my entire family was not fair."
NDIS Participant, Regional Queensland

"I would be happier to go back before NDIS. It is a complicated process and my daughter is much worse off. It has caused a lot of stress for our family."

Carer of NDIS participant, regional New South Wales

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Carer of NDIS participant, metropolitan South Australia

"Dealing with the processes from meeting access to having my plan approved – I was on a verge of having a mental and emotional breakdown. The stress it caused for not only myself but also my entire family was not fair."

NDIS participant, regional Queensland

- 2.29. The speed and pace of rollout was highly ambitious given the magnitude of the reform that the NDIS represents. This review, however, is not the first to raise that there have been trade-offs between the scale and pace of implementation and quality participant experiences. Similar concerns have been consistently acknowledged during the transition period (Box 2 refers).

Box 2: Summary of implementation challenges highlighted in other reports and inquiries

Productivity Commission – 2017 Inquiry into NDIS Costs

"It is no surprise, given the size, speed and complexity of the reform, that there are transitional issues with the rollout of the NDIS. All major reforms are followed by a (sometimes protracted) period of disruption and adjustment... most transitional issues are expected to be ironed out as the scheme rollout is completed and the scheme matures... however, if transitional issues are not dealt with quickly and effectively, they can become entrenched problems that endure in the longer term and affect the success and sustainability of the scheme." (p.76)

"Planning processes are currently not operating well. The speed of transition and performance indicators that focus on participant numbers have placed pressure on the National Disability Insurance Agency to finalise plans quickly, and the quality of plans has been compromised." (p.181)

Commonwealth Ombudsman – 2018 Report on the administration of reviews under the NDIS Act

"We acknowledge the NDIA's resources are limited and, since commencement of the national rollout, the Agency has been under considerable pressure to ensure it meets its various bilateral targets. This pressure is likely to continue for several years, until the Scheme is fully implemented; however, it should not be used as a reason to deprioritise or delay other work, especially where the decisions in question affect participants' daily lives." (pp.17-18)

National Institute of Labour Studies – 2018 Final Report, Evaluation of the NDIS

"The evaluation has found that on the whole, the objectives of the NDIS and its high-level design are working very well. However, hindsight suggests that the speed of implementation was too fast and that more thought needs to go into the practical aspects of the NDIS rollout. Some of the practical issues appeared to be getting solved during the three-year evaluation period, some remained largely unchanged, and some appeared to be getting worse." (pp.xxiii-xxiv)

NDIA – 2018 improving the NDIS Participant and Provider Experience

"From the commencement of transition in July 2016 and as the number of participants entering the Scheme ramped up, it became obvious that the NDIA's processes and systems had not always resulted in a participant and provider experience of a consistently high standard. Systems and processes migrated to at transition posed Information and Communication Technology (ICT) challenges. This combined with the use of telephone contact to develop participant plans and the very pace of participants entering the Scheme collectively caused many participants and providers to report poor plan experiences." (p.8)

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- 2.30. This review acknowledges [there are](#) a number of factors [that](#) have contributed to how participants have experienced the NDIS to date. ~~These include, including:~~
- a. the pressure to meet the participant intake targets set by all governments as part of bilateral agreements for the transition period;
 - b. the quality of data provided by all governments to support the transition of people with disability from [their existing state and territory](#) service systems. In some cases, this data was inadequate to [support allow](#) the NDIA to make timely decisions about a participant's eligibility for the NDIS and the supports in their plan;
 - c. the quality of the NDIA's enabling systems, including its ICT solutions and workflow management tools; and
 - d. the need for a rapid expansion of a workforce capable of implementing NDIS processes under the NDIS Act.
- 2.31. This review does not infer the NDIS is failing to improve outcomes for participants once they have become a participant, have a ~~robust~~ plan in place and are accessing supports. ~~Indeed~~ [Rather](#), longitudinal outcomes data ~~collected by the NDIA~~ demonstrates participant outcomes are improving the longer they are in the scheme⁴. [A three-year analysis of participant outcomes demonstrates that community and social participation increases as participants spend more time in the scheme, as does their view that the NDIS is helping them have more choices and control over their lives⁵.](#)
- 2.32. This review also acknowledges the NDIA has developed a number of strategies to address these issues and improve the participant experience. Much of this work was generated [as following](#) a ~~result of the~~ 2017 review of the [NDIS Pathways participant and provider pathways](#), which the NDIA initiated to address people's feedback about their experience with the NDIS and to identify areas for improvement. [Some of the improvements rolled out following the pathways review have included:](#)
- a. specific pathways for participants with complex needs, or who enter under the ECEI gateway;

⁴ COAG Disability Reform Council#NDIA Quarterly Report [to DRC for the period ending 30 September 2019, Part 2](#) pp.26-30.

⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, pp.89-94.

- b. specific service streams for people with psychosocial disability and hearing loss, to deliver targeted support that provides those participants with an experience more suited to their specific disability needs; and
- c. service enhancements to meet the communication and engagement needs of people from different backgrounds or regions, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people living in remote and very remote communities, and people who identify as LGBTIQA+.

2.33. The NDIA is also begun rolling out new baseline service improvements nationally in June 2019 to give effect to the pathway reforms, including:

- a. a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers;
- b. a consistent point of contact for participants;
- c. enhanced planning communication products in a variety of formats;
- d. face-to-face pre-planning and plan implementation meetings at the discretion of the participant;
- e. improved linkages between NDIA planners and the Partners in the Community workforce, including LACs and ECEI partners; and
- f. improved training for NDIA planners and Partners in the Community.

2.34. Provider improvements have also been rolled out or are underway, including:

- a. more clarity on pricing, following an independent price review in 2017;
- b. such as joint planning meetings, the provision of draft plan summaries and other work to resolve existing pressure points for efficiencies to payment processing and the creation of a dedicated provider payment team, including working to develop and implement solutions that address the root causes of provider payment issues, and developing a payments strategy to support an improved future payments platform;
- c. the implementation of a National Providers Engagement team that helps providers engage with and navigate the NDIS; and
- d. improved MyPlace provider portal functionality.

2.33-2.35. participants. Further information on the key operational improvements previously implemented by the NDIA to improve the participant and provider experience (or which are currently in the process of being implemented) is provided at Attachment C Appendix D.

2.34-2.36. These reforms are ~~starting to have~~having an effect. As outlined in the NDIA's report to DRC for the September 2019 quarter:

- a. wait times for access decisions ~~has~~reduced from 38 days in the June 2019 quarter to 12 days;
- b. first plans are being approved faster, from 133 days in the June 2019 quarter to 88 days.
- c. unscheduled plan reviews as a proportion of NDIS participants has reduced from 30.5 per cent in the March 2017 quarter to 16.1 per cent; and
- d. complaints from participants and providers are also tracking downwards and are at their lowest levels for more than two years⁶.

2.37. To better understand the impact of the NDIS on participants and their families and carers, the NDIA has also been measuring NDIS outcomes for participants, recognising how far they have come since they entered the scheme and acknowledging their different starting points. National level data for the period July 2018 to September 2019 indicates participant satisfaction across a number of indicators has consistently been in excess of 80 percent in a number of areas, particularly:

- a. between 93 and 87 per cent of participants rated their satisfaction with the planning process as 'Very Good' or 'Good', compared to ;
- b. between 97 and 93 per cent felt their planner listened to them;
- c. between 96 and 93 per cent considered that they had enough time to tell their story;
- d. between 95 and 91 per cent reported that their planning meeting went well.
- e. between 85 and 80 per cent felt that planners helped them think about their future⁷.

2.38. Notwithstanding these ~~steady~~improvements and the NDIA's current program of work to improve the participant experience, ~~feedback to~~this review ~~indicates the NDIA is~~notes many of the operational improvements currently underway are yet to be rolled out nationally or evaluated for their effectiveness.

⁶ COAG Disability Reform Council NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.7.

⁷ NDIA Quarterly Report to DRC for the period ending 30 September 2019, pp.32-33.

NDIA Quarterly Report to DRC for the period ending 30 September 2018, p.14.

~~2.35-2.39.~~ While the NDIA's data indicates there has been significant improvements across the NDIS pathway, the feedback provided by participants to this review demonstrates that the NDIA has not yet been getting it right the first time for each and every participant and ongoing effort is needed to realise the expected benefits of the NDIS. ~~This review also notes many of the operational reforms currently underway to give effect to pathway reforms are yet to be rolled out nationally, or evaluated for their effectiveness.~~

New 2019 Commitments

~~2.36-2.40.~~ In October 2019, the Australian Government announced an increase in the NDIA workforce of around 800 positions to ensure the NDIA can deliver on the pathways reforms, including implementing the improvements that will form part of the [Participant Service Guarantee](#).

~~2.37-2.41.~~ The Australian Government has also committed to expand the NDIS Community Connectors program to assist people with disability and their families in hard to reach communities to navigate the NDIS and get the services they or their children need. This expansion will provide \$20 million over two years [from 2019-20](#), building on the NDIA's Remote Community Connector Program and other activities undertaken by [the NDIA's Partners in the Community](#) (~~Attachment C refers~~).

~~2.38-2.42.~~ The expanded Community Connectors program will assist people in hard to reach communities to engage with the NDIS, and support them throughout the access, planning and implementation processes. Hard to reach communities [will](#) include Aboriginal and Torres Strait Islander peoples, CALD communities, people with psychosocial disability, and ageing parents or carers of children with disability.

~~2.43.~~ In addition, new initiatives were announced in November 2019 to resolve existing [pressure points for participants and ensure faster, higher quality and transparent decision-making](#). These include [joint planning meetings and the provision of draft plan summaries to strengthen the focus on goals and outcomes and provide participants](#)

[with a greater understanding of, and confidence, in their NDIS plan. These initiatives will roll out nationally in 2020 and are further discussed in Chapter 3.](#)

[2.39-2.44.](#) The Australian Government and NDIA have also committed that all NDIS participants will have a single point of contact with the NDIS, and the ability to have a longer plan review date of up to ~~3~~ three years ~~from when their plan is approved,~~ if their ~~disability is~~ support needs are stable. This ~~is~~ work is expected to improve participant's experiences with the ~~NDIA, NDIS~~ as they will not have to tell their story multiple times to different people. It is also expected to support participants who are ready to develop longer-term goals to achieve better outcomes, as longer plans will provide certainty for them and ~~their chosen~~ the providers delivering their supports.

[2.40-2.45.](#) This review understands that as at 30 September 2019, 93 per cent of participants now have a "MyNDIAContact". ~~Although,~~ although it ~~should be~~ is noted ~~that~~ the single point of contact results in participants being provided a contact name but generally not a direct phone number or email.

Future focus

[2.41-2.46.](#) 1 July 2020 is an important milestone for the rollout of the NDIS across Australia. It reflects a change of focus from transitioning state and territory disability service systems towards an environment focused on resolving outstanding implementation issues and working towards a mature NDIS, with around 500,000 participants expected to benefit from the scheme by 2023 ~~(Table 1 refers).~~

Table 1: Projected increase in NDIS population to 2023

Total	Population by Projection Year (30 June)				
	2019	2020	2021	2022	2023
	286,015	369,118	423,889	470,615	501,491
Change		+83,103	+54,771	+46,726	+30,873

~~2.42-2.47.~~ A 2014 review stated the NDIS was “like a plane that took off before it had been fully built and is being completed while it is in the air”⁸. ~~Five~~ Building on that metaphor, five years on, ~~the plane~~ is ~~clear that the NDIS is still being built, flying but the passengers are experiencing some turbulence.~~ In order to ensure the NDIA is able to deliver an efficient and effective scheme, ~~this review considers~~ the next phase of NDIS implementation will need to have a focus on:

- a. building the trust of participants, their families and their carers when engaging with NDIS processes;
- b. activities to support new people with disability to access the NDIS; and
- c. expediting access to funded supports and reducing the number of unnecessary steps in the participant pathway.

~~2.43-2.48.~~ ~~While substantial efforts are underway to make improvements in these areas~~ However, the NDIS is already a large and complex system, meaning further improvements to support positive participant experiences will take time to embed within NDIA operations, including making the required changes to ICT systems. It is therefore reasonable to expect it will take several years before the NDIS is operating efficiently in a fully efficient and effective manner.

~~2.44-2.49.~~ In addition, there are many policy and practice challenges that will need to be addressed to ensure the NDIA can deliver on its promise to people with disability, particularly in respect ~~relation~~ to:

- a. ~~Fully~~ fully overcoming delays across all decision-making processes, to ensure timely access to supports when people with disability actually need them;
- b. resolving ambiguity in the construction of supports so plans meet participant expectations and always have a clear link to the participant’s goals and aspirations;
- c. actively supporting people with disability to build their capacity to identify their support needs, goals and aspirations, self-advocate and navigate the market;
- d. improving the capability and capacity of the NDIA workforce, including Partners in the Community; ~~and~~
- e. supporting the development of a robust marketplace of disability service providers that keeps pace with demand; ~~and~~

⁸ Whelan, J., Acton, P. and Harmer, J. (2014). *A Review of the Capabilities of the National Disability Insurance Agency*—Geelong, VIC, p.7.

f. ensuring disability service providers are acting in the best interests of participants.

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Other Issues

2.45-2.50. This report does not consider all aspects of the NDIA's service delivery. This is because I was specifically asked to evaluate the particular legislative changes that would be required to improve ~~participant~~participants' experiences with the scheme. Nevertheless, one of the intentions of this report is suggest areas where operational changes would support legislative changes that impose timeframes or other requirements as part of the Participant Service Guarantee.

2.46-2.51. ~~In addition,~~ I have not considered the effectiveness of the NDIA's current approach to ILC investment as the Terms of Reference are focused on the experience of NDIS participants with the administration of NDIA decision-making. I do, however, acknowledge ILC is a fundamental aspect of the NDIS that seeks to build the capacity of mainstream services and community programs to create connections between all people with disability and the communities in which they live, ~~encouraging inclusion and participation, while also building a more inclusive, diverse and accessible Australia.~~

2.47-2.52. I acknowledge feedback ~~calling~~that called into question the scope of the NDIS, as set out in the NDIS Act, and feedback suggesting the role of the NDIS, and the NDIA in delivering it, is not ~~well~~ understood. For example:

- a. the principles of 'choice' and 'control' were seen by participants as reinforcing a view that they, as experts in their own lives and needs, would be able to receive funded supports through the NDIS of the type and at the level they felt was appropriate, without the NDIA having authority to make decisions to that end;
- b. there is confusion around who the NDIA 'speaks for', acts 'on behalf of' or ultimately, 'serves' – is it people with disability or government interests?; and
- c. there is confusion about the role of the NDIA in managing, advising and reporting on, the financial sustainability of the NDIS.

~~2.48-2.53.~~ I ~~also~~ acknowledge there is a tension between the role of the NDIS in supporting the functional impact of impairments that arise due to a chronic health condition and confusion around the respective roles and responsibilities of, and how the NDIS works alongside, the health system. I ~~note~~~~acknowledge~~ this issue was ~~mentioned~~~~noted~~ in the 2015 Review of the NDIS Act but is yet to be resolved. ~~I~~ ~~reviewing this~~ ~~is a critical~~ issue ~~I consider that, at this point, however,~~ more significant and detailed policy work needs to be undertaken before ~~this issue~~ it can be ~~appropriately considered~~~~addressed.~~ ~~This should be a policy priority of Governments.~~

~~2.49-2.54.~~ ~~Consultation~~ ~~also note~~ feedback ~~also suggests~~~~suggesting~~ the role of ~~all~~ governments in providing policy stewardship of the NDIS is not clear, including its ability to influence NDIA decision-making. Some submissions referred to policy announcements by governments or stated objectives in Intergovernmental Agreements and considered them binding upon the NDIA. Others indicated they felt the NDIA had “broken their promises” when the NDIA acted in ways they perceived was inconsistent with political undertakings, ~~such as – for example, that~~ they “would not be disadvantaged” in the transition from state and territory disability systems.

~~2.50-2.55.~~ Some of these frustrations will be addressed by effective implementation of the ~~proposed~~ Participant Service Guarantee, as outlined in Chapter 10. ~~of this report.~~ However, I consider they are ~~generally~~ outside the remit of this review as they ultimately regard the role and function of the NDIS itself, and of the NDIA in delivering it. Accordingly, I do not make any recommendations on these issues, and instead suggest the most appropriate vehicle for such consideration is the next review of the NDIS Act, currently scheduled for 2021.

~~2.51-2.56.~~ ~~Lastly,~~ I acknowledge feedback suggesting there is a need to review the nominee provisions of the NDIS Act in relation to their intersection with guardianship and administration legislation in ~~the~~ states and territories. ~~As a matter of reviewing the NDIS Act, this~~ ~~This~~ issue is unlikely to be resolvable in isolation. Accordingly, I do not make any recommendations on this issue but consider it appropriate for governments, through DRC, to commission a review of the interoperability between Commonwealth and state and territory legislation as it applies to nominee and guardianship provisions. ~~This review would have the~~ ~~The~~ intent ~~of identifying~~~~should be to identify~~ opportunities to ensure a nationally consistent approach to nominee, ~~guardianship~~ and supported-~~decision-~~making arrangements for people with disability.

2.57. Finally, I acknowledge feedback suggesting legislative reforms may be needed to ensure the integrity of the NDIS, including through providing the NDIA with explicit powers to undertake fraud detection and enforcement activities and strengthening the provisions around the interface between the NDIS and state and territory compensation schemes. These matters cannot be achieved without close examination of the regulatory interface between the NDIA and the NDIS Quality and Safeguards Commission and the legal and practical dilemmas about the valuation and liabilities of compensation benefits made under state and territory statutory schemes.

2.58. Issues that go to the integrity of the scheme should be considered by DRC, noting the Terms of Reference for this review focus on improving the participant experience of NDIA decision-making. Accordingly, I do not make any recommendations on these issues but encourage further policy work to be undertaken by governments. The Australian Government recently said the NDIS was about 80 per cent there, with 20 per cent left to go⁹. These issues form part of that last 20 per cent, and efforts should be undertaken to resolve them as soon as possible.

Recommendation 1: DRC add, to its forward work program, the resolution of the following outstanding policy matters:

- a. the treatment of chronic health conditions under the NDIS;
- b. the role of nominees, guardians and support-decision making under the NDIS, including the intersection between the NDIS and state and territory guardianship legislation;
- c. the role of the NDIA in undertaking fraud detection and enforcement activities, in consult with the NDIS Quality and Safeguards Commission; and
- d. the operation of compensation provisions under the NDIS Act.

⁹ Minister for the NDIS, the Hon Stuart Robert MP, National Press Club address of 14 November 2019.

CHAPTER 3 – ENGAGEMENT AND NAVIGATION

KEY FINDINGS

- ✓ Improvements to the participant experience could occur by ensuring all planning is done with a person who can make the decision to approve a plan.
- ✓ There is no clear understanding of the term 'reasonable and necessary', which is leading to varying interpretations and driving confusion for participants and the NDIA.
- ✓ Effective implementation of the scheme is being undermined by a lack of freely available and accessible information, inconsistency and a lack of transparency over NDIA decision-making.
- ✓ People with disability have the right to understand the reasons on which the NDIA makes decisions regarding their eligibility for, and the supports provided to them under, the NDIS. The legislative framework and NDIA administrative practices needs to support this outcome for participants.

KEY FINDINGS

- ✓ Improvements to the participant experience could occur by ensuring all planning processes are done with a person who has delegation to make the decision.
- ✓ There is no clear definition of when a support is reasonable and necessary. This is leading to different interpretations and driving confusion and frustration for people with disability, LAC partners, NDIA delegates, tribunals and courts.
- ✓ Additional support should be provided to assist people with disability to navigate the NDIS and its processes.
- ✓ People with disability have the right to understand the reasons on which the NDIA makes decisions regarding their eligibility for the NDIS and the supports provided in their plans.
- ✓ Participants should be provided with a whole draft plan before it is approved to keep them at the center of the planning process.
- ✓ The legislative framework and NDIA administrative practices need to enshrine transparency as a principle underpinning all their engagement with people with disability.

- 3.1. The NDIS is having a positive impact for many participants. These outcomes become particularly evident the longer a person is in the scheme, as they continue to develop their confidence in navigating the provider market and implementing their plan. However, this review has heard that the complexity of the NDIS (as a system in itself) is causing significant confusion and frustration for many people with disability.
- 3.2. Consultation feedback suggests that participants find some people with disability have found it difficult to navigate through “the bureaucracy of the NDIANDIS” and that they are feeling increasingly disempowered by how the NDIA engages with the NDIA is not delivering what the NDIS promised them. The vast majority of people with disability who participated in the public workshops or completed the online survey consultations reported that finding they could not find accessible information, applying for about the scheme, how to lodge an access request and that talking to the NDIA is ‘confusing-left them feeling disempowered and frustrating’-not valued as an expert in their disability.

- 3.3. ~~Feedback~~ Consultation feedback also ~~suggests~~ suggested that people with disability do not understand how the NDIA makes decisions about their eligibility for the NDIS and the supports provided in their plan, including when a support is reasonable and necessary. ~~This review~~ Submissions also ~~noted feedback describing~~ indicated there is a disconnect between the person ~~working with them to test their eligibility~~ responsible for supports or develop their plan planning and the person ~~who has the~~ with sufficient delegation to ~~approve it.~~ make decisions, resulting in unnecessary levels of bureaucracy and people with disability needing to repeat their stories to different people, which can be traumatising.

Joint Planning

Reforms to the planning process

- 3.4. Under current arrangements, once a person with disability becomes an NDIS participant they are assigned a ~~planner.~~ “My NDIS Contact” to assist and guide them with the planning process. In the majority of cases, the ~~planner~~ contact will be one of the NDIA’s Partners in the Community ~~—that is, (e.g. a LAC or an ECEI partner).~~ However, where a ~~participant’s needs are~~ participant has more intensive or complex need, the ~~planner~~ contact will be an employee of the NDIA. ~~{Query for: The NDIA: can you provide stats on what proportion advise that, currently, around 70 per cent of participants are assigned a Partner for planning?}~~ “My NDIS Contact” from Partners in the Community, with the remaining 30 percent assigned to the NDIA.
- 3.5. Where ~~the planner~~ “My NDIS Contact” is a ~~LAC or ECEI partner, the partner~~ Partner, they will work with the participant and their representatives, including their families and carers, to develop a ~~draft~~ plan. This involves discussing the participants support needs, goals and aspirations and the informal, community and mainstream supports available ~~in their community to them.~~ Once the ~~LAC or ECEI partner~~ Partner has ~~prepared~~ drafted a ~~draft~~ plan containing the reasonable and necessary supports proposed to be funded by the NDIA, it is then sent to ~~an~~ an NDIA delegate for approval. As currently set out in the NDIS Act, the CEO can only delegate powers and functions to an NDIA employee ~~has the delegation to approve a plan.~~
- 3.6. In approving the plan, the NDIA delegate may make amendments to ~~the plan~~ it, based on NDIA operational procedures or other considerations ~~as required~~ they need to be

satisfied that the supports in the plan are reasonable and necessary. This review has heard ~~feedback that suggests~~ that, in at least some cases, the NDIA delegate may not have met the participant or discussed any changes ~~with them~~ prior to the plan being approved ~~and sent to the participant~~.

- 3.7. ~~It appears that a truncated planning and plan approval~~This process has ~~created~~driven a ~~clear~~ disconnect between the NDIA and participants, ~~and has resulted~~resulting in plans that do not ~~necessarily~~ reflect planning discussions. In addition, it has ~~driven complexity for participants~~complicated the participant experience with many citing anxiety and frustration in having to repeat their story unnecessarily ~~and request~~by requesting plan reviews ~~to have consideration of~~so the supports ~~they~~ asked for, but ~~were~~ not funded, ~~can be reconsidered~~.

"LAC just seems to be a conduit for information with no contact with planner by person with disability, information becomes second hand and there seems to be little communication between LAC and planner."

Family member and Carer of NDIS Participant, Metropolitan New South Wales

"Completely inadequate plan and absolute shambles of a planning process. Information presented was not read or considered. Erroneous assumptions were made. The Chinese whispers from the LAC to the planner did not come through clearly – another major flaw with the planning process: LACs gathering information which is then passed on to someone who does not meet the person with disability or have the conversation with them absolutely disastrous."

Family member and Carer of NDIS Participant, Regional New South Wales

"LACs have too many clients and cannot do their jobs properly, one LAC told me that their caseloads aren't even capped. How can they support people adequately if they are so time poor that they can't return phone calls or answer emails within a day or so – that Participant is likely to have an extremely serious problem such as lack of access or if the plan isn't spent they will lose money in the next plan."

Carer of NDIS Participant, Regional Victoria

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Carer of NDIS participant, regional Victoria

- 3.8. In its 2011 report, the Productivity Commission conceived the role of partner organisations as helping people with disability connect to services in their community and build the capacity of the community for such interactions. That is, the original conception of the NDIS always envisaged that it might be more appropriate for some NDIS functions to be outsourced.
- 3.9. ~~However, as~~As the NDIS has been rolled out, and ~~as, and due to the speed of transition and the available workforce,~~ this role has been expanded to include planning functions. ~~As a result,~~ LAC's and ECEI Partners are now being asked to undertake dual roles of planning and coordination for the majority of the NDIS eligible population, ~~and there.~~ There are indications that a focus on planning has been at the expense of their coordination ~~role~~role.

3.10. With an ongoing focus on increasing the number of participants to 500,000 by 2023 (the majority of ~~whom~~new participants will be children), there will be an ongoing tension between the Partner's two roles, ~~and therefore~~. Therefore, it is important that the balance is right and that the interface with NDIA delegates is as effective and streamlined as possible.

~~in~~

3.11. The NDIA have rolled out two new processes in response to response to feedback from participants about the disconnect between the processes of planning and plan approval, ~~the NDIA have commenced rolling out "joint planning meetings"~~. Plan Alignment Meeting and Joint Planning Meetings.

3.12. ~~Joint planning meetings~~Plan Alignment Meetings involve a meeting between the planner, LAC and NDIA delegate to provide the delegate with greater insight into the participants support needs, goals and aspirations and work through clarifications.

~~3.12-3.13.~~ Joint Planning Meetings are for participants preparing their first plan, and involve a meeting between the LAC, NDIA delegate and the participant and/or their representative and the NDIA delegate who can approve the plan. These meetings, following the Plan Alignment meeting. Joint Planning Meetings are designed to give participants the opportunity to ask questions to both the ~~planner~~LAC and ~~the~~ NDIA delegate, so they understand the supports to be funded in the plan, and why other supports will not be funded. Importantly, a key goal of the meeting is to promote transparency in the way information flows between the ~~planner~~LAC and the NDIA and to be able to provide an approved plan to the participant during the meeting. Joint Planning Meetings have not yet been rolled out for people with disability entering the NDIS through the ECEI gateway, given the specific focus and expertise of ECEI Partners.

~~3.13-3.14.~~ Feedback from an early trial of the Joint Planning Approach Meetings in Victoria during 2018 suggests that it delivers multiple benefits, including:

- a. the ~~planner~~LAC and NDIA delegate have a better understanding of the participant and their needs, which ~~translated~~translates to better explanations ~~of being provided to the participant of the~~ reasonable and necessary supports and other elements of ~~the~~their plan ~~to the participant~~;

- b. in the majority of cases (85.4 per cent), the plan was able to be approved at the planning meeting and provided to the participant, with a further 10.9 per cent of plans approved within five working days;
- c. participants and their representatives reported ~~that~~ they felt more involved in the process; and
- d. participants who were unable to have their plan approved at the meeting understood the reason why, and in most instances ~~that~~ the delay did not impact their overall satisfaction with the process.

3.14-3.15. In November 2019, the Australian Government announced the NDIA will expand the pilot and roll out joint planning meetings across Australia from April 2020, along with the provision of draft plan summaries. Providing a draft plan summary will enable ~~them~~ the participant to review and amend their personal details, goals, living arrangements, informal ~~community supports~~ and other community supports, and social and economic participation prior to a plan being approved.

3.15-3.16. Importantly, these strategies will ensure NDIA planning decisions are consistent with participant expectations because the participant, the planner LAC and the NDIA Planner delegate will collectively discuss a working version of the plan and supports to be included before it is approved.

3.16-3.17. ~~However~~ Notwithstanding these benefits, it seems reasonable to question whether the addition of a joint planning meeting is simply adding additional complexity and time for ~~both~~ the participant experience and increasing the NDIA's administrative burden, and whether there are other more structural approaches that could be undertaken to improve the participant experience and deliver administrative efficiencies.

3.18. One potential option could be to ~~remove~~ reduce the need for joint planning meetings ~~entirely~~ by ~~bringing~~ bringing all planning related functions undertaken by LAC's into the NDIA, such that ~~the person~~ a participant plans, including their support network, only have to engage with ~~is~~ the person who ~~can~~ has delegation to approve their plan. LAC's would still be responsible for helping participants connect to services in their community, build the capacity of the community for such interactions, and provide input to these aspects for the NDIA delegate to include in building and approving a plan that captures all supports (community, mainstream/government, informal, and formal).

~~3.17-3.19.~~ This would reflect a ~~fundamental~~ shift in the way the NDIS is currently implemented, and move the administration of the NDIS towards the model originally envisaged by the Productivity Commission ~~—that is LAC and ECEI partners focusing on coordination and plan implementation functions.~~

~~3.18-3.20.~~ A second option, ~~as raised in some submissions to this review~~ could be to provide ~~LAC and ECEI partners~~ LAC's with legislative delegation to make plan approval decisions, ~~however.~~ However, this approach would only be addressing the symptom, as opposed to driving operational processes towards the most effective balance of NDIA staff and its ~~partners~~ Partners.

~~3.19-3.21.~~ Moving to a system where ~~the a~~ NDIA staff do planning related functions for the majority of participants (that is done by NDIA staff, excluding ECEI), would require a significant adjustment to ~~their~~ the NDIA's operational planning footprint and require a well-developed workforce strategy between the NDIA and its partners, noting existing contractual arrangement would need to lapse or be amended.

~~3.20-3.22.~~ Given the significance of such a change to current operational arrangements, any change to the planning process needs to be thoroughly tested against current arrangements ~~to ensure that participant experience is maximised, through an appropriate comparative evaluation.~~ Otherwise, rushing to amend the NDIA's operational footprint and formally changing the role of partners may create perverse outcomes ~~or~~ for the participant experience.

~~3.21-3.23.~~ Therefore, this review considers that there is merit in the NDIA trialing an arrangement where NDIA delegates undertake all planning related functions. ~~This could be done in a particular location or state, in areas where (except for people entering the LAC and NDIS through the ECEI partner approach is least mature gateway).~~

~~3.22-3.24.~~ Subject to an evaluation of the participant experience, the NDIA should then proceed to implement the model that, based on the evidence, achieves the best outcome for participants. This review notes, however, that any trial may have a requisite impact on the NDIS average staffing limit.

Recommendation 1: The NDIA undertake a trial where all planning functions are undertaken by NDIA delegates, to compare the benefits of that approach with current operational reforms underway.

Recommendation 2: The NDIA undertake a trial where all planning related functions are undertaken with person who has delegation to approve the plan, and compare the benefits of that approach with the roll out of joint planning meetings.

Navigation support

3-23-3.25. If current operational arrangements remain, however, including Regardless of the role of NDIA delegates and noting the existing NDIA reform program, this review considers that a mature NDIS may not see a material improvement in the overall complexity, or bureaucracy of the scheme.

3-24-3.26. Consultation feedback suggests those people with disability who have support to navigate the NDIS from initial entry to being able to fully ~~and~~ access and implement their plans tend to achieve better outcomes than those who do not have the help they need to navigate the system by themselves. This review has heard that this is driving a higher demand for advocacy support, both to navigate the NDIS and to deliver capacity-building supports that were intended to be delivered by the Partners in Community, but may have been lost due to a focus on planning. Indeed, anecdotal evidence suggests that many advocacy organisations across the country are reporting the establishment, or a significant expansion of waiting lists because of the NDIS, with evidence some people with disability are being turned away.

~~3.25-3.27.~~ ~~Consequently~~ Taking into account the time it will take for the NDIA to mature and current operational reforms to be embedded, there ~~may likely be an ongoing~~ is a need to provide ~~some participants with~~ additional support to ~~help people with disability~~ navigate the NDIS, exercise informed choice and control, understand and implement their plans and to have their voice heard in matters that affect them ~~or.~~ This kind of support is more commonly referred to as supported decision-making. This ~~and~~ is particularly important for people with limited capacity to make decisions or self-advocate, ~~and noting it~~ should ~~still~~ always enable core NDIS principles, such as independence, choice and control, community inclusion and linkages to other service systems.

~~3.26-3.28.~~ However, in keeping with the principles of the NDIS, ~~this review considers~~ it may not always be the responsibility of, or appropriate for, the NDIA or NDIS service providers to provide supported decision-making. ~~Rather, if LAC and ECEI partners continue to have a role in planning style supports. Therefore,~~ the Australian Government could consider providing additional funding to third parties, who are sufficiently independent from the NDIA, to undertake these functions.

~~3.29.~~ ~~This~~ However, providing this support is not without risk. It will be important to ensure that implementation does not result in dependency that is at odds with the principle of increasing the capacity of people with disability.

~~3.30.~~ Initial estimates are that an injection of around \$45 million over three years to 2022-23 would be appropriate, noting there is no robust data available about the level of unmet need. In addition, while there may be some ongoing need, demand for these services is expected to reduce over time. Accordingly, as the NDIS moves into a new phase of implementation, it would be sensible for additional supports to be reviewed in the context of the next scheduled review ~~has~~ of NDIS costs in 2023.

Recommendation 3: The Commonwealth provide additional funding for people with disability to navigate the NDIS, with a review of demand to occur as part of the next review of NDIS costs, currently scheduled for 2023.

~~3.27-3.31.~~ Consultation feedback also heard from participants who argue the funding of ~~suggests that funded~~ support coordination in their plan would help them use and plans is critical for helping participants reduce the burden of managing their plan and enable

[them to maximise the benefits of their funding. In some cases, it was suggested](#) the NDIA should fund this support more generally for NDIS participants.

~~3.28.3.32.~~ This review considers that this feedback is likely to be another symptom of Partners in the Community having dual coordination and planning roles. As a result, and whilst likely to be the least effective of the options to address ~~the effect of~~ current operational arrangements, the NDIA could be more generous in its interpretation of when it is reasonable and necessary to provide funded support coordination, noting that currently 39 per cent of active participants [already](#) have funded support coordination in their plans¹⁰.

~~3.29.3.33.~~ ~~This review notes, however, that~~ However, the market for support coordination is ~~not well established~~ [still developing in response to NDIS demand](#) and there are locations where the market ~~is~~ [would be](#) thin and ~~or there are issues around~~ the quality of service provision ~~an issue~~. As such, any move to increase the use of funded support coordination ~~in participant plans~~ would need to be accompanied with a comprehensive market development strategy to ensure service providers were able to effectively assist participants to get the best outcomes from their NDIS ~~fundingsupports~~ and make the transition from being passive recipients of supports to informed consumers. This is further discussed in Chapter ~~7~~.

Reasonable and ~~Necessary~~ [necessary](#)

~~3.30.3.34.~~ Reasonable and necessary is one of the first terms people hear about when they start to engage with the NDIS. However, despite being the most important term, as it defines the supports that are funded under the NDIS, there is no clear ~~notion~~ [definition](#) of what it actually means.

~~3.31.3.35.~~ The legislative concept of reasonable and necessary is not unique to the NDIS, with similar constructs being legislated in other compensation ~~schemes~~ [schemes](#) in Australia, ~~for instancesuch as~~ state and territory motor accident lifetime care and support schemes¹¹.

¹⁰ COAG Disability Reform Council/NDIA Quarterly Report [to DRC for the period ending](#) 30 September 2019, p.103.

¹¹ See, for example: the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (South Australia), *Motor Accidents (Lifetime Care and Support) Act 2006* (New South Wales) and *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (Australian Capital Territory).

3.32-3.36. However, in its application under the NDIS Act, it is clear from the NDIS rollout that there is yet to be a consistent understanding between NDIS participants people with disability and the NDIA as to what constitutes a reasonable and necessary. Consultation feedback indicates there is significant confusion around how decisions on the reasonable and necessary supports funded by the NDIS are made in respect to an individual's plan. support.

"I felt the 'reasonable and necessary' test was very subjective and my planner couldn't understand how it was necessary or reasonable that I have a bag for my wheelchair even though my occupational therapist had stipulated that as I have limited mobility, it was necessary to achieve my goals of independence"

NDIS Participant, Regional Queensland

"Reasonable and necessary is not the easiest to understand and navigate, which I also suspect if leaving people out on a limb because they do not understand this term clearly and what is included"

Family member and Carer of NDIS Participant, Metropolitan Victoria

"Interpretation of the criteria is too subjective. What is fair and reasonable and necessary?"

NDIS Participant, Regional Queensland

"Better clarify 'reasonable and necessary'. For someone like me, this is a very vague term, implying a compromise between goals and supports"

NDIS Participant, Regional Victoria

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"Better clarify 'reasonable and necessary'. For someone like me, this is a very vague term, implying a compromise between goals and supports."

NDIS participant, regional Victoria

~~3.33-3.37.~~ Fundamentally, ~~this is because~~ the confusion results from reasonable and necessary ~~is being~~ defined in the NDIS Act and Rules legislation through high-level ~~principles~~ criteria around what constitutes a support in ~~scope~~ for NDIS funding and those other supports more appropriately funded by another service system or through a participant's ordinary income (including income support).

~~3.34-3.38.~~ This is complicated by reasonable and necessary being, in large, a discretionary determination made on a case-by-case basis having regard to each participants individual circumstances. Combined with limited (or at least not easily accessible) information on the NDIS website on how a NDIA delegate makes a reasonable and necessary decision, there is ~~significant scope for NDIA delegates and people with disability to misinterpret what supports were intended to be funded when all governments established the NDIS Act~~ considerable challenge for delegates in applying the reasonable and necessary criteria consistently.

~~3.35-3.39.~~ However, what is clear is that legislative responsibility for determining what is reasonable and necessary, within the established principles, is vested solely with NDIA delegates.

~~3.36-3.40.~~ ~~Confusion~~ When aligned with an immature NDIA workforce and the NDIA not providing explanations of its decisions, confusion around when a support is reasonable and necessary ~~and poor planning decisions (in some instances) made by delegates are~~ driving people with disability to seek formal reviews of their plan and, in some cases, escalating issues to the AAT for resolution.

~~3.37-3.41.~~ In considering the facts of the matter before it, the AAT is ~~are~~ also making determinations as to what is, or is not, reasonable and necessary. While the Tribunal is not a Court, and its decisions are not binding, it does ~~set precedent~~ provide persuasive guidance for the types of support that could be funded by the NDIS. This review also notes that the AAT's decisions, while having regard to the objects and principles of the NDIS Act, may, or may not be making decisions ~~in the interest of the scheme~~ as was intended when the legislation was drafted.

~~3.38-3.42.~~ ~~However, this~~ This review ~~does~~ not ~~consider that~~ assessing the appropriateness of AAT ~~is making incorrect~~ decisions. Rather, ~~this review considers it proposes~~ that all governments need to take a greater role in resolving the definition of reasonable and necessary. In particular, this review considers five key actions are required to provide clarity to participants and NDIA delegates about what is reasonable and necessary.

~~3.39-3.43.~~ Firstly, the NDIA should provide clearer advice on how it decides whether a support is reasonable and necessary, including practical examples, such as case studies or cameos. These should be readily available on the NDIS website and other platforms in accessible formats. Currently, reasonable and necessary is described in vague terms, often simply replicating the legislative criteria. Case studies should address key areas of confusion for participants, for instance, ordinary living costs ~~and~~ health ~~interfaces and transport~~.

~~3.40-3.44.~~ Secondly, the *National Disability Insurance Scheme (Supports for Participants) Rules 2016* (Supports for Participants Rules) should be updated to provide greater legislative guidance for NDIA decision makers in determining when a support is reasonable and necessary. This update should have regard to the recent and anticipated decisions made by the DRC ~~in respect of~~ about the interface between the NDIS and mainstream service systems. ~~Notwithstanding that~~ This is particularly important because while the NDIA ~~should~~ must have regard for the decisions of the

DRC, ~~these~~ DRC's decisions are not law and do not have formal standing in the context of NDIA delegate decisions.

~~3.41-3.45.~~ 3.41-3.45. Thirdly, DRC should clarify the interface between the NDIS and a participant's ordinary living costs, in order to provide further direction to NDIA delegates in funding supports in circumstances where it is not clear whether a support is directly attributable to a participant's functional impairment, disability. This can occur where a support provides outcomes that are not solely related to a participant's functional impairment, disability, or where a support would be considered an ordinary living cost for the wider Australian population, but it is not clear if a participant would have purchased that support if not for their functional impairment, disability.

~~3.42-3.46.~~ 3.42-3.46. Fourthly, the NDIS Act should be amended to provide clarity to NDIA delegates that, while they must decide that each support supports in a participant's participant's plan is are reasonable and necessary, it is also the function of the reasonable and necessary test to consider how each support interacts with supports are considered as a package in the other reasonable and necessary supports in a participant's participant's plan. While this is already inferred through the concept of a NDIS plan 'plan' in the NDIS Act, this review considers that it is worth providing clarifying this clarification interaction more explicitly to NDIA delegates.

~~3.43-3.47.~~ 3.43-3.47. Finally, the NDIS Act should be amended to clarify that the absence of a support being provided by another service system, where that service system is considered to be the appropriate service delivery mechanism for that support, does not infer a responsibility for on the NDIS to fund that support. On face value, this would appear to be a negative for people with disability as it could potentially enforce, or exacerbate, service gaps for participants. However, this review considers that this clarification would provide further certainty to participants and all governments over the role of the NDIS, driving the debate more appropriately towards the reason why the support is not being provided by the other service system.

~~3.44-3.48.~~ 3.44-3.48. Importantly, these actions are not intended to narrow the intended scope of the NDIS. Rather, these actions they are intended to ensure there is a strong understanding of the NDIS' boundaries by participants and governments. If implemented appropriately, this elevates the debate around on the role of the NDIS and what is reasonable and necessary can be elevated from individual participant

experiences ~~toward more~~ to a focus on the structural and systemic debates between governments and people with disability issues.

Recommendation 2: ~~That more certainty is provided to NDIA delegates and NDIS participants when considering the concept of reasonable and necessary, with:~~

- ~~a. the NDIA to provide clearer guidance on how it makes reasonable and necessary decisions;~~
- ~~b. the NDIS Rules be updated to reflect recent and upcoming decisions by the DRC in relation to the interface between the NDIS and other service systems;~~
- ~~c. DRC adding, to its forward work program, resolving the interface between the NDIS and ordinary living costs;~~
- ~~d. the NDIS Act to be amended to clarify the interaction among individual supports within a plan; and~~
- ~~e. the NDIS Act to be amended to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.~~

Recommendation 4: Provide more clarity around the definition of 'reasonable and necessary', with:

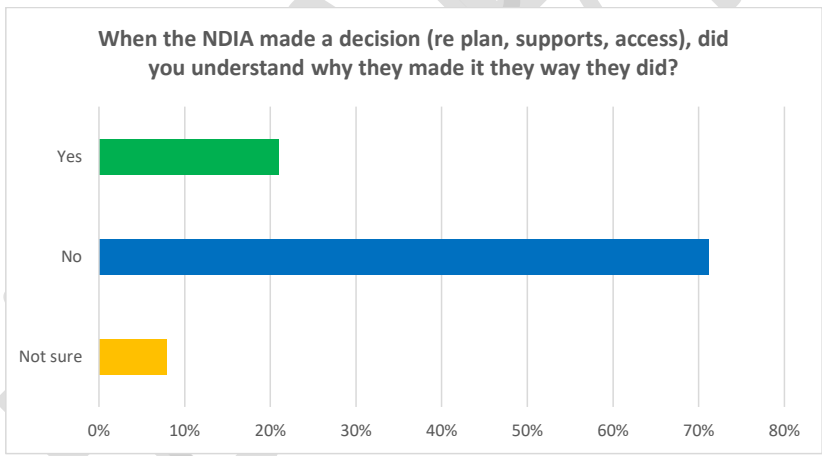
- a. the NDIA publishing information about how it determines when a support is reasonable and necessary, in accessible formats;
- b. updating the NDIS Rules to reflect DRC agreements on the interface between the NDIS and mainstream service systems;
- c. DRC working to resolve the interface between the NDIS and ordinary living costs;
- d. amending the NDIS Act to clarify that reasonable and necessary supports are considered together as a package; and
- e. amending the NDIS Act to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

Transparency

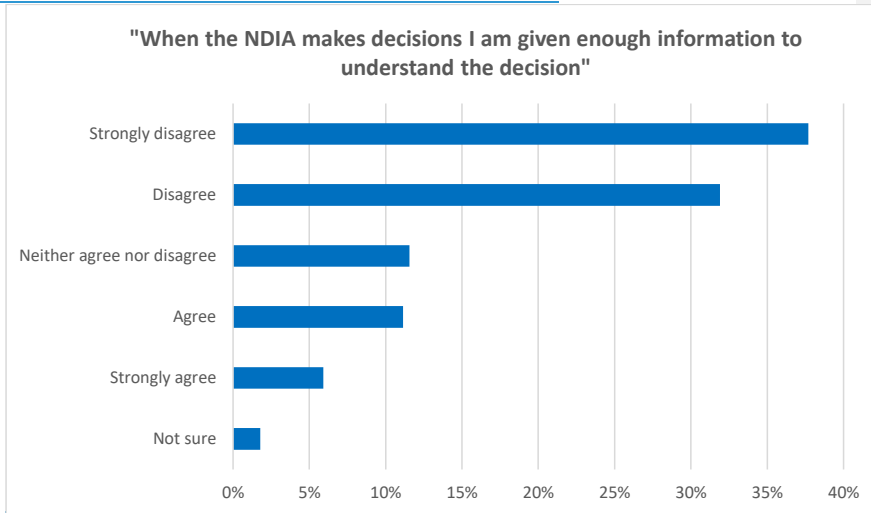
Understanding the reasons for NDIA decisions

3.49. Further to issues around the interpretation of reasonable and necessary supports, consultation feedback ~~to this review~~ suggests ~~that~~ the NDIA is not ~~effectively~~ always explaining its decisions to participants and ~~that~~ this is leading ~~to~~ participants ~~requesting plans~~ to request reviews to seek explanations, ~~and/or~~ correct ~~what they feel~~ are errors ~~or otherwise results~~ in their plans.

3.45-3.50. Survey data indicates participants feel there is a lack of transparency in decision-making and that this is driving a lack of trust and confidence in NDIA processes. More than 71 per cent of, even if the NDIA's decisions were legitimate. The vast majority of participants responding to the 930 long-form survey respondents who gave a specific response to this question reported they did not understand the reasons why the NDIA made certain decisions, even if those decisions were legitimate, and that the NDIA did not provide them with information to understand the decision and what it meant for them (Figure 2 refers).



3.46. ~~This finding was consistent with feedback in response to another question in the survey, which asked participants whether they agreed with the statement: "When the NDIA makes decisions I am given enough information to understand the decision" with 70 per cent of the 1,274 survey respondents who provided a specific response disagreeing or strongly disagreeing.~~



Qualitative feedback from the survey also indicates

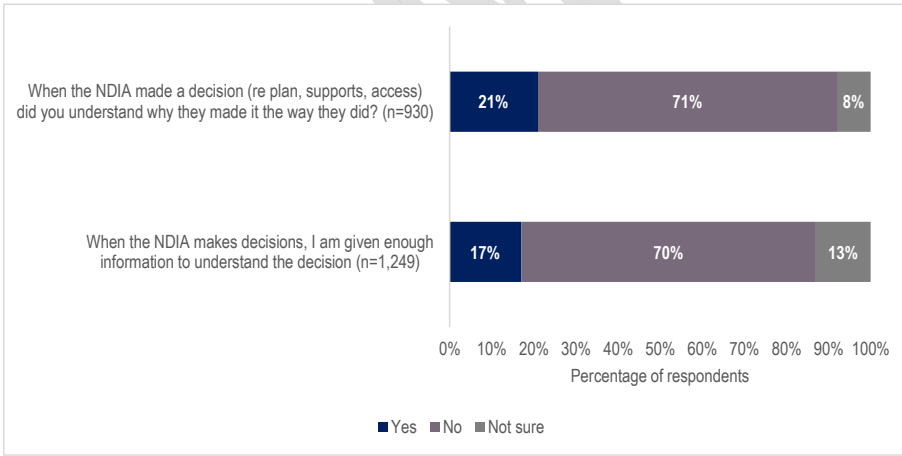


Figure 2: Explanation of NDIA decisions (long-form survey)

3.47-3.51. The survey data is supported by other feedback reinforcing that participants want explanations of how the NDIA makes decisions, including when a person

becomes a participant, why access was not granted, supports were funded or not funded and why funding levels were reduced from previous plans.

"The decisions made during plan reviews need to be explained to the participant. We need to know why services, equipment or home modifications are denied."

NDIS Participant, Regional Victoria

"They [NDIA] should be required to explain the plan – e.g. give a breakdown of what has been agreed to be funded; to be accountable & provide explanation of why they say 'no' to things."

Carer of NDIS participant, Regional Victoria

"Actually explain why supports were not included, or hours of support were reduced, then listen and offer advice or next steps."

Carer of NDIS participant, Metropolitan Victoria

"The decisions made during plan reviews need to be explained to the participant. We need to know why services, equipment or home modifications are denied."

NDIS participant, regional Victoria

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"Actually explain why supports were not included, or hours of support were reduced, then listen and offer advice or next steps."

Carer of NDIS participant, metropolitan Victoria

3.48.3.52. There would appear to be a link between participants' reported experience of NDIA decision-making and the rapid scale up of participants entering the scheme. A number of participants reported that planners 'quickly moved on' to the next person and that planners did not work with them to ensure they understood why certain supports were included in the plan, or not. To the extent that pressure to meet participant intake targets has influenced the NDIA workforce, it appears this has influenced the quality of NDIA decision-making.

"When we did get a rushed new plan instead of including all of our daughter's new goals and changes of circumstances, they copied and pasted her original plan from 2017 onto her new 2019 plan! No changes, no updates."

Carer of NDIS participant, Regional New South Wales

"We were rushed in our planning process this time because our plan was due to expire and we had not been called up for a review—I had to chase it up. We did not have all the people at the meeting we wanted because of the late notice."

Carer of NDIS participant, Metropolitan Western Australia

"We believed that in the planning meeting the LAC would listen to our needs and goals and create a plan to reflect these things. That did not happen."

Carer of NDIS participant, Remote Victoria

“When we did get a rushed new plan instead of including all of our daughter’s new goals and changes of circumstances, they copied and pasted her original plan from 2017 onto her new 2019 plan! No changes, no updates.”

Carer of NDIS participant, regional New South Wales

“We were rushed in our planning process this time because our plan was due to expire and we had not been called up for a review – I had to chase it up. We did not have all the people at the meeting we wanted because of the late notice.”

Carer of NDIS participant, metropolitan Western Australia

“We believed that in the planning meeting the LAC would listen to our needs and goals and create a plan to reflect these things. That did not happen.”

Carer of NDIS participant, remote Victoria

3.49-3.53. It should be noted, however, that the NDIA ~~Quarterly Report~~quarterly report to DRC for the period ending September 2019 indicates that 85 per cent of people who entered the scheme in that quarter reported ~~that their plans were clearly explained. This discrepancy is, in part, reflective of when the participant completing the survey entered the scheme. This review notes that survey respondents who reported they entered the scheme more recently were more likely to respond “Not Sure” or “Yes” to this question.~~their plans were clearly explained, compared to 81 per cent in previous quarters¹².

3.50-3.54. The NDIS is still evolving. As the NDIA and Partners in the Community workforce continue to mature and NDIA processes are further embedded, it is reasonable to expect the NDIA’s processes ~~infor~~explaining how they made their decision~~decisions~~ will also improve. ~~This Review expects that this~~A best practice explanation of a decision would include how the supports in the participant’s plan relates~~relate~~ to both the participant’s functional impairment/s as well as their individual goals and aspirations, in a way that is accessible for the participant.

¹² NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.96.

~~3.51-3.55.~~ ~~However, this Review also considers that a requirement for~~ Requiring the NDIA to explain its decisions would reinforce more robust planning practices, ~~reduces~~ reduce duplication and ensure the scheme remain accountable to the people it is designed to support. ~~Understanding~~ People with disability have the right to understand the reasons why a particular decision was made (and how it was made, including what information was taken into account in making that decision). It is also important ~~to enable~~ in enabling participants to decide whether or not to exercise their right of review or appeal if they disagree with an NDIA decision, and if they do, that they can do so in an informed manner.

~~3.52-3.56.~~ ~~Failing~~ Failure on the part of the NDIA to provide an explanation of the basis for its decisions disempowers participants and ~~impacts~~ impedes their capacity to exercise informed choice and control. While this review understands the NDIA is currently providing formal statements of reasons for ~~participant's~~ participants who have requested an internal (merits) review of an NDIA decision, it would be consistent with best practice administrative decision-making principles ~~and the intent of the scheme~~ that a participant should have the right to seek an explanation of NDIA decisions without needing to progress to internal (merits) review.

~~3.53-3.57.~~ While a person affected by a decision made under the NDIS Act has a right to request reasons for decision pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, ~~(Cth)~~ this review considers that recourse to the processes of this Act should not be the ~~most accessible way~~ first avenue for a person to obtain evidence of ~~an~~ NDIA decision.

~~3.58.~~ ~~Rather, an explanation to~~ Providing people with disability with an explanation of a decision should be a routine operational process for the NDIA when making access, planning and plan review decisions. However, in the event this does not occur, the Guarantee should empower the ~~participant-person with disability~~ to require the NDIA provide this information in a manner that is accessible to ~~the participant-them~~ (Chapter 10 refers).

Draft Plans

3.59. In November 2019, the Australian Government announced that participants will be provided with draft plan summaries from April 2020. These will be provided at the conclusion of pre-planning discussions, and set out:

- a. the participant's goals, objectives and aspirations; and
- b. the participant's environmental and personal context, including their living arrangements, informal community supports and other community supports, and social and economic participation.

3.60. Notwithstanding the Australian Government's commitment, this review has consistently heard that the participant experience would be improved if full draft plans were made available to participants prior to the NDIA delegate approving the plan. Almost all submissions stated this would keep participants at the center of the planning process. Draft plans were also articulated as a key mechanism to reduce the incidence of issues raised throughout this review, such as unscheduled review requests, appeals or difficulties in implementing their plan.

“The NDIS Act should require that a planner provide a proposed NDIS plan with reasons for decision-making to the participant and their nominated support people and allow for discussion of the plan NDIS before it is finalised.”

National Legal Aid

“Draft plans should be available before they are finalised for participants of their carers to review. We had the experience several years ago where an administration error led to a huge delay in approval of an equipment budget that had already been allocated in the plan”.

Carer of NDIS participant, regional New South Wales

“[We urge] the NDIA to involve people living with disability in the planning process, perhaps through a review process of draft plans before they are lodged with the NDIA for approval. This would align with the Convention on the Rights of Persons with Disabilities, which states that ‘persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’.

JFA Purple Orange

3.61. In the early years of trial, some participants were given the option of seeing their whole draft plan, inclusive of the estimated plan budget. The NDIA advised that while this practice was helpful in picking up basic errors and refining for goals and aspirations, it did not increase participant’s satisfaction with the planning process or expedite plan approval timeframes.

3.62. The NDIA also advised the practice led to disagreements about the dollar value of the draft plan, not the supports listed in the plan, and that this further delayed the timely provision of funded supports to participants. One potential inference from this outcome is that a participant’s goal was simply to get the highest dollar amount possible, or that providers who have commercial interests drive participants to seek more funding.

3.63. Thus, allowing a participant to be provided with a draft plan creates a perverse outcome if participants believe it is their role to decide what is included in a plan. As

mentioned previously, the decision of what is contained in a plan is vested with the NDIA delegate based on the information available to them at the time.

3.64. Therefore, the provision of a draft plan will never resolve issues where the NDIA delegate makes a decision that is contrary to a participant's expectations. Rather, where disputes occur, it is the role of the internal review process, and if necessary the AAT, to determine whether the NDIA delegates' decision is correct. For it to be an effective tool, the purpose of a draft plan would need to be centered on participant education and the removal of errors or anomalies as the plan is built by the NDIA.

3.65. Notwithstanding the intent of introducing plan summaries, the plan summary is also introducing a new form of documentation for a participant to consider, as it does not include all the information that would be contained in a plan, including the budget. It seems at odds both with the intent of reducing red tape for participants that a participant is made to review another type of document, and with the idea that a mature NDIS should work closely with participants under the banner of transparent and clear decision-making processes.

3.66. The review notes that in other insurance systems, information about support offerings, including the dollar values of what can be claimed, are routinely provided to consumers before a commitment is made (for instance Private Health Insurance, Travel Insurance, Home Insurance etc.). As a system, it also seems odd that the NDIS would be constructed differently, regardless of the fact that the insurable impairment has already been realised.

3.67. Therefore, on balance, this review considers it is preferable that participants should be empowered, under the Guarantee, to review and consider a draft version of the entire plan rather than a plan summary. As per the draft plan summaries, the full draft plan would be provided in advance of the final planning discussion (or Joint Planning Meeting), and with sufficient time for the participant to review the content (Chapter 10 refers). This review notes that this would likely require additional meetings with a participant, and therefore would have impacts to the NDIA's operating model.

3.54-3.68. In providing a full draft plan, it should be the ordinary expectation of the NDIA to manage the expectations of participants, and build the understanding of what the NDIA will, or will not provide so that it is demonstrable that the NDIS is designed to fund all reasonable and necessary supports, and it is not a fight for every cent. The review understands that there are no technical or legislative barriers to providing draft plans.

Accessible information

3.55-3.69. A significant number of people with disability who participated in the consultations indicated that the information they could access about the NDIS was not disability-friendly or available in alternative formats, such as easy read, AUSLAN, braille or in languages other than English. Others stated that the NDIA assumed participants had a high degree of digital literacy and that planners, instead of responding to queries directly, would pointdirect them to find the information on the NDIS website, but they could not find the information they needed, sending them on a loop which proved too difficult to navigate.

“The website has so much stuff on there and it is simply too overwhelming, it needs to be written in layman’s terms and less of it. I gave up because I couldn’t figure it out.”

A person with disability, Remote South Australia

“The [NDIA] website does not have an easy to use search function that locates information people really need to see. Search for a term and you receive a dump of everything that features that word. The engine does not prioritise most frequently accessed documents or participant fact sheets and booklets which are most likely to be helpful.”

Every Australian Counts

3.56. This review understands that currently, a prospective participant is required to complete a Verbal Access Request (VAR) or an Access Request Form (ARF). Prospective participants who choose to complete the VAR will be sent a Supporting Evidence Form to assist with the evidence collection. The prospective participant or an authority acting on their behalf will be asked to confirm their identity including age and residency details.

"The website has so much stuff on there and it is simply too overwhelming, it needs to be written in layman's terms and less of it. I gave up because I couldn't figure it out."

A person with disability, remote South Australia

"The [NDIA] website for example does not have an easy to use search function that locates the information people really need to see. Search for a term and you receive a dump of everything that features that word. The engine does not prioritise most frequently accessed documents or participant fact sheets and booklets which are most likely to be helpful."

Every Australian Counts

3-57-3.70. Many respondents asked for an improved online experience, with the ability to download and print forms and any other documentation they may need to apply for the NDIS, including an option to upload required evidence to support NDIA decision-making. ~~While it cannot be assumed that all people have access to the internet and/or will be digitally literate, there is merit in the NDIA making better use of information technology and digital transformation to provide a service delivery platform that enables more readily available information and referrals online for those who prefer to use such technologies~~ While the NDIA have advised that some forms can be downloaded from the NDIS website, it appears they cannot be easily found.

3.71. There is merit in the NDIA making better use of information technology and digital solutions to improve the participant experience. Digital communications provide a service delivery platform that enables more readily available information for those who prefer to use such technologies or for whom it is more convenient. For example, online access is potentially preferable for younger people and far more convenient for people with mobility issues or those who live in rural and remote communities.

3-58-3.72. As a first step, this could mean that a copy of the form a person needs to complete to apply for access to the scheme should be freely available on the NDIS website, along with detailed information about what ~~they will need to provide~~ must be provided to support an access decision. This would serve to empower ~~the person~~ and allow ~~them~~ prospective participants to understand and commence the access processes in their own time, and at the pace in which they feel comfortable.

3.59-3.73. This review understands that, moving forward, the NDIA is exploring new options to make it easier for people to apply for the scheme online, while mitigating risks that people apply on a person's behalf without consent or misunderstand the requirements that are needed to support decision-making. This review understands that an online access request option is expected to roll out in 2020—2021-21 financial year.

3.60-3.74. However, feedback to this review indicates that providing more information upfront about the NDIS will not solve participants' greater concerns – i.e. that they were not kept informed of NDIA decision-making after the submission of their access request or the process of developing, approving or reviewing their plan. Some indicated the NDIA should have a service like a mobile app that kept them informed of where their request was “up to in the queue”, and that

“A visual tracking option [to track requests] at the beginning of the portal page could improve communication between the Agency and the participants, their carers/families and support network (including advocates). This will also reduce the time they spend calling the NDIA directly.”

Advocacy for Inclusion

longer timeframes for decision-making would be tolerable if they knew when the decision was likely to be made.

“A visual tracking option [to track requests] at the beginning of the portal page could improve communication between the Agency and the participants, their carers/families and support network (including advocates). This will also reduce the time they spend calling the NDIA directly.”

Advocacy for Inclusion

~~3.61-3.75.~~ Clear, consistent, easy to understand and accessible information is critical to allow people with disability to make informed decisions about their supports. Notwithstanding the NDIA's work to date in improving its communication and engagement practices (Appendix C refers), consultation feedback indicates that many people with disability either:

- a. ~~don't do not~~ know about those improvements;
- b. still consider them to be inaccessible;
- c. ~~don't do not~~ know where to find, or rely on social and online peer groups to obtain, information about the scheme; or
- d. find that their experience does not reflect the process as set out in the information they have been able to find.

~~3.62-3.76.~~ Some participants also reported that they could not obtain accessible information at all stages in their NDIS journey. For example, some cited that while pre-planning information was available in easy read, their plan and information to help them implement their plan were not.

~~3.63.~~ ~~Neither changing the NDIS Act to remove red-tape or legislating the Guarantee will be effective in improving participant experiences with the scheme unless it is essential that~~ the NDIA ~~equips participants~~ ~~continue to improve its information products to better equip people with disability~~ to become informed consumers.

~~3.64-3.77.~~ On this basis, the Guarantee should commit the NDIA to ensure all participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, in formats that meet their needs and is easy to understand. The proposed form of this requirement is further discussed in Chapter ~~10~~.

~~3.78.~~ ~~In addition, this review recognises~~ ~~Furthermore,~~ ~~the ability to introduce a~~ NDIA should consider the benefits of introducing online tracking systems for both prospective participants and participants ~~to track their requests would require a significant expansion of the NDIA's workflow management tools. There is merit in considering such features~~ as part of ~~the NDIA's~~ ~~sits~~ existing efforts to upgrade its ICT functionality.

Recommendation 5: The NDIA give priority to ICT upgrades to enable online access processes and allow people with disability to track the status of NDIA processes relating

3.65.

3.66-3.79. There is also merit in the Commonwealth government and the NDIA exploring opportunities to provide accessible and alternative formats of the NDIS Act and NDIS rules, similar to the online Social Security Guide that provides a simple interpretation of key provisions underpinning social security legislation. This would assist all people with disability to exercise an informed understanding of the legislative provisions that inform the administration of the scheme and the basis on which the NDIA makes decisions about a person's eligibility for the scheme and the supports provided in their plans.

Recommendation 3: The Commonwealth and NDIA produce accessible versions of the NDIS Act and NDIS Rules.

Recommendation 6: The Commonwealth publish accessible versions of the NDIS Act and NDIS Rules, to ensure all people with disability understand the legislative basis of NDIS.

CHAPTER 4 – EVIDENCE TO SUPPORT DECISION-MAKING

KEY FINDINGS

- ✓ ~~Strengthening the use of standardised functional assessments at the point of access would improve participant's experiences at all stages as they progress through the NDIS, by improving the quality and consistency of NDIA decisions.~~
- ✓ ~~The financial impact on both prospective participants and participants to provide evidence of functional capacity should be minimised and greater clarity provided on the form and type of information required to support decision-making.~~

Scheme

experience

KEY FINDINGS

- ✓ Standardised functional capacity assessments would improve the quality and consistency of NDIA decisions. If undertaken at the point of access it would also improve the participant experience by mitigating the need for the participant to provide further information about their functional capacity later in their NDIS journey.
- ✓ The administrative and financial burden felt by both prospective participants and participants to provide evidence to the NDIA should be minimised.
- ✓ Greater clarity should be provided surrounding the requirement, use and form of information required to support decision-making.
- ✓ The impact of secondary impairments should not be a barrier to planning. A participant's "primary" disability does not solely determine the supports funded or not under the NDIS.

4.1. Experience has shown that the evidence, and the quality of evidence, provided by prospective participants and participants is diverse, and at times does not assist the NDIA to make clear or consistent decisions, consistent decisions. This is influenced in

~~part, by confusion as to what evidence is required to support decision-making, particularly when a person has multiple impairments affecting their functional capacity or where their support needs are episodic or fluctuating.~~

~~4.1.4.2.~~ To improve the quality of decision-making, the NDIA must have access to the best and most relevant evidence related to a person's functional ~~impairment~~ capacity. This will assist the NDIA in properly discharging its functions where the statutory criteria requires it to be satisfied of certain matters – for example, whether or not a person meets the eligibility criteria or that ~~the supports in their plan area~~ support is reasonable and necessary.

~~4.2.~~ ~~This review has heard there is significant confusion as to what evidence is required to support the NDIA to make decisions. Therefore, there is merit in providing greater clarity in the operational and legislative architecture surrounding the requirement and use of evidentiary material. This review also supports mitigating the current administrative and financial burdens felt by prospective participants and participants in providing information required to support NDIA decision-making.~~

Strengthening the use of functional capacity assessments

4.3. Functional capacity assessments support processes that ensure people who would be eligible for the ~~scheme~~ NDIS become participants and get the right level of support in their plan. ~~If done properly, an appropriate functional assessment~~ Functional capacity assessments that ~~is~~ are robust and evidence based and meets the NDIA's needs at the point of access will ~~reduce future administrative burden participants during the planning process. It will also~~ result in plans being developed and approved faster and ~~help~~ ensure that access and planning decisions are made consistently and directed towards improving functional capacity. ~~It will also reduce the administrative burden on participants by mitigating the need to provide further evidence of functional capacity later in their NDIS journey.~~

4.4. ~~As there~~ However, this review heard that it is unclear what evidence is needed to support decisions about a person's functional capacity, and no actively promoted standardised or standard format ~~to support assessors in providing evidence to support decisions, the quality of evidentiary material varies for prospective participants, participants and their health professionals to provide that evidence. This has resulted in people submitting evidence that is not always fit for purpose, varying in quality and consistency. Many pieces of evidence are not fit for purpose, and requiring a back-and-forth process to obtain what is needed for the NDIA to be satisfied in discharging its functions under the required information, or have resulted in a large number of participants requesting reviews of access and funding decisions. Ultimately, this can drive~~ NDIS Act.

4.4.4.5. Understandably, this is driving disengagement for people with disability and those involved in assessment and planning processes. It has also resulted in a large number of people with disability requesting reviews of access and funding decisions on the basis it was unclear what information was used by the NDIA to make the decision.

4.5.4.6. The reliance on operational guidelines to streamline access decisions (Chapter 5 refers) during the transition period has also led to downstream problems for some participants because the NDIA does not have enough evidence of their functional capacity to make robust planning decisions. (Chapter 5 refers). Some participants reported that they needed to provide the NDIA with more information and/or undergo examinations or assessments when developing their plan in order to ensure they got all the supports they needed. Understandably, those participants found this process frustrating because they ~~didn't~~ did not understand why further information was required when the NDIA had already decided they had met the access criteria.

4.6.4.7. In addition, this review has heard that some participants who had already had a first plan reported they were required to provide further information about their functional capacity in order to develop and approve their second plan, even if their circumstances had not changed and it was not apparent that their needs had neither improved ~~nor~~ deteriorated.

"Why does the NDIS require participants or their advocates to prove annually why they or their children require the support they need. This causes huge amounts of stress and anxiety

to both participant or parent and is not necessary especially when the nature of the participant's disability mean that their condition will not improve and in most cases will worsen with age."

Carer of NDIS participant, Regional New South Wales

"It was embarrassing to have to keep proving disability, when evidence was already provided during the initial application, particularly in relation to my psycho-social disability."

Carer of NDIS participant, Regional New South Wales

"All information had already been supplied with the original application. Having to provide more evidence just so the original information could be confirmed was both unnecessary and stressful, not to mention, costly"

Carer of NDIS participant, Metropolitan South Australia

"Why does the NDIS require participants or their advocates to prove annually why they or their children require the support they need. This causes huge amounts of stress and anxiety to both participants or parents and is not necessary especially when the nature of the participant's disability mean that their condition will not improve and in most cases will worsen with age."

Carer of NDIS participant, regional New South Wales

"It was embarrassing to have to keep proving disability, when evidence was already provided during the initial application, particularly in relation to the psycho-social disability."

Carer of a former NDIS participant, regional New South Wales

"All information had already been supplied with the original application. Having to provide more evidence just so the original information could be confirmed was both unnecessary and stressful, not to mention, costly."

Carer of NDIS participant, metropolitan South Australia

4.7.4.8. Taken in the context of pressure to meet intake targets, this is not a surprising outcome. Indeed, it is likely to continue until the impact of streamlined access decisions, and the provision of inconsistent evidence formats wash through the

system. It is at this point that planning processes for all participants will be simpler, and ~~that~~ NDIA ~~decisions~~ decision makers can have increased confidence in regularly setting ~~plan~~ longer plans with less frequent scheduled review dates ~~for a period longer than 12 months from when the plan is approved.~~

4.8.4.9. Nevertheless, a contributing factor is the loose and discretionary way an ~~“assessment”~~ assessment is defined in the NDIS Act ~~legislation~~. It is not clear that the primary purpose of any information a person with disability must produce, or any assessment or examination they must undergo, for the purpose of access or planning processes, is to demonstrate, amongst other things, the functional impact and permanency of their impairment s.

4.9.4.10. In addition, the ~~existing legislative framework~~ legislation does not expressly allow for information collected for the purposes of one decision point to be used for another. For example, ~~allowing the legislation does not clearly permit the use of~~ information collected for the purposes of ~~deciding whether a person meets the~~ making an access ~~criteria~~ decision to also be used for the purposes of preparing, approving and reviewing ~~their statement of participant supports~~ a participant's plan.

4.10.4.11. When combined, these issues create significant confusion as to what evidence is required to support NDIA decision ~~making~~ and when additional evidence is required. ~~There is merit in reinforcing~~ The legislation should be amended to recognise the ~~purpose~~ importance of appropriate assessments ~~in the legislation~~, and what they can be used for, noting it is a reasonable expectation that ~~all~~ participants ~~must~~ might need to undertake further assessments from time to time, to ensure their plans remain fit for purpose.

4.11.4.12. To improve the participant experience and make it more streamlined, it would also be logical to allow the NDIA to use information, assessments and reports ~~collected~~ about ~~the person~~ person's functional capacity to be used for various purposes throughout ~~the~~ their NDIS pathway.

4.12.4.13. However, in reinforcing the importance of functional capacity assessments, the NDIA ~~need~~ needs to appropriately consider and make decisions guided by the outcomes of those assessments. ~~Evidence from some~~ Some consultation feedback ~~indicates~~ indicated that some planners are either not fully considering the reports

participants ~~provided~~provide or are not sufficiently taking into account the recommendations of experts.

“In my experience, while the NDIA requests supporting documentation from various disability/healthcare professionals to determine whether a service or piece of equipment is necessary, it does not appear to listen to the professional opinions of these individuals, but prefers to leave the decision-making process wholly up to its delegates and other associated NDIA individuals.”

NDIS Participant, Metropolitan Victoria

“If the NDIA actually looked at the information we provided with access request and the conditions and what they do to someone’s body they would’ve realised there was no need for putting me or someone like me through an extremely tedious, stressful and complex situation of gathering supporting documentation and evidence.”

NDIS Participant, Regional Victoria

“There are many frustrating examples of LACs and planners not reading material provided by participants, their families or the professionals that support them.”

Every Australian Counts

“People with disability and their families and carers go to considerable effort and expense to obtain professional or specialist reports — only to find they are not read or dismissed in preparation of plans.”

National Disability and Carers Alliance

“Carers have reported that costly assessments and subsequent recommendations from medical or allied health professionals have not been considered or included in the participant’s NDIS plan.”

Carers

NSW

"If the NDIA actually looked at the information we provided with the access request and the conditions and what they do to someone's body they would've realised there was no need for putting me or someone like me through an extremely tedious, stressful and complex situation of gathering supporting documentation and evidence."

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"There are many frustrating examples of LACs and planners not reading material provided by participants, their families or the professionals that support them."

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National Disability and Carer Alliance

4.13.4.14. Planners need to recognise that they are not necessarily the experts on a person's functional capacity. Planners must always carefully consider any information that a person provides when making a decision and should not fill gaps in assessments with their own judgements. While planners may bring expertise and evidence about appropriate supports that could be funded by the NDIS to help the person overcome the functional impact of their impairment, planners should not make decisions about a person's functional capacity without supporting evidence.

4.14.4.15. More generally, understanding and appreciating the culture of the NDIA and its Partner workforce needs to appreciate that the person people with disability (and the people providing functional capacity assessments on their behalf) are the experts in their disability needs to be embedded throughout the culture of the NDIA and Partners

~~in Community workforce.~~ This would be in keeping with the general principles guiding actions of the NDIA in implementing the NDIS, as set out in section 4 of the NDIS Act.

~~4.15.4.16.~~ It also ~~needs to~~ must be appreciated that many people with disability rely on a shared sense of identity and need that has emerged from their diagnosis. ~~For~~ As an example, this is particularly relevant for the ~~Deafdeaf~~ community and people with autism. In strengthening the use of functional capacity assessments to support decision-making, the NDIA will need to recognise the significance of this shift for some people with disability.

Individualised planning

~~4.16.4.17.~~ The general principles at section 4 of the NDIS Act reinforce the objectives of the NDIS ~~is~~ are to place individualisation at the heart of planning and maximise participant's ability to exercise choice and control over the disability supports they need to achieve their goals and aspirations. The principles also reinforce that people with disability should be supported in all their dealings and communications with the NDIA to ensure their capacity to exercise informed choice and control is maximised.

~~4.17.4.18.~~ Notwithstanding this intention, this review has heard that participants do not feel that the NDIA is taking an individualised approach to planning ~~and the development of their plan.~~ Some participants reported ~~they felt like their impression was that~~ the NDIA was using a ~~"formula"~~ 'formula' based on pre-existing criteria or their diagnosis to determine their supports. Others indicated ~~that~~ what was put in their plan did not reflect what was discussed in their planning meeting ~~with the planner and/or~~ that the planner disregarded the information they had provided.

~~4.18.4.19.~~ Others stated that the plan they received did not link to their goals and aspirations, looked like a stock plan for a person with a certain type of disability, or contained obvious errors, such as misspelt names or old addresses.

"I felt that I was not listened to at all, it was not an individual experience and I was given a horrible plan. It had nothing about my disability in it and ignored all my requests. It included information about my family when I didn't mention them as they do not support me and are not in my life."

NDIS Participant, Regional Victoria

"In my current plan they couldn't even spell my surname right!"

NDIS Participant, Regional Victoria

"My needs aren't being met and I'm not being seen as an individual or taken seriously, I also did not get asked about my personal problems."

NDIS Participant, Metropolitan Western Australia

"Every plan meeting is very different. You never know what is going to happen in each planning meeting, which is stressful as it makes you unsure of whether you're ready. The last few planning meetings we have had I feel the planners don't listen to us and in some cases have not read reports or evidence we or therapist have given. Sometimes what we have spoken about does not reflect the plan that's been approved and there is absolutely no feedback to why this happens."

Carer of NDIS Participant, Metropolitan Western Australia

"I felt that I was not listened to at all, it was not an individual experience and I was given a horrible plan. It had nothing about my disability in it and ignored all my requests. It included information about my family when I didn't mention them as they do not support me and are not in my life."

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Carer of NDIS participant, metropolitan Western Australia

4.19.4.20. The way ~~plans are developed~~ the planning process is undertaken was one of the main complaints heard throughout this review ~~and is driving many. It is evident that the lack of (or the perception of a lack) of individualisation in planning is leading a small number of participants to call for plan reviews. ~~Feedback indicates that as a result, some participants are feeling~~ feel betrayed and misled by a scheme intended to give them choice and control ~~over their disability support needs.~~~~

Consistency of decision-making

4.20.4.21. Consultation feedback suggests ~~that the~~ NDIA decision is not making about what is a reasonable and necessary support is not consistent, with decisions during

planning. Some participants with similar disability support needs receiving reported they received very different levels and types and values of supports in their plans, where the differences did not appear to be linked to their goals and aspirations or their informal supports. This was particularly evident in cases of young siblings with the same disability and similar levels of functional capacity.

However, it should be noted that an individual's

"[There is] complete inconsistency in plans and planners for people with the same needs and goals. Makes it very hard and confusing."

NDIS participant, regional Victoria

"Many carers have reported that the information or assurances provided by LACs that supports would be included in the plan have not been reflected in the plans they have received from the NDIA, resulting in significant distress on receiving plans that do not fund many of the agreed supports. The lack of direct contact with NDIS planners in many cases limits communication between the planner and the participant and their carer, creating confusion and frustration for participants and carers as they do not understand why some decisions have been made nor been able to discuss alternatives or provide further evidence."

Carers Australia NSW

"Feedback suggests a disconnect between the participant and the planner. Many feel they have not been heard or understood by the planner and this can translate into a plan that they are unhappy with."

Unpublished submission

4.21-4.22. It is, however, important to note that a participant's goal and aspirations are not intended to have a significant bearing on the level of funding provided in a

participant's ~~their~~ NDIS plan. ~~When~~ Rather, when comparing two participants with the same, or very similar, functional capacity, of the same age and living in the same area, the NDIS is not designed to provide more funding for one participant over the other, on the basis that their goals and aspirations are, fundamentally more expensive.

"Complete inconsistency in plans and planners for people with the same needs and goals. Makes it very hard and confusing."

"Many carers have reported that the information or assurances provided by LACs that supports would be included in the plan have not been reflected in the plans they have received from the NDIA, resulting in significant distress on receiving plans that do not fund many of the agreed supports. The lack of direct contact with NDIS planners in many cases limits communication between the planner and the participant and their carer, creating confusion and frustration for participants and carers as they do not understand why some decisions have been made or been able to discuss alternatives or providing further evidence."

-Carers NSW

Feedback suggests a disconnect between the participant and the planner. Many feel they have not been heard or understood by the planner and this can translate into a plan that they are unhappy with.

Legal Services Commission of South Australia

4.22-4.23. ~~This~~ Nevertheless, consultation feedback demonstrates there is a clear ~~demonstration of the~~ tension between consistency of decision-making and the individualised planning approach, and that more work needs to be done by the NDIA to find appropriate operational responses.

4.23-4.24. The NDIA is ~~doing~~ currently undertaking work in this regard by reforming ~~the use of "how it uses~~ 'typical support ~~packages"~~ packages during planning, ~~which uses~~ Typical Support Packages use input from guided questions to help determine what kinds of support a participant would ordinarily need to meet their disability support needs, and then ~~adjusting~~ adjusts for ~~their~~ goals and aspirations, and other relevant factors.

4.24.4.25. This work is appropriate to the extent it provides more powerful tools for the consistent construction of plans and baseline comparisons, ~~but only to the extent that it remains~~ and gives participants greater certainty about what they could ordinarily expect in their plan. However, these tools should remain sufficiently flexible to ~~the~~ accommodate and recognise the participant's specific needs ~~and circumstances, goals and aspirations.~~ Further, the use of the individual. ~~It is also important to recognise that these tools~~ tools such as these will never replace the need for ~~appropriately~~ trained planners who are able to recognise that participants are the experts in their own disability. ~~a~~ participant's support needs will vary over time, depending on their individual circumstances.

A new model – independent sourcing of functional capacity assessments

4.26. In its 2011 Inquiry, the Productivity Commission recommended that functional capacity assessments should be drawn from independent health professionals to promote independent outcomes and provide national consistency in assessment approaches.

4.27. In late 2018, the NDIA undertook a pilot project to demonstrate whether sourcing independent functional capacity assessments improved consistency, accuracy and reliability of NDIA decisions. The pilot was deployed in nine areas across NSW. Assessments were offered to 500 people who had either applied for access but needed more evidence, participants who had been granted access but planning had not commenced, and participants who were approaching a scheduled plan review. A single service provider, the Benevolent Society, was engaged to conduct the assessments and the NDIA funded the cost of functional capacity assessments for the individuals participating in the pilot.

4.28. Pilot evidence indicated that sourcing standardised functional capacity assessments resulted in higher quality and more consistent decisions and more equitable plan outcomes for participants with similar characteristics. NDIA staff and partners reported the information contained in the assessments informed their conversations with participants, which in turn increased their levels of confidence in developing plans. They also found the assessments gave helpful insights and more detailed information about the participant's disability and functioning in different areas of life.

- 4.29. The benefits that have arisen from this pilot indicate it is worth implementing nationally for every person with disability who would like to test their access for the scheme or who require further evidence to support decision-making about the supports in their plan. If scaled up, this could significantly mitigate the current financial barriers that exist for people with disability seeking to navigate the NDIS. It would also decrease the likelihood that a participant would need to undergo further assessments and produce additional information at the plan development and review stage, unless their circumstances had changed.
- 4.30. The Australian Government recently announced the pilot will re-commence in the Nepean Blue Mountains area of NSW in December 2019, with a view to establishing a national panel of independent and appropriately skilled and qualified assessors and roll the program out across Australia from July 2020.
- 4.31. As with the original pilot, this review understands that assessments will be offered free of charge and will help to inform a person's eligibility for, and the supports included in their plan. The functional capacity assessment tools that would be used by the independent assessors would also ensure that all relevant information is captured regardless of disability type, such that planning decisions are blind to the identification of a primary disability.
- 4.32. The roll out of this program will constitute a significant role change for the NDIA's Partners in the Community and is expected to increase their ability to focus on linkages with community and mainstream supports and pre-access processes for prospective participants. It will also represent a change of role for planners, allowing them to focus on goal planning and implementation.
- 4.33. This change in approach will require extensive consultation with participants, the disability sector, service providers and the NDIA workforce. Fundamentally, however, the success of the program will largely be dependent on:
- a. the willingness of prospective participants and participants to work with NDIA-approved functional assessors; and
 - b. those assessors providing truly independent functional capacity assessments, so they are not perceived as agents of the NDIA or a tool designed to cut supports from participants.

- 4.34. The NDIS Act should be amended to support the use of functional capacity assessments as proposed above. However, there are a number of key protections that need to be embedded as this approach rolls out, including:
- a. participants having the right to choose which NDIA-approved provider in their area undertakes the functional capacity assessment;
 - b. participants having the right to challenge the results of the functional capacity assessment, including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment;
 - c. the NDIA-approved providers being subject to a uniform accreditation requirements that are designed and implemented jointly by the NDIA and appropriate disability representative organisations;
 - d. the NDIA providing clear and accessible publically available information, including on the NDIS website, on the functional capacity assessments being used by the NDIA and the available panel of providers.
- 4.35. One of the biggest risk in implementing the new functional capacity assessment process will be disengagement – that is, people with disability refusing to interact with any of the NDIA-approved providers. As with the NDIS as a system more generally, this is a particular risk for Aboriginal and Torres Strait Islanders, those from CALD backgrounds and those with psychosocial disability.
- 4.36. Given this, the depth of the NDIA-approved panel of assessors must be sufficient to mitigate any engagement risks for these cohorts as well as any other issues relevant in specific locations, communities, or for particular disability types.
- 4.37. Therefore, this review considers that, in at least the short term, the NDIA should not implement a closed or deliberately limited panel of providers to undertake functional capacity assessments. Rather, engagement issues need to be monitored closely and the panel of approved providers should be dynamic and evolve to ensure the new approach does not drive disengagement. Where structural or localised engagement risks are identified, the NDIA should actively engage with participants and the market to ensure the availability of appropriate providers of functional capacity assessments.
- 4.38. Notwithstanding this, it may not always be possible to source an appropriate provider, or there may be particular individual circumstances where it is more appropriate for

non-NDIA approved providers to undertake the assessments. In addition, functional capacity assessments would not always be required, for instance if a participant's functional capacity is stable.

4.39. Therefore, it is reasonable that the NDIS Act is amended to require the provision of an NDIA-approved functional capacity assessment, but that this power be discretionary. To support this, the NDIA will need to develop clear operational guidelines for decision makers in exercising this discretion.

Recommendation 7: The NDIS Act be amended to:

- a. allow evidence provided to the NDIA about a prospective participant or participant to be used for multiple purposes under the NDIS Act, including access, planning and plan review processes; and
- b. provide discretionary powers for the NDIA to require a prospective participant or participant to undergo an assessment for the purposes of decision-making under the NDIS Act, using NDIA-approved providers and in a form set by the NDIA.

Mitigating cost as a barrier to producing information

4.25-4.40. During consultations, concerns were raised about the financial capacity of both prospective participants and participantspeople with disability to pay for the cost of producing information or undergoing assessments, and examinations so the NDIA may require they produce or undergo to support decision-makingcould make access and planning decisions.

4.26-4.41. Stakeholders maintainedMany submissions stated that this cost is beyond the financial capacity of many individuals and/or their families and, as a result, there is a significant number of people with disability who would otherwise be eligible, but are being priced out of the scheme. Anecdotal evidence suggests a participant and their family may incur out-of-pocket costs of several thousand dollars, with no surety they will be found eligible for the scheme, or that they will have sufficient funding in their NDIS plan to offset the impact of those costs.

4.27. This review notes that in some instances the costs of obtaining further information to support a planning decision could be drawn from the participant's NDIS package,

assuming there was sufficient funds available to be drawn from their other supports, although this would seem to be a perverse outcome in the circumstances that the information was requested by the NDIA.

“We were told we needed to have more than one professional write a report to say my son needed services. However, we could not afford to see another professional (we saw an OT through the public system). We were stuck, we had no money to see a therapist but we needed a therapist to help us get access to NDIS funding.”

-Carer of NDIS Participant, Metropolitan Australian Capital Territory

“I supplied information personally but they didn’t accept it. I provided the same information to an OT who wrote it in a report at a personal cost of \$2,000 out of pocket and the information was then believed.”

NDIS Participant, Regional New South Wales

“My daughter was already diagnosed with disabilities that were on the automatic accepted list. It cost me money to get reports, which placed me under financial duress. All therapists now charge NDIS rates even if you don’t have funding so suddenly the therapy I was funding privately I could no longer afford.”

-Carer of NDIS Participant, Metropolitan South Australia

“Many of our clients struggle with the everyday reality of living in poverty and cannot afford to pay for the detailed reports and support evidence the NDIA typically requests.”

National Legal Aid

 Several

"We were told we needed to have more than one professional write a report to say my son needed services. However, we could not afford to see another professional (we saw an OT through the public system). We were stuck, we had no money to see a therapist but we needed a therapist to help us get access to NDIS funding."

Carer of NDIS participant, metropolitan Australian Capital Territory

"I supplied information personally but they didn't accept it. I provided the same information to an OT who wrote it in a report at a personal cost of \$2,000 out of pocket and the information was then believed."

NDIS participant, regional New South Wales

"Many of our clients struggle with the everyday reality of living in poverty and cannot afford to pay for the detailed reports and support evidence the NDIA typically requests."

National Legal Aid

4.42. A significant number of submissions suggested ~~amending the NDIS Act to require the NDIA to have regard to~~ should be required to consider the financial impact on ~~the prospective participant of~~ participants in producing information to support ~~NDIA a~~ decision ~~making about their eligibility for the scheme.~~ Some submissions also ~~considered~~ stated that ~~an existing~~ participant should not be disadvantaged, ~~if the NDIA needed further information to support a decision about their plan,~~ by being forced to ~~draw down on funds provided~~ pay for that out of their other NDIS support ~~plan funding.~~

4.28-4.43. This review understands that, once a person is a participant, the costs of additional assessment requirements are generally included for in order to provide their plan budget. The NDIA have also advised that information with the introduction of independent functional capacity assessments, any associated costs will become an administrative expense to the NDIA, with no cost to prospective participant or participant.

4.29-4.44. This review notes that section 6 of the NDIS Act already provides broad powers for the NDIA to provide support and assistance (including financial assistance) to prospective participants and participants in relation to doing things or meeting

obligations, or for the purposes of the NDIS Act ~~(emphasis added)~~. ~~Increased~~. Taking into account that other supporting material that may be required by the NDIA to support decision-making, the NDIA should consider whether there are other areas where increased use of this power is recommended to offset the reasonable costs of obtaining assessments and would go some way to removing remove cost as a barrier to the NDIS, noting the intersecting role of the Health system — i.e. there could be interactions with other service systems, including Medicare rebates.

Recognising the impact of secondary impairments

~~4.30-4.45.~~ The existing legislation does not explicitly set out how assessment and planning decisions should or should not be made if a person has multiple impairments. The NDIS eligibility criteria is clear that a person meets the disability access criteria if they have an impairment or impairments that are, or likely to be, permanent, and where the impairment or impairments result in substantially reduced functional capacity in undertaking one or more of the six activities in section 24(1)(c) of the NDIS Act. The NDIS Act then provides that a plan of reasonable and necessary supports will be developed for the person, following a positive access decision.

~~4.46.~~ However, the legislation does not explicitly set out how planning decisions should be made if a person has multiple impairments. While the NDIA captures information relating to secondary disabilities or impairments but this has, it appears such information currently has limited use in assessment and planning processes.

~~4.47.~~ Consultation feedback suggests that both prospective participants and participants are asked during the access and planning process required to choose their "primary" primary disability and advised that the NDIS will not provide supports for any other disability they may have. This review also heard of instances where participants reported they had to re-undergo an submit a second access request, as their planner indicated they could not include on the basis the NDIS would not provide supports in a plan for a secondary impairment unless that secondary impairment also met/satisfied the access criteria — which would be when considered in isolation.

~~4.31.~~ If accurate, this is an entirely erroneous application of the NDIS Act.

4.32-4.48. This review notes that The legislation does not distinguish between a primary or secondary disability and the combination of multiple disabilities cannot be considered in isolation and to To the extent that a person has a secondary disability, the impact of that disability should be taken into account in access and planning decisions.

4.33. Importantly, the legislative architecture does not distinguish that a prospective participant or participant has a “primary” disability and that supports funded in the plan should be limited to that “primary” disability. Furthermore, this review notes feedback from participants that they cannot separate themselves into parts, and that it is impossible for many to consider the impact of one of their disabilities independent of another they may have. This was particularly pertinent for people with both physical and psychosocial disabilities.

“The scheme was never intended to be based on diagnosis but always on functional impairment. Requiring participants to identify a primary disability not only goes against scheme intent but also has a number of practical consequences. The first is that it forces people to choose—many participants have more than one disability. Which one is primary depends on many factors including timing, circumstances, environment. The ones that has a greater impact may vary from data to day, or from circumstance to circumstance. Identification of a primary disability also takes no account of the way multiple disabilities interact. As a result, the decision to commit to a primary disability means people are missing out on vital supports.”

Every Australian Counts

“It was difficult to label varying disabilities as primary and secondary as they all impact function. So many reports required!”

Carer of NDIS Participant, Regional South Australia

“The NDIS when making their decision should consider the applicant as a whole, not just their primary disability. All of the person’s disabilities go to making the person as a whole not just the degree of their primary disability.”

Carer of NDIS Participant, Regional Queensland

“The reliance on primary diagnosis does not reflect the reality of many people’s lives.” National Disability and Carers Alliance

4.34. Irrespective of how many or which disabilities satisfied the access criteria, the planning process, as set out in Part 2 of Chapter 3 of the NDIS Act, provides that a participant's plan will provide reasonable and necessary supports to assist them to pursue their goals and aspirations and undertake activities to facilitate social and economic participation. Therefore, the legislation already supports a view that a holistic approach should be taken to planning and where a person has multiple disabilities that these will be considered in regard to their support needs and what can reasonably be funded by the NDIS.

"The scheme was never intended to be based on diagnosis but always on functional impairment. Requiring participants to identify a primary disability not only goes against scheme intent but also has a number of practical consequences. The first is that it forces people to choose – many participants have more than one disability. Which one is primary depends on many factors including timing, circumstances, environment. The ones that have a greater impact may vary from data to day, or from circumstance to circumstance. Identification of a primary disability also takes no account of the way multiple disabilities interact. As a result, the decision to commit to a primary disability means people are missing out on vital supports."

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"It was difficult to label varying disabilities as primary and secondary as they all impact function. So many reports required!"

Carer of NDIS participant, regional South Australia

"The NDIS when making their decision should consider the applicant as a whole, not just their primary disability. All of the person's disabilities go to making the person as a whole not just the degree of their primary disability."

Carer of NDIS participant, regional Queensland

4.49. The NDIA ~~have~~has advised that ~~in the requirement to choose a primary disability is imposed by the ICT system which requires a single disability type to be attributed to a person's record. In~~ circumstances where a prospective participant or participant has multiple disabilities, the NDIA has advised the disability causing the greatest impact on functioning will be listed as the primary disability. ~~The NDIA have also indicated that~~ Alternatively, where it is unclear which ~~listed~~ disability results in greater

functional impact, that further advice ~~may be~~ sought from the treating health professional (where consent is provided) or from the participant to determine which should be listed first.

4.50. The planning process, as set out in Part 2 of Chapter 3 of the NDIS Act, sets out that a holistic approach should be taken to planning. It does not matter how many disabilities a person may have, or which satisfied the access criteria; in all cases, once a person becomes a participant, they will provided with reasonable and necessary supports to assist them to pursue their goals and aspirations.

4.35-4.51. The NDIA ~~have also indicated that setting of a plan budget occurs independently of how "disability type" is recorded and it is a~~ ~~has advised that~~ holistic ~~assessment~~ ~~assessments~~ of the impact of the person's functional impairment ~~that~~ drives all planning decisions, with the setting of a plan budget occurs independently of how disability type is recorded. However, to the extent possible, the language of primary disabilities should be removed from the lexicon of the NDIS, noting it does not reflect the reality of many people's lives and has no bearing on the supports provided to eligible participants.

A new model – independent sourcing of functional assessments

4.36. In its 2011 Inquiry, the Productivity Commission recommended that functional assessments should be drawn from independent health professionals to promote independent outcomes and provide national consistency in assessment approaches.

4.37. In late 2018, the NDIA undertook a pilot project to demonstrate whether sourcing independent functional assessments improved consistency, accuracy and reliability of NDIA decisions. The pilot was deployed in nine metropolitan service delivery areas in NSW. Assessments were offered to 500 people who had applied for Access but needed more evidence, participants who had received an "Access Met" decision but planning had not commenced, and participants who were approaching a scheduled plan review. A single service provider, the Benevolent Society, was engaged to

conduct the assessments and the NDIA funded the cost of functional assessments for those individuals participating in the pilot.

~~4.38.4.1. Pilot evidence indicated that sourcing standardised functional assessments resulted in higher quality and more consistent decisions by the NDIA and more equitable plan outcomes for participants with similar characteristics. NDIA staff and partners reported the information contained in the assessments informed their conversations with participants, which in turn increased their levels of confidence in developing plans. They also found the assessments gave helpful insights and more detailed information about the participant's disability and functioning in different areas of life.~~

~~4.39. The benefits that have arisen from this pilot indicate that it is worth implementing on a national basis for every person with disability who would like to test their access for the scheme or who require further evidence to support decision making about the supports in their plan. This would, if scaled up, be expected to significantly mitigate the current financial barriers that exist for people with disability seeking to navigate the NDIS. It would also decrease the likelihood that a participant would need to undergo further assessments and produce additional information at the plan development and review stage, unless their circumstances had changed.~~

~~4.40. The Australian Government recently announced the pilot will re-commence in the Nepean Blue Mountains area of NSW in December 2019, with a view to establishing a national panel of independent and appropriately skilled and qualified assessors and roll the program out across Australia from July 2020, using a panel of NDIA approved providers. As with the original pilot, this review understands that assessments will be offered free of charge and will help to inform a person's eligibility for, and the supports included in their plan.~~

~~4.41. The functional assessment tools that would be used by independent assessors would also ensure that all relevant information is captured independently of disability type, such that access and planning decisions do not require the identification of a primary disability.~~

~~4.42.4.1. The roll out of this program will constitute a significant role change for NDIA Partners in the Community and is expected to increase their ability to focus on linkages with community and mainstream supports and support access for prospective~~

~~participants. It will also represent a change of role for planners, allowing them to focus on goal planning and implementation.~~

- 4.43. ~~This change in approach by the NDIA will require extensive consultation with participants, the disability sector, staff and service providers. Fundamentally, however, the success of this approach will be largely dependent on:~~
- ~~a. the willingness of participants and prospective participants to engage with NDIA approved functional assessors; and~~
 - ~~b. assessors providing truly independent functional assessments, and are not perceived as agents of the NDIA, or a tool designed to cut NDIS supports from participants.~~
- 4.44. ~~While this review supports strengthening the NDIS Act to support the use of consistent functional assessments, this review also considers that there are a number of key protections that need to be built into the system as this approach is embedded into the scheme, including:~~
- ~~a. participants having the right to choose which NDIA approved provider undertakes the functional assessment;~~
 - ~~b. participants having the right to challenge the results of the functional assessment, including the ability to undertake a second assessment or seek some form of arbitration if, for whatever reason, they are unsatisfied with the assessment;~~
 - ~~c. that NDIA approved providers are subject to a national accreditation or auditing scheme, that is designed and implemented jointly by the NDIA, appropriate disability representative organisations and experts in the design and use of functional assessments; and~~
 - ~~d. that the NDIA provide clear and accessible publically available information, including on the NDIS website, on the functional assessment's being used by the NDIA and the available panel of providers.~~
- 4.45. ~~However, this review considers that the biggest risk in implementing the new functional assessment process is disengagement — that is people with disability refusing to interact with the NDIS because the NDIA will dictate to whom they must tell their story. This will be a particular risk for Aboriginal and Torres Strait Islanders, those from CALD backgrounds, and those with psychosocial disability.~~

4.46. Given these risks, and for the functional assessment process to work as intended, the depth of the NDIA approved panel of assessors must be sufficient to address the engagement of these cohorts and other issues relevant in specific locations, communities, or disability types. Evidence from pilot processes undertaken to date are insufficient to assess this risk.

4.47. Therefore, this review considers that it is premature to amend the NDIS Act to allow the NDIA to specify the provider that is to undertake a functional assessment. For the time being, the use of NDIA approved providers should remain a discretionary opt-in approach for participants, noting that participants who do not choose to opt-in may be required to pay for the cost of providing a functional assessment undertaken by a third party.

4.48. This review also considers that a decision on mandating a provider is better considered in the context of the next review of the NDIS Act currently scheduled for 2021.

Recommendation 4: That the NDIS Act be amended to strengthen the emphasis on functional assessments to support high quality and consistent decision making, by:

- a. clarifying the purpose of an “assessment” under the NDIS Act is to provide evidence of functional capacity;
- b. allowing evidence of functional capacity able to be used for multiple purposes under the NDIS Act; and
- c. providing that the NDIA may require a participant undertake a functional assessment for the purposes of decision making under the NDIS Act.

DRAFT

CHAPTER 5 – BECOMING A PARTICIPANT

KEY FINDINGS

- ✓ There is significant confusion about the NDIS eligibility criteria, particularly the criterion of “permanency” for people with psychosocial disability and what evidence is needed to demonstrate the “functional impact” of a person’s impairment/s.
- ✓ The legislative framework should be amended to provide clarity on the intended scope and timings of access decisions to enhance the responsiveness of the NDIS to people with disability.
- ✓ The first point of contact with the NDIA is critical as it shapes the confidence and trust that many people with disability, particularly those who face other barriers in engaging with government service systems, have in the scheme.
- ✓ More concerted efforts are needed to engage with people with disability who may be eligible for, but have not yet connected with the NDIA. This is particularly important for Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial disability.

KEY FINDINGS

- ✓ There is significant confusion about the NDIS eligibility criteria, particularly in respect of demonstrating ‘permanency’ for psychosocial impairment/s and whether diagnoses are sufficient evidence of functional impairment.
- ✓ Additional clarity should be provided on when a person meets the access requirements to enhance the responsiveness of the NDIS to people with disability.
- ✓ The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed people with disability have the capacity to navigate the access process without help.
- ✓ More concerted efforts are needed to engage with people with disability who may be eligible for, but have not yet connected with the NDIA. This is particularly important for Aboriginal and Torres Strait Islander people, people from CALD backgrounds and people with psychosocial disability.

- 5.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans, which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to [plans participation of people with disability](#)), Part 1 (Becoming a participant) and Part 2 (Participants' plans).
- 5.2. I centered my analysis of Part 1 of Chapter 3 ~~in terms of~~ issues relating to the [access eligibility](#) criteria and ~~issues relating to~~ the process of making an access request. I also considered the requirements set out in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules) to the extent they could be amended to remove blockages to access and confusion about eligibility requirements.
- 5.3. ~~There are a number of~~ [In order to reach the estimate of supporting 500,000 Australians by 2023 the NDIA will need to connect with approximately 190,000 people with disability in Australia](#) who ~~were~~ anticipated to benefit from the NDIS, but have not yet become participants. ~~As at 30 September 2019, there are around 310,000 receiving supports through the scheme, but over 190,000 will still need to come into the scheme over the next few years in order to meet the estimate of 500,000 Australians by 2023.~~ To this end, [the Review](#) considered ways to ~~effectively outreach~~ [reach out](#) to people with disability who have not previously accessed disability support, or may be reluctant to engage.

Eligibility criteria

- 5.4. To become a participant in the NDIS, a person ~~may make~~ [makes](#) an access request to the NDIA. On receiving an access request, the NDIA will then determine whether or not the person meets ~~certain access~~ [the eligibility](#) criteria. These criteria include: the person was under the age of 65 when the access request was made, ~~residence~~ [satisfies residency](#) requirements and either the disability or early intervention requirements, as set out in sections 21 to 25 of the NDIS Act.

5.5. A small number of ~~respondents~~ submissions indicated the NDIS should be available to people with disability who were older than 65 after the NDIS rolled out in their area or who acquire their disability after the age of 65 years. A small number also questioned the appropriateness of the ~~residence~~ residency requirements. However, the question of who should (or should not be eligible) to become a participant is one relating to the broader parameters and design of the scheme. Accordingly, I do not make any findings or recommendations in relation to the age or residency requirements.

5.6. ~~However, considerable~~ Considerable feedback was provided on the disability requirements and the criteria that a person's ~~impairment~~ or impairments/s are, or are likely to be ~~permanent~~ (section 24(1)(b)) permanent, and ~~that they must~~ result in substantially reduced functional ~~capacity~~ (section 24(1)(c)).

5.7-5.6. Key capacity. The key issues raised ~~in this regard~~ on these criteria were ~~the application of "how permanency is determined~~ for people with psychosocial disability and ~~confusion around whether the presence of~~ a medical diagnosis or condition is (or if it should be) considered a proxy for evidence of functional capacity.

Permanency

5.8-5.7. In the Becoming a Participant Rules, paragraph 5.4 states (in relation to section 24(1)(b) of the NDIS Act) ~~that "an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment-".~~ Likewise, clause 5.6 states:

~~"An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated)-".~~

- 5.8. The current legislated requirements in relation to permanency have created particular challenges in relation to access to the scheme for people with disabilities arising from psychosocial conditions. Specifically, there is confusion about the disabilities, given the episodic and fluctuating nature of severe and persistent mental health issues and the nature of 'available' and 'medical' treatment. There is some evidence indicating.
- 5.9. Consultation feedback indicates health professionals who are engaged in assisting prospective participants with psychosocial disabilities to make an access application have reported varying experiences and inconsistency in the assessment of the person's eligibility for the NDIS, and processes inconsistent, with people with similar clinical and psychosocial disability needs and situations have received circumstances receiving different outcomes. In many cases, it appears that, in at least some cases, this is due to the lack of information available inconsistency is a result of insufficient guidance being provided to health professionals and varying information provided in about the form of evidence needed to support of a person's application for access a decision about the prospective participant's eligibility for the scheme. This has led to wide variety in the quality of information being provided to the NDIA to support access decisions.

"The forms were not really appropriate for my disability as it is mental health not physical or intellectual disabilities. Both my GP and Psychiatrist filled the forms out to the best of their ability and returned them to the NDIA, which I was then told I was not successful in my application."

NDIS Participant, Metropolitan South Australia

"The measure of permanency may be adequate for some other disabilities, it does not recognise that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery, potentially (sometimes episodically) over the course of their lives. It fundamentally fails to acknowledge the episodic nature of psychosocial disability."

Mental Health Australia

Stakeholders also reported the NDIS eligibility criteria

"The forms were not really appropriate for my disability as it is mental health not physical or intellectual disabilities. Both my GP and Psychiatrist filled the forms out to the best of their ability and returned them to the NDIA, when I was then told I was not successful in my application."

NDIS participant, metropolitan South Australia

"The measure of permanency may be adequate for some other disabilities, [but] it does not recognise that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery, potentially (sometimes episodically) over the course of their lives. It fundamentally fails to acknowledge the episodic nature of psychosocial disability."

Mental Health Australia

5.10. ~~These issues are unclear for health professionals supporting people with mental illness. A lack of not helped by the lack of~~ a working definition and ~~no~~ clear guidelines for assessing the permanency of mental health issues in the context of ~~available medical or other~~ treatment ~~was noted as being. This is~~ problematic for a number of reasons, including:

- a. many people with ~~or supporting people with~~ mental health conditions do not consider their situation as resulting in a 'psychosocial disability that is permanent and ~~ongoing~~ ongoing;
- b. the impact of psychosocial disability can fluctuate ~~over time~~, both as a consequence of the condition and in response to factors in the ~~individuals~~ individual's life;
- c. people with mental health conditions may have limited or sporadic engagement with mental health services, making it difficult to provide adequate evidence of treatment history;
- d. some impacts primarily relate to the mental health condition, but others may be related to co-existing physical disabilities or health issues;
- e. the outcomes of clinical treatments on functional capacity or in isolation ~~offrom~~ other factors that contribute to poor mental health ~~isare~~ unpredictable and not well-supported by a significant body of evidence; and
- f. it has led ~~to a practice of a~~ heavy reliance and focus on formal diagnosis and treatment ~~rather than a more holistic approach that considers the person's functional capacity at a point in time and how to respond more flexibly to changes over time.~~

5.11. It needs to be appreciated that ~~functional capacity~~ for ~~these~~ people ~~with severe and persistent mental health issues, functional capacity~~ can be cumulative and variable, even when the symptoms of ~~the psychiatric~~ their condition ~~do not~~ appear ~~not~~ to be ongoing or permanent. That is, their disability can continue even when the symptoms of the condition are not apparently active or present. ~~Greater and where active treatment or intervention may not be required.~~

5.11-5.12. ~~The more appropriate option is to embrace a holistic approach when determining eligibility for the NDIS for people with psychosocial disability, considering the person's functional capacity at a point in time and what service response will be needed when their support needs change. Accordingly, this review considers greater~~ weight should be given to functional capacity assessments than diagnoses in determining permanency for people with psychosocial disability.

5.12-5.13. Best practice approaches to coordinated mental health and psychosocial care and support ~~seek to~~ emphasise the person's strengths and abilities ~~and recovery journey.~~ This is to be expected, given the relationship between the person, their supporters and mental health teams is ~~strengths-based and~~ directed towards supporting recovery and improved health and wellbeing. However, ~~anecdotal evidence suggests~~ some submissions suggested the provision of strengths-based evidence may adversely affect the outcome of a person's application to access the NDIS as it makes it difficult to demonstrate ~~'permanency'~~ permanency of functional impairment in the context of the disability access requirements.

5.13-5.14. ~~In some instances,~~ Some submissions also indicated there is a common view in the sector that prospective participants ~~indicated they were~~ should be encouraged to present ~~"on their worst day" day~~ in order to improve their chances of being ~~deemed eligible for support~~ granted access. This practice undermines the capacity of an individual, the long-term work of the mental health sector in driving systemic reform towards recovery-focused approaches and the intent of the NDIS in supporting people to build their capacity to achieve their goals and aspirations.

"Since introduction of the NDIS Legislation and Rules, the mental health sector has raised concerns about the use of the term 'permanent' to describe an impairment related to a psychiatric condition. This terminology is opposed to recovery-oriented practice, widely accepted as good practice in psychosocial disability work."

Mental Health Australia

"In order to be eligible for the NDIS, an individual must demonstrate that they have a permanent impairment or an impairment that is likely to be permanent. This criteria is inconsistent with the recovery focus of mental illness or the episodic nature of psychosocial disability—a condition that fluctuates in severity and impact over time in different ways for different people."

National Mental Health Commission

There is merit in amending the

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[Mental Health Australia](#)

“In order to be eligible for the NDIS, an individual must demonstrate that they have a permanent impairment or an impairment that is likely to be permanent. This criteria is inconsistent with the recovery focus of mental illness or the episodic nature of psychosocial disability – a condition that fluctuates in severity and impact over time in different ways for different people.”

[National Mental Health Commission](#)

5.15. The Becoming a Participant Rules should be amended to provide further and more specific clarification of the criteria that should apply, and the evidence that must be provided, when determining the permanency, or likely permanency, of psychosocial disabilities. Such clarification should ~~seek to~~ align with emerging bodies of evidence and best-practice mental health care approaches which emphasise the language of empowerment and capacity building, recovery and ability over that of disability, impairment and illness. ~~it~~

5.14-5.16. The Becoming a Participant Rules should also seek to be amended to differentiate between what is considered when assessing the permanency and related functional impacts of a physical disability in the context of recovery and treatment, ~~noting. This is particularly important because~~ the ~~current existing legislated criteria~~ legislation does not currently take into account the reasons why a person might be able or unable to do certain things.

5.15-5.17. Furthermore, ~~it should be appreciated~~ the legislation and operational arrangements should appreciate that the episodic nature of psychosocial disabilities will mean that some people will have fluctuating ~~capacity and~~ support needs. The use of functional assessments tools need to take this into account ~~the episodic nature of psychosocial disability and with~~ planning for people with psychosocial disability, once

they become participants, should seek to accommodate fluctuating support needs and recognise that utilisation of funded supports may fluctuate over time. processes accommodating such fluctuation.

"I can be extremely unwell mentally and still appear to be quite 'functional' according to the NDIS. Someone like me who is intelligent, well educated and who has knowledge and insight into their mental illness can appear to be far more functional than they actually are. The realist is that most of the time, I am so depressed and distressed that I am suicidal yet I am still pushing myself through each day just to exist."

Written submission—no state or locality proved

"Services for people with psychosocial disability need to be responsive to people's actual needs to lead an ordinary life, including a recognition in NDIS plans of the importance of psychosocial and peer support for people experience mental health issues to re-engage in the community."

National Legal Aid

5.18. This review also notes the NDIS Act importantly, while this may result in utilisation of funded supports changing over time, that fluctuation does not mean – when the participant is not drawing down on the support – that the support is no longer needed and should not be funded, or in an extreme example, that it means the person's status as a participant should be revoked. This would be a perverse and detrimental outcome to the participant and an erroneous application of the legislation.

"I can be extremely unwell mentally and still appear to be quite 'functional' according to the NDIS. Someone like me who is intelligent, well educated and who has knowledge and insight into their mental illness can appear to be far more functional than they actually are. The reality is that most of the time, I am so depressed and distressed that I am suicidal yet I am still pushing myself through each day just to exist."

Written submission – no state or location provided

"Services for people with psychosocial disability need to be responsive to people's actual needs to lead an ordinary life, including a recognition in NDIS plans of the importance of psychosocial and peer support for people experiencing mental health issues to re-engage in the community."

National Legal Aid

5.16.5.19. Furthermore, the legislation currently includes references to a psychiatric condition when determining whether a person is eligible of the NDIS, which is an artefact of a medicalised, rather than recovery based model. Therefore, this review recommends in keeping with best-practice approaches, the words 'psychiatric condition' should be replaced with the more commonly used phrase of 'psychosocial disability'.

Recommendation 5: The NDIS Act and Rules be amended to:

- a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent;
- b. remove references to psychiatric conditions when determining eligibility

Recommendation 8: The NDIS Act and Rules be amended to:

- a. provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent, recognising that some conditions may be episodic or fluctuating; and
- b. remove references to 'psychiatric conditions' when determining eligibility and replace with 'psychosocial disability'.

Resolving confusion between functional impairment and diagnosis

5-17-5.20. Section 24(1)(c) of the NDIS Act states one of the disability requirements to access the NDIS is that a person's impairment or impairments result in *“substantially-reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication; social interaction; learning; mobility; self-care; self-management.”*

5-18-5.21. There is significant public confusion on what about the evidence is required to support NDIA decision-making in regard to this requirement. This is not helped by the NDIS Act being silent on the nature of the information required in a relevant assessment for determining whether or not a person meets the eligibility criteria (Chapter 4 refers).

5-19-5.22. Confusion has arisen particularly with respect to the operational guidelines the NDIA used in the trial and transition period to manage the *scale/volume* of people transitioning from state and territory service systems. These guidelines relied on a medical model and the presence of a diagnosis to help streamline a decision about a person's eligibility for the scheme.

- a. The *“List A”* operational guidelines set out conditions/*diagnosis/diagnoses* likely to meet the disability requirements in terms of permanency and functional impact. In the vast majority of cases, *if a person had a condition/diagnosis on “List A”, they would will* go on to meet access. *if they have a condition or diagnosis on this list.*
- b. The *“List B”* operational guidelines set out permanent conditions/*diagnosis/diagnoses* for which functional impact is variable and where further assessment of functional capacity *would is* generally *be* required before the access decision *could can* be made.

5-20-5.23. As a *consequence/result of these lists*, there is a widespread assumption that diagnosis correlates to functional capacity, and that if a person has a diagnosis on either of these lists, they will be eligible for the scheme. There is also an assumption

that if a person has a diagnosis not on either list, they will not be eligible for the scheme. Neither of these statements is true. In all cases, any person can test their eligibility for the scheme by providing the NDIA with evidence of their functional capacity, irrespective of any diagnosis they may or may not have.

~~5.24.~~ The NDIA ~~need to recognise and make access processes easier to~~ must proactively address this confusion around by making it clear what the NDIA is looking for from functional assessments, and to required to support decision-making and explain why the presence of a diagnosis alone is not a proxy for eligibility. This information should be freely available on the NDIS website for ~~prospective participants~~ all people with disability to access.

~~5.21.~~

Timeframes for making an access decision

~~5.22-5.25.~~ Under section 20 of the NDIS Act, if a person makes an access request, the NDIA must, within 21 days of receiving it, decide whether or not the prospective participant meets the access criteria or request they provide further information ~~under to support that decision. Under~~ section 26(1)-(f) of the NDIS Act, if further information is requested from the prospective participant, the NDIA must, within 14 days of receiving that information, decide whether or not the prospective participant meets the access criteria.

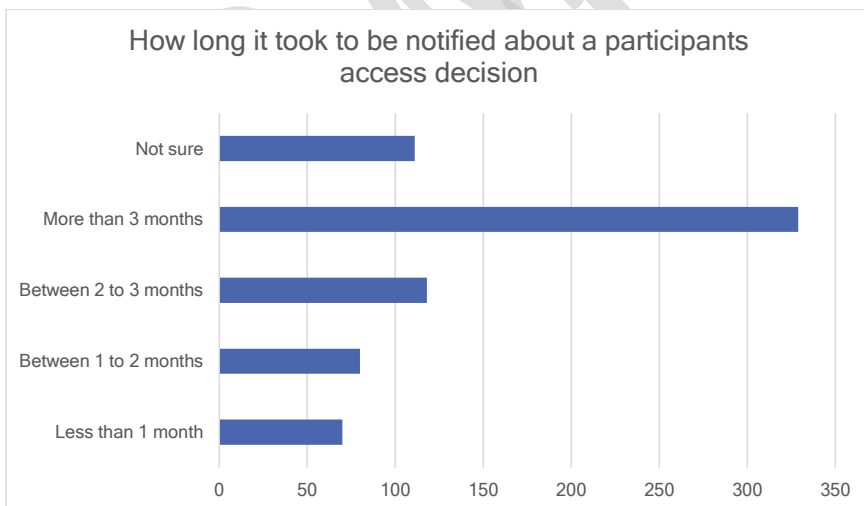
~~5.23.~~ During the transition period, the ~~NDIS~~ National Disability Insurance Scheme (Timeframes for Decision Making) Rules prescribed 2013 permitted the NDIA ~~could to~~ double the length of these periods during the first 12 months of a region's rollout—~~i.e. This gave~~ the NDIA had 42 days to make the access decision or request further information from the prospective participant, and 28 days to make the access decision upon the receipt of that information.

~~a.5.26. these rules are~~ This provision is no longer enforceable in most parts of Australia as the rollout of the NDIS across all states and territories (except Western Australia) is now complete¹³.

~~b. the NDIA only has the power to double the length of the period to make an access decision in certain parts of Western Australia and the Christmas and Cocos (Keeling) Islands. This is because some areas of Western Australia only began transitioning to the NDIS on 1 July 2019 and the Christmas and Cocos (Keeling) Islands will not transition until 1 July 2020.~~

During face-to-face consultations, considerable

~~5.24.5.27. Considerable~~ feedback was provided in consultations about delays between applying for the NDIS and having the outcome of their access decision. ~~Of the 845 respondents who provided a specific response~~ 55 per cent of participants responding to this question in the long form survey, ~~55 per cent~~ indicated ~~(n=462)~~ it took more than three months for the NDIA to ~~make~~ made a decision about their eligibility for the scheme. This is unsurprising given the pressure of the transition period and the rapid scale up of participants entering the scheme.



¹³ The NDIA still has the power to double the length of the period in certain parts of Western Australia and the Christmas and Cocos (Keeling) Islands. This is because some areas of Western Australia only began transitioning to the NDIS on 1 July 2019 and the Christmas and Cocos (Keeling) Islands will not transition until 1 July 2020.

5.28. When asked what timeframe would be appropriate for inclusion in the Guarantee, 74 per cent of survey respondents indicated a period of up to one month would be reasonable (Figure 3 refers).

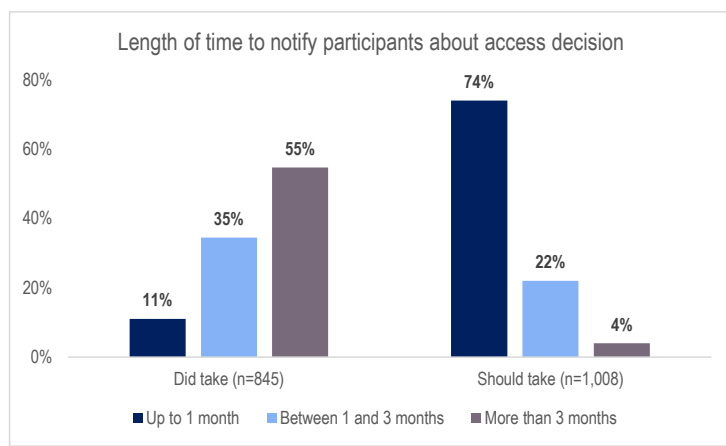
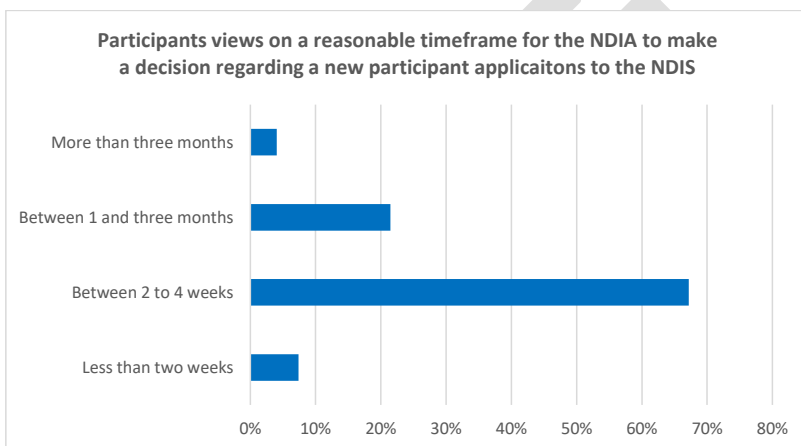


Figure 3: Timeframes for notification of access decisions (long-form survey)

5.25. Survey data indicates there did not appear to be a significant correlation between reported delays of decision making and the prospective participant needing to provide additional information to support the access decision. Rather, even when factoring in the time taken for a participant to produce additional information, all participants, even those who did not need to produce additional information, reported waiting longer than 3 months to know the outcome of their access request.

5.26-5.29. The NDIA has provided data to this review, which indicates demonstrating the national average timeframe for an access decision to be made in the 2018-19 financial year was 15 days, with only 10 per cent of applications access requires requiring further information from the participant in order to make the decision. The NDIA has also provided data indicating the current national average for an access decisions to be made following the receipt of the last period piece of required evidence was 17 days.

5.27. In order to inform the timeframes for access decisions to be set out in the Guarantee, this review asked participants what they considered would be a reasonable period if the NDIA had all the information required to make the decision. Of the 1,008 who provided a specific response to this question, 48 per cent felt a decision should be provided within four weeks, 33 per cent felt a decision should be provided between four to eight weeks and 19 per cent felt it was reasonable to expect a decision would take over eight weeks.



5.30. The NDIA Quarterly Report to DRC for the period ending September 2019 also demonstrates there has been a commensurate reduction in timeframes in making access decisions when compared to previous quarters, with an average 12 days for resolution of an access decision, compared with 38 days at 30 June 2019¹⁴.

5.28-5.31. Taking into account survey data, responses and the NDIA's current NDIA performance in reducing the time taken to make access decisions, there is no significant reason to amend the current legislative requirement that the NDIA make a decision about a person's eligibility (or request further information from the person) within 21 days of receiving the access request.

¹⁴ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.34.

~~5.29-5.32.~~ There also does not appear to be a case to amend the requirement that the NDIA make a decision about a person's eligibility within 14 days of the participant providing ~~any~~the additional information ~~that had been~~ requested. Rather, ~~such~~the Guarantee should affirm these timeframes ~~noting they~~ are ~~already~~ in keeping with participant expectations ~~and are reasonable to expect the NDIA to continue delivering upon.~~ The Guarantee should reaffirm these timeframes (Chapter 10 refers).

~~Determining when a person does not meet~~ Deeming of access decisions

~~5.30-5.33.~~ ~~As discussed above, in~~ certain circumstances, the NDIA may require a prospective participant to provide further information, or undergo an assessment or examination and provide a report, to decide whether or not they meet the access criteria.

~~5.31-5.34.~~ Currently, the NDIS Act provides that, should the NDIA request additional information from the prospective participant ~~provide additional information to support an access request~~, the ~~prospective participant must provide the~~ requested information must be provided within 28 days. ~~If they do not provide~~ the information is not provided within 28 days ~~they are taken to have~~ the access requested is deemed to be withdrawn ~~their access request~~, unless the NDIA is satisfied it was reasonable for the prospective participant not to have complied with the request. However, the ~~CEO does have~~ NDIA has the ability to prescribe a longer timeframe for the prospective participant ~~has a longer period~~ to provide the information.

~~5.32-5.35.~~ Consultation feedback indicates the 28 day period for the prospective participant to provide the requested information was inadequate. Some submissions stated it took between two to three months to provide the requested information, owing to lengthy wait times for appointments to see their health professional or to save enough money to pay for the cost of the assessment – and that was without factoring in the time lost in mailing documents through the post. In these instances, respondents felt their access request should not be withdrawn because they were still actively trying to provide the information the NDIA had asked for, or had actually already sent it to the NDIA but it had not ~~yet~~ been received or registered.

"The current 28 day timeframe that people have to apply is not currently very fair if you need pediatricians to fill out access request forms. It often take a lot longer than the 28 days to get an appointment and have the forms filled out and returned. I was really worried and needed to ask for an extension but wasn't sure I could do this or that it was possible. Trying to get the information in 28 days when not everyone has it to hand is stressful."

Carer of NDIS Participant, Metropolitan Queensland

"When given forms to fill in and submit, you [NDIA] only give us 28 days, after that, it gets rejected. However, the NDIA can take 6 to 8 or more months to reply to us. In my case, my Doctor had to go overseas for a family emergency and was gone for a month so I could not get the form filled in by the allocated timeframe, so my application was rejected. Circumstances beyond my control meant I had to wait longer, but there was no way I could get an extension on the 28 day time period."

NDIS Participant, Regional New South Wales

"The current 28 day timeframe that people have to apply is not currently very fair if you need pediatricians to fill out access request forms. It often take a lot longer than the 28 days to get an appointment and have the forms filled out and returned. I was really worried and needed to ask for an extension but wasn't sure I could do this or that it was possible. Trying to get the information in 28 days when not everyone has it to hand is stressful."

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"When given forms to fill in and submit, you [NDIA] only give us 28 days, after that, it gets rejected. However, the NDIA can take 6 to 8 or more months to reply to us. In my case, my Doctor had to go overseas for a family emergency and was gone for a month so I could not get the form filled in by the allocated timeframe, so my application was rejected. Circumstances beyond my control meant I had to wait longer, but there was no way I could get an extension on the 28 day time period."

NDIS participant, regional New South Wales

5.33-5.36. This review understands the NDIA doubles the 28 day timeframe to 56 days for the prospective participant to return requested information to support their access request. This is in recognition that 28 days is not always reasonable as many

difficulties in obtaining the information are not always in the prospective participant's direct control. However, ~~given the doubling as the extension of the 28 day timeframe still~~ relies on the NDIA ~~determining when~~ recognising that a longer period ~~may be~~ is appropriate, ~~this review considers~~ prospective participants are ~~currently not provided with~~ given sufficient assurance that they will be given an appropriate amount of time to provide the requested information.

5.37. ~~As such, it could also be argued that no deeming provision should apply, on the basis that it is the prospective participant's application and they should be able to take as long as they like to respond to a request for more information. However, this may lead to excessive administrative burden for the NDIA, with many applications not able to be finalised or closed in the system.~~

5.34-5.38. ~~On balance, given the drivers of time delays as reported by participants and notwithstanding efforts to streamline functional assessments (Chapter 4 refers), there is merit in extending the legislated Guarantee should extend the 28-day timeframe to 90 days as part of the Guarantee when factoring in drivers of the time delays participants have reported (Chapter 10 refers).~~

5.35-5.39. ~~This review also considers that, should the prospective participant not provide the information within the specified 90 day period, their access request should not be automatically be deemed to have been withdrawn. Rather, it should only be withdrawn after the 90 day period has lapsed and the NDIA has taken all reasonable efforts to contact the participant and confirm if they are still trying to get the additional information they need to support an access decision. Importantly, a prospective participant's access request should only be withdrawn if the prospective participant indicates they do not wish to be a NDIS participant and/or cannot be contacted after all reasonable measures have been madetaken.~~

5.36-5.40. ~~The NDIA has an important role to play in supporting prospective participants through the access process. It cannot be assumed that people with disability have the capacity to navigate the access process without help, and not responding or providing that a failure to provide the information within a stated period indicates the requested timeframe is an indication they no longer wish, or do not need, to access supports under the NDIS.~~

~~Recommendation 6: The NDIS Act be amended to extend the timeframe for a prospective participant to provide information requested by the NDIA to support an access decision.~~

Recommendation 9: The NDIS Act be amended to give a prospective participant up to 90 days to provide information requested by the NDIA to support an access decision, before it is deemed they have withdrawn their access request.

Assertive Outreach

~~5.37.5.41.~~ With the transition of people who previously received support from Commonwealth and state and territory programs almost complete, an increasingly important focus for the NDIA is reaching out to people with disability who have not previously accessed disability support services, or are reluctant to engage. ~~The NDIA cannot rely on people willingly approaching the scheme.~~

~~5.38.5.42.~~ ~~It also~~ The NDIA cannot ~~be assumed~~ rely on people approaching the scheme of their own accord nor assume that people with disability have the capacity or confidence to know how to navigate the NDIS by themselves. It ~~needs~~ is also important to be acknowledged appreciate that there is a significant number of people with disability in the Australian community who may fear or distrust government, stemming from a history of trauma, social discrimination and isolation, either because they have a disability or because of their cultural background.

~~5.39.5.43.~~ Outreach activities ~~needs~~ need to build the capacity of vulnerable people with disability to engage with the NDIS, particularly those who are at risk of falling through the gaps because their needs are complex, challenging or who may be resistant to asking for support. Outreach activities should include a dedicated focus on Aboriginal and Torres Strait Islander people, people from CALD backgrounds and those with psychosocial disability.

~~5.40-5.44.~~ The NDIA has implemented a ~~large~~substantial program of work to support these priority cohorts to engage with the NDIS. This ~~has included~~includes publically releasing a number of strategies – including ~~the~~an Aboriginal and Torres Strait Islander Engagement Strategy, Cultural and Linguistic Diversity Strategy, and Rural and Remote Strategy. These strategies were developed in consultation with external stakeholders including people with disability and peak ~~sector~~organisations, and identify key priority and action areas for these specific population groups.

~~5.41-5.45.~~ The Australian Government also recently announced new initiatives to assist people in diverse and hard-to-reach communities to navigate the access, planning and plan implementation process (Appendix CD refers).

~~5.42-5.46.~~ Notwithstanding this work, ~~there is merit in considering if~~ the NDIA's activities should be underpinned by a holistic outreach and engagement strategy. Such a strategy ~~would~~could set out how ~~prospective participants~~people with disability in these cohorts will receive the support they ~~require~~need to access the NDIS and navigate its processes, ~~and how~~. It could also set out the NDIA will work alongside partner agencies and mainstream services to ensure no person with disability falls through the cracks. ~~It could~~There is also includemerit in the concept of dedicated outreach teams ~~to assist for~~ hard-to-reach communities to increase engagement and accessibility, with consideration given to ongoing reporting of outcomes at both participant and community levels.

~~5.43.~~ Such a strategy would complement the goal of supporting the NDIS to benefit around 500,000 Australians by ~~2022-23, recognizing~~2023, recognising those people with disability not already in the scheme are some of the most vulnerable and hardest to engage.

~~5.44-5.47.~~ The remainder of this chapter discusses key themes arising from consultations that would assist in informing future efforts in this area.

Aboriginal and Torres Strait Islander people

~~5.48.~~ While awareness of the NDIS has grown over time, The proportion of Aboriginal and Torres Strait Islander participants in the NDIS at 30 September 2019 was 5.9 per cent

or 18,252 people¹⁵. The September 2019 quarter saw a higher proportion of Aboriginal and Torres Strait Islander participants entering the scheme during the quarter (6.5 per cent) compared with previous quarter combined (5.8 per cent)¹⁶.

5.45-5.49. However, while participation in the NDIS is growing over time, this review heard that knowledge of the NDIS and the function of the NDIA remains limited for people with disability in regional and remote communities, particularly those communities that include a higher proportion of Aboriginal and Torres Strait Islander peoples.

The proportion of Aboriginal and Torres Strait Islander participants in the NDIS at 30 September 2019 was 5.9 per cent or 18,252 people¹⁷. However, the

"The awareness raising process that is fundamental to the successful roll out of the NDIS in Aboriginal and Torres Strait Islander communities nationally has not been seen or heard of in any capacity by most communities visited."

First Peoples Disability Network, Consultations Final Report

5.46-5.50. The targeted consultations for Aboriginal and Torres Strait Islander communities people provided evidence that the NDIA's existing outreach and engagement strategies are not effectively embedded within rural and remote communities, and that. It was also suggested many Aboriginal and Torres Strait Islander people with disability in these communities, who would likely be found eligible for the scheme NDIS do not know how to, or are choosing not to, engage with the NDIA NDIS.

5.47. Anecdotal feedback also suggests the NDIS is clouded in an atmosphere of uncertainty for many Aboriginal and Torres Strait Islander people and they are worried they will be disadvantaged under the NDIS compared to previous systems of support. The importance of these perceptions cannot be overstated in remote community contexts.

¹⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.78.

¹⁶ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.20.

¹⁷ COAG Disability Reform Council Quarterly Report 30 September 2019, p.78.

“There is a sizeable group who may not even realise the NDIS exists and they may be eligible for support. They are likely to have other forms of social disadvantage and may have limited interaction with other government systems. They may be people who have good reasons to fear government bureaucracies.”

National Disability and Carers Alliance

“The consultation revealed a deep frustration and angst with how the NDIS was being implemented in Aboriginal and Torres Strait Islander communities. The barriers to access and difficulties with the processes were widespread, chronic, and were showing no signs of improvement. The prevailing sense from the workshop was that cultural and social issues affecting access to the NDIS by Aboriginal and Torres Strait Islander people had been placed in the ‘too hard basket’ by the NDIA, and that they were not taking the issues of Aboriginal and Torres Strait Islander people seriously”.

First Peoples Disability Network, Consultations Final Report

“There is a sizeable group who may not even realise the NDIS exists and they may be eligible for support. They are likely to have other forms of social disadvantage and may have limited interaction with other government systems. They may be people who have good reasons to fear government bureaucracies.”

National Disability and Carer Alliance

5.48-5.51. Culture was reported as being more significant than disability in terms of identity for Aboriginal and Torres Strait Islander people. That is, they firstly identified as a member of the Aboriginal community, rather than as a person with disability. StakeholdersSome participants stated current assessment tools were culturally inappropriate in this regard and highlighted the importance of the NDIA incorporatingand reiterated that Indigenous definitions and perspectives of health and disability and framingshould be incorporated into the NDIS, with engagement framed around core cultural values, such as family, culture and country.

“Greater promotion by the NDIA of flexible application processes for potential participant’s who are transient and itinerant is required. In order to progress an NDIA application, the standard process by NDIA requires evidence of address which are not applicable to itinerant represented persons with significant mental health issues and who may also be Indigenous. These people may be very easily disadvantaged by the process with the outcome being that they do not pursue NDIA applications because it is too difficult.” Western Australian Office of the Public Advocate

“Unfortunately, many Aboriginal and Torres Strait Islander people’s engagement with the NDIA is inflexible, inaccessible and not culturally safe. Engaging in the “proper way” with Aboriginal and Torres Strait Islander participants requires respectful, sensitive and participant led relationships.”
National Legal Aid

Indeed,

“Greater promotion by the NDIA of flexible application processes for potential participants who are transient and itinerant is required. In order to progress an NDIA application, the standard process by NDIA requires evidence of addresses which are not applicable to itinerant represented persons with significant mental health issues and who may also be Indigenous. These people may be very easily disadvantaged by the process with the outcome being that they do not pursue NDIA applications because it is too difficult.”
Unpublished submission

“Unfortunately, many Aboriginal and Torres Strait Islander people’s engagement with the NDIA is inflexible, inaccessible and not culturally safe. Engaging in the “proper way” with Aboriginal and Torres Strait Islander participants requires respectful, sensitive and participant led relationships.”
National Legal Aid

5.52. It is evident that greater promotion of the NDIS is required to ensure Aboriginal and Torres Strait Islander people with disability receive supports that will help improve their quality of life. In this regard, consultation feedback reinforced that engaging with Aboriginal and Torres Strait Islander people in the “proper way” is critical to supporting them to navigate through NDIS processes. Consultation feedback reinforced any

~~5.49-5.53.~~ Any engagement and work with Aboriginal and Torres Strait Islander communities needs to begin with a process of establishing trust within the community and acknowledging that there are diverse understandings and levels of awareness of disability among Aboriginal and Torres Strait Islander peoples. The importance of this cannot be overstated in remote community contexts.

~~5.50-5.54.~~ Further, consultation Consultation feedback highlights also stressed that different issues are present in urban, rural, remote and very remote populations and these communities cannot be homogenised. Indeed, given Given the diversity existing across Aboriginal and Torres Strait Islander nations Australia wide, there will not be an single model that works will work or is be culturally appropriate. These findings reinforce This reinforces the importance of building an outreach and engagement model from the ground up and placing those whom the service will impact, with local communities at the center to ensure it is fit for purpose for that community.

~~5.51-5.55.~~ Notwithstanding the benefits of bottom up engagement approaches, one One of the most immediate significant barriers to inclusion and access for Aboriginal and Torres Strait Islander people is the absence of information about the NDIS in their primary spoken language. For many people living in remote Australia, particularly in the Northern Territory and Cape York Peninsula, English was reported as being their third or fourth learned spoken language. Even when English is spoken, they people reported it was difficult to read, as literacy rates among the general population are variable, and so too for people with disability.

~~5.52-5.56.~~ Consultation feedback also suggested that, because both Aboriginal and Torres Strait Islander cultures have stronger oral traditions than written traditions, Aboriginal and Torres Strait Islander people with disability are more likely to find out about the NDIS from speaking to someone. This suggests the best prospects of an Aboriginal and Torres Strait Islander person engaging with the NDIS will be if the information is provided by a trusted member of their own community, in the language spoken within that community.

5.57. It is apparent that for Aboriginal and Torres Strait Islander people, language and the barrier that language poses in understanding the NDIS and what it might offer them, is a fundamental barrier to increased engagement.

~~5.53-5.58.~~ Though not specific to the NDIS, Aboriginal and Torres Strait Islander people may also have a rational fear or mistrust of government agencies and service providers, resulting from racially—based intergenerational and historical mistreatment, social exclusion and discrimination. In delivering outreach activities, it must be ~~recognized~~recognised that discussions about disability may not be easy for Aboriginal and Torres Strait Islander people and historical perceptions, past experiences and beliefs may hinder engagement. The task ahead for the NDIA in overcoming these issues is significant.

~~It is apparent that for Aboriginal and Torres Strait Islander people who face significant levels of social disadvantage, language and the barrier that language poses to stakeholders in understanding the NDIS and what it might offer them, is a fundamental barrier to increased engagement.~~

~~*“Participants who have experienced trauma may be acutely aware of power-relations and susceptible to influence. This may cause them to request different supports depending on who they are talking to. In this way, participants may present inconsistent goals and support requests, and ultimately have their requests dismissed. This behavior is not uncommon in the planning process and can be a significant barrier to the articulation of goals, particularly if the planner is not sensitive to the participant’s behaviours and needs.”*~~

~~Advocacy for Inclusion~~

~~5.54. The task ahead for the NDIA in overcoming these issues is significant.~~

~~*“Participants who have experienced trauma may be acutely aware of power-relations and susceptible to influence. This may case them to request different supports depending on who they are talking to. In this way, participants may present inconsistent goals and support requests, and ultimately have their requests dismissed. This behavior is not uncommon in the planning process and can be a significant barrier to the articulation of goals and request, particularly if the planner is not sensitive to the participant’s behaviors needs.”*~~

~~Advocacy for Inclusion~~

People from culturally and linguistically diverse background

Once the NDIS is fully rolled out, it is expected around 20 per cent of NDIS participants across Australia will be from a CALD background. The proportion of participants with a CALD background in the NDIS at 30 September 2019 was 8.7

5.59. Historically, per cent or 27,030 people¹⁸. Like Aboriginal and Torres Strait Islander people, the September 2019 Quarter saw a higher proportion of CALD participants entering the scheme during the quarter (11.5 per cent) compared with previous quarters (8.4 per cent)¹⁹.

5.55-5.60. This review heard that, while the proportion of participants from a CALD background is growing, current participation rates are significantly below those anticipated at the onset. This may be attributed, in part, to Australians from culturally diverse backgrounds ~~have been underrepresented~~ being historically under represented in the disability sector and face additional challenges in terms of inclusion in their communities. This extends to their ability to access and navigate the NDIS.

5.56-5.61. The various ways CALD communities understand and approach disability can influence whether or not individuals access the NDIS, or see the need for it in their lives. The availability of easily understood information in a person's preferred language, medium and format has a significant impact on their confidence in engaging with the NDIS, and then in turn, drawing ~~down~~ on the supports in their plan.

5.57. ~~Once the NDIS is fully rolled out, it is expected around 20 per cent of NDIS participants across Australia will be from a CALD background. The proportion of participants with a CALD background in the NDIS at 30 September 2019 was 8.7 per cent or 27,030 people²⁰. While the proportion of participants from a CALD background is growing, evidence suggests current participation rates are significantly below what was anticipated.~~

5.58-5.62. In this regard, a number of submissions recommended increasing assertive outreach programs to help locate and connect people from CALD backgrounds with the NDIS, particularly those experiencing isolation or disadvantage.

¹⁸ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.79.

¹⁹ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.20.

²⁰ COAG Disability Reform Council Quarterly Report 30 September 2019, p.79.

“People from Aboriginal and Torres Strait Islander and CALD backgrounds and people who live in remote and very remote communities will not necessarily access the scheme through engagement processes that rely on them to initiate access through a phone call to a 1800 number.”

Queenslanders with Disability Network

“Assertive outreach should be prioritise, funded and implemented to identify and connect with isolated people and communities who cannot otherwise engage in the NDIS.”

Victorian Council of Social Services

“People from Aboriginal and Torres Strait Islander and CALD backgrounds and people who live in remote and very remote communities will not necessarily access the scheme through engagement processes that rely on them to initiate access through a phone call to a 1800 number.”

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“Assertive outreach should be prioritised, funded and implemented to identify and connect with isolated people and communities who cannot otherwise engage in the NDIS.”

Victorian Council of Social Services

5-59-5.63. The targeted consultations for CALD communities reinforced the need for more accessible, less complex and translated information and communications. Some participants noted the process for accessing the NDIS is difficult if they ~~don't~~ do not speak English and ~~that~~ where information about the NDIS ~~was~~ is not available in their first language. Almost all stakeholders stressed the importance of independent face-to-face interpreter services so that everybody in the room hears “the same thing at the same ~~time~~ time”, and questioned whether current interpretation arrangements where ~~relying~~ relaying their story as they told it.

5-60-5.64. As ~~with~~ for Aboriginal Torres Strait Islander people, people from CALD backgrounds outlined there can be distrust of authorities and that more time is needed to build trusting and collaborative relationships, particularly with local CALD organisations, leaders and role models, before moving on to more formal discussions around access and planning ~~process~~ processes. Indeed, a key theme of discussions was

the primacy of respecting and valuing cultural needs of CALD communities and the importance of the NDIS being responsive to language and cultural needs, supported by a culturally competent workforce.

“The NDIS relies heavily on people finding their own way to the door. That is not easy for a whole range of people—people who have multiple forms of disadvantage, people who come from CALD backgrounds, people who come from an Aboriginal or Torres Strait Islander background. Then there are those who have a very good reason to fear government services. We need to use trusted networks and organisations to reach these people.”
Every Australian Counts

“Increasing awareness of the NDIS among new migrants and providing interpreting services may increase participation rates for people with diverse backgrounds.” Queensland Government

“The NDIS relies heavily on people finding their own way to the door. That is not easy for a whole range of people – people who have multiple forms of disadvantage, people who come from a culturally or linguistically diverse background, people who come from an Aboriginal or Torres Strait Islander background. Then there are those who have a very good reason to fear government services. We need to use trusted networks and organisations to reach these people...”
Every Australian Counts

“Increasing awareness of the NDIS among new migrants and providing interpreting services may increase participation rates for people with diverse backgrounds.”
Queensland Government

~~5.61-5.65.~~ Consultation feedback also reinforced that ~~engagement~~when engaging with people with disability from CALD backgrounds ~~need to recognise~~ the critical role of family-centered practice must be recognised, particularly in those communities ~~were~~where collectivist notions of identity are more prevalent and ~~value~~valued. In this regard, ~~stakeholders~~submissions reinforced that notions of culture and community must be at the forefront of discussions, with extra support provided in order to support people with disability ~~from CALD backgrounds~~ and their families to engage with the NDIS. ~~Here, many stated that they did not know what they need, what supports could benefit from, nor what the NDIS and other service systems might be able to provide.~~

~~5.62-5.66.~~ It is also evident that, despite the work currently underway by the NDIA to strengthen its engagement with ~~the CALD~~ community~~communities~~, more effort is needed to embrace a higher level of cultural responsiveness. Otherwise, the current barriers and challenges that exist for people with disability from CALD communities will continue to prevent them from utilising NDIS services to the extent that they are entitled to, or even at all.

People with psychosocial disability

~~5.63-5.67.~~ Australians living with severe mental health conditions and psychosocial disability are among the most disadvantaged people in our community. Many experience challenges with communication and social inclusion, finding suitable housing and employment and maintaining their physical health. The lack of community awareness and support can have major bearing upon their lives. This extends to their understanding of, and their ability to access, the NDIS.

5.64.5.68. The Productivity Commission estimated that approximately 64,000 of the 600,000 Australians living with severe and persistent mental health conditions will be eligible to access the NDIS once it is fully rolled out. While the proportion of participants with psychosocial disability is growing, 10 per cent of participants who entered the NDIS in the September 2019 quarter had a psychosocial disability compared with 9 per cent in previous quarts combined – there were still fewer than 27,864 (or 9 per cent) participants with a primary psychosocial disability at 30 September 2019²¹. This indicates there is still a long way to go in reaching out to this cohort.

²¹ [COAG Disability Reform Council/NDIA Quarterly Report to DRC for the period ending 30 September 2019](#), p.81.

5.65-5.69. Feedback and practice in clinical mental health services suggests people with psychosocial disability require higher levels of support to engage with support services and face some specific challenges understanding and accessing the Schemescheme. These include:

- e.a. information and marketing programs are not well targeted to people with mental health issues as they do not associate with the disability community;
- f.b. participant's mental health circumstances can limit their capacity to understand their need for additional support;
- g.c. the requirements of putting together the evidence to navigate the scheme is seen as too burdensome or beyond the skills and abilities of some people living with psychosocial disability, particularly for people who do not have support from an existing service provider or informal supports;
- h.d. many people with severe mental health issues do not identify as having a lifetime disability associated with their mental health issues. The language of disability and permanency is unfamiliar to many people with mental health issues, is different to the recovery language used by mental health professionals and does not reflect the episodic nature of some conditions;
- i.e. many submissions stated it can be very expensive and time consuming to obtain the required information from health professionals to demonstrate their eligibility from health professionals, with some professionals indicating it can take up to 20 hours to prepare the required documentation; and
- j.f. many health professionals are reluctant to determine permanency with their clients conditions are permanent, due to uncertainties of the outcomes of medication or treatments and lack of NDIS or academic guidance on criteria for permanency. Many health professionals see themselves as working in a strengths recovery-based rather than a deficit model.

5.66-5.70. These issues result in many people with psychosocial disability not engaging with the NDIS, when they wouldmay benefit from such engagement. Indeed, a small number of submissions indicated that some people, who wouldmight otherwise likely be found eligible for the scheme, are choosing to withdraw or defer their application for these reasons.

“Many people accessing Missions Australia’s mental health services feel overwhelmed by the NDIS application process. Concerning, a significant number of people with complex needs are not applying for NDIS due to the complexity of the application process, despite their access workers opinion that the clients are likely to meet the eligibility criteria and offering to support them throughout the application process.”

Mission Australia

“Many people accessing Mission Australia’s mental health services feel overwhelmed by the NDIS application process. Concerningly, a significant number of people with complex needs are not applying for NDIS due to the complexity of the application process, despite their access workers opinion that the clients are likely to meet the eligibility criteria and offering to support them throughout the application process.”

Mission Australia

5-67-5.71. There is a clear need for assertive outreach strategies to support people with psychosocial disability to access the NDIS. This may include strengthening existing relationships and networks with community mental health and other support providers, and additional investment from all levels of government. This is not a new idea - it has been well documented for many years that more concerted and targeted efforts need to be applied to the management of pre-access and access processes to successfully engage people with psychosocial disability. Ensuring the NDIS targets all Australians with psychosocial disability will require effective partnerships and coordination with mainstream service systems and engagement and investment from all Australian governments, are needed to ensure the NDIS engages with the entire eligible population of Australians with psychosocial disability.

Recommendation 7: The NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS.

Recommendation 10: The NDIA develop a comprehensive national outreach strategy for engaging with people with disability who are unaware of, or are reluctant to seek support from the NDIS, with a dedicated focus on Aboriginal and Torres Strait Islander peoples, Culturally and Linguistically Diverse communities, and people with psychosocial disability.

DRAFT

CHAPTER 6 – DEVELOPING A PLAN

KEY FINDINGS

- ✓ Delays in commencing the planning process are frustrating participants and preventing access to vital supports aimed to improve quality of life and wellbeing.
- ✓ Engaging participants, their families and carers in the planning process is critical to ensure that they get the right supports funded in their NDIS plan and that they get those supports when they are needed.
- ✓ There is legal ambiguity around what supports the NDIS should fund, and what is the responsibility of other service systems. There is merit in providing greater clarity for NDIA decision makers about the responsibility for the delivery of supports.
- ✓ Participants will not get the best outcomes if there is a disconnect between the supports funded in their plan and their goals and aspirations and if plans do not consider the broader supports families and carers need to maintain their caring roles.
- ✓ From 1 July 2020, most new entrants to the NDIS are expected to be young children. Enabling quick access to early intervention supports is critical for their development and the schemes insurance approach.

KEY FINDINGS

- ✓ Uncertainty around the planning process is frustrating participants, with delays in plan approval preventing timely access to vital supports aimed at improving quality of life and well being.
- ✓ There is some ambiguity around whether the NDIS or another service system is responsible for the delivery of particular supports. Greater clarity should be provided as governments, through DRC, agree to the respective roles and responsibilities of the NDIS and mainstream service systems.
- ✓ Planning processes should consider the broader supports families and carers need to maintain their caring roles, noting current arrangements place an overreliance on the informal supports they provide.
- ✓ More flexibility is needed in the ECEI pathway to maximise the benefits of early intervention supports for children with disability.
- ✓ In all cases, planning processes should be transparent and maximise the ability of participants to drive decisions that impact their daily lives.

- 6.1. Chapter 3 of the NDIS Act outlines how people with disability become NDIS participants, and the subsequent process for developing personal, goal-based plans which could include individually funded supports. Chapter 3 comprises three parts: Part 1A (Principles relating to plans participation of people with disability), Part 1 (Becoming a participant) and Part 2 (Participants' plans).
- 6.2. I centered my analysis of Parts 1A and 2 on three key issues:
- a. what would be the reasonable timeframes for developing and approving plans;
and
 - b. what should be considered as part of determining the supports to be funded in participant plans—including supports for people with psychosocial disability and the role of families and carers when a support is reasonable and necessary;
and
 - c. opportunities to maximizemaximise the benefits of early intervention for young children with disability and encourage family-centred planning approaches.

- 6.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Supports for Participants Rules)*, to the extent they could be amended to provide greater clarity on when a support is reasonable and necessary.

Background to planning

- 6.4. A participant's NDIS plan ~~is comprised of~~comprises two elements:
- the participant's statement of goals and aspirations, which is prepared by the participant, or by the NDIA on behalf of the participant, and specifies the participant's goals, objectives, aspirations and circumstances; and
 - the statement of participant supports, which is prepared with the participant and approved by the NDIA, and sets out, among other matters, the reasonable and necessary supports that will be funded by the NDIS.
- 6.5. In deciding whether to approve a statement of participant supports, the NDIA must have regard to the participant's statement of goals and aspirations. The NDIA also needs to be satisfied of a number of other matters, including that:
- the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
 - the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
 - the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
 - the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide; and
 - the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems.
- 6.6. ~~NDIA~~The NDIA's decisions about what supports are reasonable and necessary are guided by the NDIS Act, ~~the rules made under the NDIS Act and Rules~~, relevant

operational guidelines, and ~~the COAGCOAG's~~ agreement on the roles and responsibilities of the NDIS and other service systems. ~~(Chapter 3 refers).~~

- 6.7. There are five steps involved for a participant in developing their plan:
- thinking about [their support needs](#) and deciding ~~on~~ their ~~needs~~, goals and aspirations;
 - meeting with their planner ~~or LAC~~ to discuss the goals, activities and tasks they want to achieve and what supports they need;
 - considering how to manage their NDIS supports, including deciding whether or not they want to manage their own budget;
 - ~~implementing~~[choosing service providers](#) and using their funded supports ~~and choosing service providers~~; and
 - reviewing and updating their plan.
- 6.8. The NDIA has published a number of documents to help participants prepare for their planning meeting, including checklists and ideas for thinking about their immediate support needs and their current and future goals. For example, following the [Pathways 2017 pathways](#) review, the NDIA released three new participant booklets on the NDIS website. These booklets provide practical information [about the NDIS](#) for participants and prospective participants, as well as their families, carers and the wider community. ~~These booklets provide advice on how to learn more about the NDIS,~~ [prepare for a planning meeting and to implement their plan](#). These booklets are intended for use throughout a person's NDIS journey to record key information, write questions and collect thoughts.
- 6.9. The NDIA has also published a number of other fact sheets and tools on the NDIS website to provide guidance on the process of developing and implementing a plan and identifying opportunities to connect with mainstream and community-based services.

Timeframes for commencing planning

- 6.10. The NDIS ~~currently~~[Act](#) does not set a fixed timeframe for how long it should take to develop and approve a ~~participants~~[participant's](#) plan. While ~~this review understands~~ internal operational guidelines provide some advice on the priority of plan development for particular cohorts, the current legislative requirement is that the

NDIA commence facilitating the preparation of a participant's plan *"as soon as reasonable practicable"*: *reasonably practicable*.

- 6.11. Consultation feedback demonstrates participants are seeking more certainty around timeframes for planning, including when they will have their first meeting with a planner and how long it will take to approve their plan. [Stakeholders](#) [Many submissions](#) reported planning processes are taking too long to commence and too long to complete and this is disempowering, frustrating and delaying access to vital supports.

"It took more than six weeks for the NDIA to contact me to book in my first planning meeting following receiving notification that I had been granted access to the NDIS. I thought that there might have been a mistake in granting me access because it took so long!"

-NDIS Participant, Regional Queensland

"We received a letter on the 2nd January 2018 saying we were approved [for the NDIS], and we would be contacted for our first planning meeting. I walked into an NDIS office in late May 2018 and we didn't even have a worker assisted to out requested at that point. Almost five months and nothing. It was only when I personally asked questions that we were then contacted to set up a planning meeting."

Carer of NDIS Participant, Regional Queensland

"My NDIS eligibility was approved quickly then I waited 13 months for my first planning meeting which only happened due to direct intervention my by Local MP to the Minister."

NDIS Participant, Regional Victoria

"People in rural and remote areas face additional challenges in participating in the planning process. They may be located a long distance from the base where planners are located, and transport options may be limited."

Queensland Government

Survey responses indicated over 32 per cent of participants had to wait between one and three months to meet with their planner after receiving access decision. Of concern, over 37

"It took more than six weeks for the NDIA to contact me to book in my first planning meeting following receiving notification that I had been granted access to the NDIS. I thought that there might have been a mistake in granting me access because it took so long!"

NDIS participant, regional Queensland

"We received a letter on the 2nd January 2018 saying we were approved [for NDIS access], and we would be contacted for our first planning meeting. I walked into an NDIS office in late May 2018 and we didn't even have a worker assigned to our request at that point. Almost five months and nothing. It was only when I personally asked questions that we were then contacted to set up a planning meeting."

Carer of NDIS participant, regional Queensland

"My NDIS eligibility was approved quickly then I waited 13 months for my first planning meeting which only happened due to direct intervention by my local MP to the Minister."

NDIS participant, regional Victoria

- 6.12. Considerable feedback was provided about delays in commencing planning. 40 per cent of survey respondents had to wait responding to this question in the long from survey indicated it took more than three months, while only 15 per cent said it took less than four weeks to have their first planning meeting. When asked what timeframe would be appropriate, if a timeframe for this were to be included in the Guarantee, 86 per cent indicated it should occur up to one month following a positive access decision (Figure 4 refers).

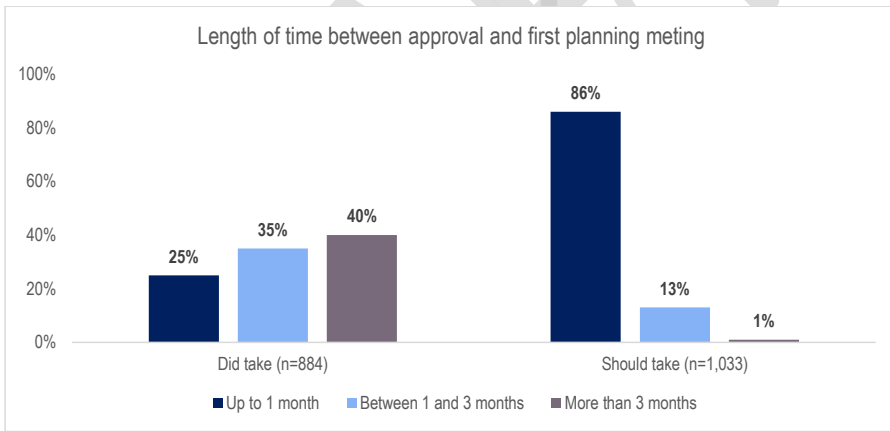
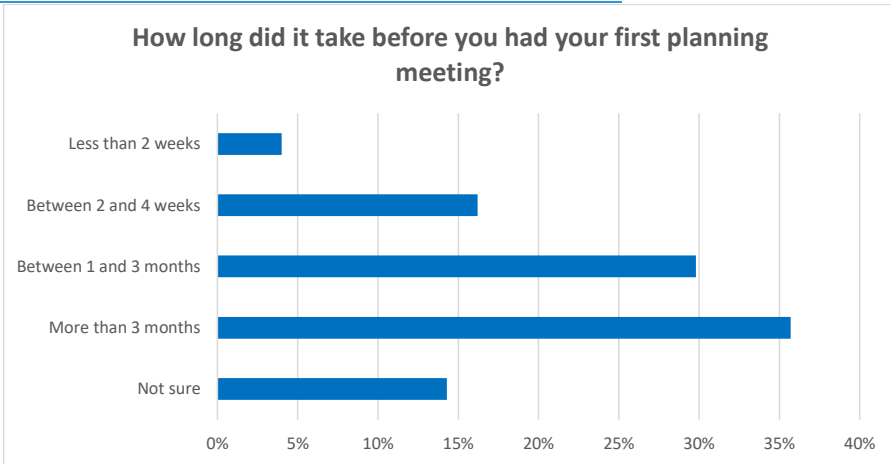


Figure 4: Timeframe for plan meeting (long-form survey)

6.13. Unsurprisingly, [and as with access decisions](#), the delays reported [by participants in starting to develop their plan in commencing planning](#) correlate with the ambitious scale and speed of the NDIS transition period. As has been noted previously, it is reasonable to expect that as the scheme matures, the volume of participants requiring their first planning meeting will reduce and therefore the NDIA should become quicker in commencing planning after a positive access decision.

~~6.14.~~ A close look at survey respondents indicates the NDIA is getting quicker at commencing planning following a successful access decision. Over X per cent of survey respondents who indicated their access decision was made in 2018 indicated their first planning meeting was held between 1 to 3 months of their access decision, compared to less than X for those whose access decisions were made in 2016.

~~6.15-6.14.~~ The NDIA has ~~also~~ provided data to this review, which demonstrates the national average for the first planning meeting to be held following the date of an access decision was 66 days, based on 2018-19 data as at 30 September 2019, with a commensurate reduction compared to ~~XX for access decisions made in 2016~~ previous quarters.

~~6.16-6.15.~~ Notwithstanding the NDIA getting faster ~~in~~ scheduling a planning meeting, there is merit in providing meetings, the NDIS Act should provide further clarity ~~in the NDIS Act~~ about when and how planning will commence. In this regard, section 32 of the NDIS Act, which sets out the NDIA must “*facilitate the preparation of a participant’s plan as soon as reasonably practicable*”, should be clarified to state that “facilitation” means the commencement of planning and the approval of a plan, ~~with the~~ The Guarantee prescribes should then prescribe a timeframe for ~~that the plan approval~~ process to occur (Chapter 10 refers).

~~6.17-6.16.~~ ~~There is also merit in prescribing the NDIA~~ The Guarantee should also prescribe that the NDIA must offer a first planning meeting but not require it to be held within a ~~soft~~ timeframe, ~~noting it~~. This is because the meeting would have to be at a mutually agreeable time for ~~both~~ the participant and the NDIA. ~~For example, it needs to be appreciated the participant may not be available to undertake the planning meeting at the offered time, so~~ Nonetheless, the NDIA must be flexible ~~to accommodate~~ in accommodating the availability of the participant, and ~~to~~ hold the planning meeting at the first available opportunity which is convenient for the participant.

~~6.18-6.17.~~ When combined, this would provide important surety to new participants that the NDIA will be responsive to developing a plan that is fully individualised and tailored to the participant’s goals and aspirations.

Recommendation 8: The NDIS Act be amended to reflect that a plan must be facilitated and approved in accordance with the rules made for the purpose of the Guarantee.

Timeframes for plan approval

~~6.19-6.18.~~ ~~Currently, the NDIA is~~ ~~The NDIS Act does not required to approve~~ ~~set a timeframe for~~ a plan ~~within a set time to be approved~~. Rather, the plan is only approved once the NDIA has received the participant's statement of goals and aspirations ~~from the participant~~ and when ~~they are~~ ~~it is~~ satisfied ~~that~~ the supports in the ~~participants'~~ statement of participant supports are reasonable and necessary. In ~~some~~ cases, ~~to make that decision,~~ the NDIA may require the participant, or another person, ~~to provide further~~ information ~~for the purpose of making the decision~~.

~~6.20-6.19.~~ This ~~Review~~ ~~review~~ heard ~~that~~ participants, their families and carers have experienced lengthy delays in getting their plan approved, often with no communication from the NDIA as to why or when they can expect it. ~~Over~~ 43 per cent of respondents to the ~~online~~ ~~long-form~~ survey said it took between one and three months for the NDIA to approve their plan following their first planning meeting and ~~21~~ ~~18~~ per cent of survey respondents said it took longer than three months to get their first plan approved. ~~(Figure 5 refers).~~

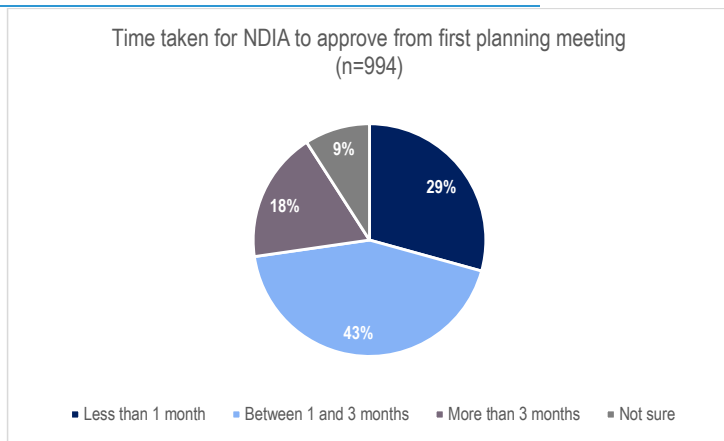


Figure 5: Timeframe for plan approval (long-form survey)

6.21-6.20. This feedback is broadly consistent with data from the NDIA which indicates indicating that in the 2018-19 financial year the average time for a plan to be approved following the first planning meeting was 51- days, or 117 days following the date of their the participant's access decision, in the 2018/19 financial year, based on data. The NDIA is continuing to get faster at first plan approvals, with first plans in September 2019 being completed in 88 days following the date of the access decision, down from 133 days in the June quarter²².

Quotes

6.22-6.21. This Review recognises one A significant driver of delays in approving a plan is whether the NDIA has requested additional information from the participant, such as a quote for Assistive Technology assistive technology or home modifications, or that they undergo an assessment to provide further evidence of their functional capacity. The latter has been an issue for a significant number of participants who transitioned from state and territory disability systems, where the streamlined access

²² NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.35.

arrangements meant the NDIA did not have sufficient evidence of the functional impact of their disability to make planning decisions. [\(Chapter 5 refers\).](#)

~~6.23-6.22.~~ It is ~~therefore~~ reasonable to expect the NDIA will [continue to](#) become more efficient in developing plans and [that](#) participants who have been in the scheme for some time will become more experienced in understanding what supports have been effective in helping them overcome [the](#) social and economic barriers resulting from the functional impact of their impairment. When partnered with stronger use of standardised functional assessments ~~and joint planning approaches, which are already proving successful in approving the majority of plans at the planning meeting, this would be expected to expedite the current delays participants have reported, this would be expected to deliver shorter planning timeframes.~~

~~6.24-6.23.~~ However, notwithstanding these efforts ~~to expedite plan approval~~, as a first principle, [this review notes](#) a participant's ability to access NDIS supports should not be delayed while they obtain any additional information for a support ~~(such as a piece of equipment that can be considered in isolation from the rest of their plan).~~ For example, a participant who needs a wheelchair should not have to wait to access their other NDIS supports while they work with the NDIA to obtain and approve a quote for the wheelchair.

~~6.25-6.24.~~ Rather, participants can and should expect to have certainty about when they will be able to access their NDIS supports, even if all of the supports cannot be funded initially due to the need to produce further information. Therefore, ~~this review considers~~ the Guarantee should specify a timeframe for a plan to approved ~~rather than~~ [and the current 'as soon as reasonably practicable \(Chapter NDIA provided with powers to later amend the plan without requiring a full plan review to be undertaken \(Chapters 8 and 10 refers\).](#)

Recommendation 11: [The NDIS Act be amended to reflect that a plan must be facilitated and approved in accordance with the timeframes outlined in the Participant Service Guarantee.](#)

The interface between NDIS and other service systems

~~6-26-6.25.~~ The interactions between the NDIS and mainstream services are guided by the Principles to Determine the Responsibilities of the NDIS and Other Service Systems ~~(the Principles)~~ agreed by COAG in April 2013 and updated in November 2015. ~~The Principles give~~ [This document gives](#) effect to the intention that the NDIS is not expected to provide for all the supports a participant may need to fully and effectively participate in society on an equal basis as people without disability. [An abridged form is contained in a schedule to the Supports for Participants Rules.](#)

~~6-27-6.26.~~ At the operational level, this review heard there is a lack of clarity about the respective lines of responsibility between the NDIS and mainstream [service](#) systems. This is resulting in boundary issues and funding disputes, ~~which is leading to~~ service gaps and confusion for NDIS participants, poor quality planning and ~~inconsistency of decision making~~ [inconsistent decisions about when a support is reasonable and necessary.](#)

“When plans are implemented, there any often be confusion as to what is covered and why. There does not appear to be sufficient regards to the fact that the NDIA is often deal with an adult participant with a disability, or the exhausted family member of a disabled child.”

Legal Services Commission of South Australia

“The complexity of the client’s support needs and life circumstances may be exacerbated by intersecting with mainstream interfaces. Planning is particularly challenging when the planner is required to interact with the justice system, mental health system or child protection system to facilitate the clients transition to the NDIS.”

Office of Public Guardian Queensland

“Some plans are inconsistent with the agreed roles and responsibilities of the NDIS and other service systems as defined in the Applied Principles and Tables of Services (APTOS) and are therefore not including all the appropriate reasonable and necessary supports.”

Queensland Government

“It is widely recognised that there remains a tension between mainstream services and the NDIA where cost shifting occurs, especially where in-kind contributions still exist in mainstream systems and responsibilities are blurred.”

Amaze

"The complexity of the client's support needs and life circumstances may be exacerbated by intersecting with mainstream interfaces. The Office of the Public Guardian has observed that planning is particularly challenging when the planner is required to interact with the justice system, mental health system or child protection system to facilitate the client's transition to the NDIS."

Office of Public Guardian Queensland

"Some plans are inconsistent with the agreed roles and responsibilities of the NDIS and other service systems as defined in the Applied Principles and Tables of Services (APTOS) and are therefore not including all the appropriate reasonable and necessary supports."

Queensland Government

"It is widely recognised that there remains a tension between mainstream services and the NDIA where cost shifting occurs, especially where in-kind contributions still exist in mainstream systems (such as the education sector) and responsibilities are blurred (such as between the NDIS and mental health sector)."

Unpublished submission

- 6.27. At the start, it needs to be ~~recognized~~recognised that as long as people with disability can access supports across a number of service systems, there will be interface issues. The key issue is that service systems work well together so people receive the right services and achieve the best possible outcomes. ~~In this regard, this Review recognises the significant~~
- 6.28. Significant work has been undertaken by all governments through the DRC to clarify between the boundaries between the NDIS and other service systems, ~~and~~ resolving funding and service delivery issues for the seven priority areas of: Health, Justice, Mental Health, Child Protection and Family Support, Personal Care in Schools and School Transport.

6.29. The most significant outcome to date was ~~the DRC's~~ agreement ~~of the Council~~ in June 2019 to how the NDIS interacts with the health system and how the NDIS will support families with children who are unable to live in the family home because of their complex support needs. Further progress was also made at ~~the Council's DRC's~~ October 2019 meeting in regard to improving the provision of transport supports under the NDIS and interface issues with mainstream mental health and justice systems. Box [53](#) summarises DRC's key agreements in relation to these priority areas:

DRAFT

Box 5:3: Summary of recent DRC 2019 Decisions*decisions*

DRAFT

Health

- ◆ Agreed the NDIS will fund specific disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability
 - This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports (this is a non-exhaustive list).
- ◆ Health supports to be excluded from being provided / funded through the NDIS are:
 - Consistent with the APTOS, items and services provided as part of diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions, and which are not part of the everyday life of a person with disability and / or resulting from the disability.
 - Medically prescribed care, treatment or surgery for an acute illness or injury including post-acute care, convalescent care and rehabilitation.
 - Sub-acute care including palliative care, end of life care and geriatric care, as set out in the APTOS.
 - Items and services covered by the Medicare Benefits Schedule (MBS) and Pharmaceutical Benefits Scheme (PBS).
 - Treatment, services or supports delivered by a doctor or medical specialist, including diagnosis and assessment of a health

Child Protection and Family Support

- ◆ Agreed to clarify roles and responsibilities relating to children and young people who are unable to live in the family home because of their complex disability support needs.
- ◆ Memorandums of understanding (MOUs) subsequently agreed centre on achieving the best outcome for the child/young person.
- ◆ From 1 September 2019, the NDIA commenced funding 24/7 staffing for children in accommodation outside of the family home, as well as disability supports. States and territories are responsible for board and lodging for children in these arrangements, as well as coordinating mainstream services as needed. NDIA is continuing to work with families to ensure NDIS related supports are in place to help keep families together.

Transport

- ◆ Agreed to interim measures to increase transport funding for NDIS participants who are significant users of taxi subsidy schemes, and the full reimbursement of states and territories for the continuation of their schemes for NDIS participants until longer term transport support policy and funding is resolved.

Mental Health

- Committed to improving access to the NDIS for people with psychosocial disability through a range of strategies, and priority areas for improvement to the access process, building a stronger focus on 'recovery' in the NDIS, and to better respond to the episodic nature of psychosocial disability.
- Agreed to strengthen information sharing, transparency and collaboration between Commonwealth, state and territory governments funded mental health services and the NDIA.
- Agreed to the establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs, noting that this would be developed in consultation with states and territories.

The

Council's

Health – June 2019 meeting

- Agreed the NDIS will fund specific disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability
 - This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports (this is a non-exhaustive list).
- Health supports to be excluded from being provided/funded through the NDIS are:
 - Consistent with the APTOS, items and services provided as part of diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions, and which are not part of the everyday life of a person with disability and / or resulting from the disability.
 - Medically prescribed care, treatment or surgery for an acute illness or injury including post acute care, convalescent care and rehabilitation.
 - Sub-acute care including palliative care, end of life care and geriatric care, as set out in the APTOS.
 - Items and services covered by the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme.
 - Treatment, services or supports delivered by a doctor or medical specialist, including diagnosis and assessment of a health condition.

Child Protection and Family Support – October 2019 meeting

- Agreed to clarify roles and responsibilities relating to children and young people who are unable to live in the family home because of their complex disability support needs.
- Memoranda of understanding subsequently agreed with states and territories to focus on achieving the best outcome for the child/young person.
- From 1 September 2019, the NDIA commenced funding 24/7 staffing for children in accommodation outside the family home, as well as disability supports. States and territories are responsible for board and lodging for children in these arrangements, as well as coordinating mainstream services as needed. The NDIA is continuing to work with families to ensure NDIS-related supports are in place to help keep families together.

Transport – October 2019 meeting

- Agreed to interim measures to increase transport funding for NDIS participants who are significant users of taxi subsidy schemes, and the full reimbursement of states and territories for the continuation of their schemes for NDIS participants until longer-term transport support policy and funding is resolved.

Mental Health – October 2019 meeting

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- Agreed to strengthen information sharing, transparency and collaboration between Commonwealth, state and territory government funded mental health services and the NDIA.
- Agreed to the establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs, noting that this would be developed in consultation with states and territories.

Justice – October 2019 meeting

- Agreed the NDIA will introduce Justice Liaison Officers in each state and territory to work across their justice systems. The Officers will provide a single point of contact for workers within each state and territory justice system, providing a coordinated approach to supporting NDIS participants in youth and adult justice systems.
- Agreed that targeted resources and training will be developed and implemented to improve the coordination of supports for NDIS participants interacting with the justice system.
- Agreed to improve information sharing processes between the states and territories and the NDIA to ensure NDIS participants interacting with the justice system received the supports they required.

- 6.30. DRC's momentum needs to be maintained and the respective roles and responsibilities of the NDIS and other service systems for the other priority interface areas resolved as quickly as possible ~~to ensure~~. This is critical in ensuring participants

receive the services they need and do not fall through the gaps as the NDIS transitions to maturity.

- 6.31. Having better clarity [about roles and responsibilities](#) will help, but only if the NDIS and other service systems are held to account [to deliver them](#). ~~An important consideration for this Review is the extent to which DRC's commitment to specific roles and responsibilities are legally binding. This Review for their delivery. Here, this review recognises that DRC's decisions, while being made within the context of the current rules are not,~~ in their specificity, [are not legally](#) binding. Rather ~~the NDIA,~~ under section 12 of the NDIS Act, [DRC](#) only has [powers](#) to ~~have regard~~ [make recommendations about policy matters that relate to the decisions of NDIS or arise under the Council NDIS Act](#).
- 6.32. ~~Therefore, as discussed, On this review considers basis, the legislation Supports for Participants Rules should be amended to be more in line accordance with the recent DRC decisions, and as DRC continues to finalise its position on each other interface area, so as to remove legal ambiguity for NDIA decision makers about the responsibility which service system is responsible for the delivery of supports. On this basis, this review considers the Supports for Participants Rules, which currently provide an abridged form of the Principles, need to be updated as DRC finalises its position on each interface area, and further clarification is provided on when a support is reasonable and necessary, in line with DRC decisions~~ (Chapter_3_refers).

Family-centered approaches

- 6.33. The NDIS Act recognises the role of families and carers in supporting their loved ~~oneones~~ [ones](#) with disability, including children. For example, one of the guiding principles of the NDIS is to strengthen, preserve and promote positive relations between children and their parents, family members and other people who are significant in their life. The NDIS principles also ~~set out~~ [specify](#) children's plans where possible, should strengthen and build the capacity of their families and the carers who support them.

- 6.34. When determining the supports that will be funded by the NDIS, the NDIA is required to take into account what is ~~“reasonable”~~ ‘reasonable’ to expect families, carers, informal networks and the community to provide. The Supports for Participant Rules provide further advice to help the NDIA decide what is ‘reasonable’.
- 6.35. In the case of children, the Supports for Participants Rules, ~~amongst others,~~ state the NDIA ~~needs to~~ must consider what is ~~“normal”~~ ‘normal’ for parents to provide in terms of ~~substantial~~ care and support ~~for children~~ and the suitability of other family members to provide ~~the~~ such supports ~~the child requires, including because of factors such as age and capacity of family members, and the child’s support needs.~~ The NDIA is also required to consider the age and capacity of family members and carers, the extent of any risks to ~~the~~ their wellbeing ~~of the participant’s family members or carers~~ as well as any risks to the child’s wellbeing.
- 6.36. ~~Some~~ In making these decisions, some submissions ~~indicated in making this decision~~ indicate the NDIA does not appreciate that caring for a child with a disability can be a very challenging and demanding experience and one that impacts both the physical and emotional capacities of the caregiver, whether this is a parent, or an informal or paid carer. These impacts can ~~also~~ adversely affect the whole family and their capacity to provide a stable and supportive home environment.
- 6.37. Other submissions indicate NDIS operational policies place an overreliance on the informal supports provided by family members, including siblings, and further supports should be provided in ~~by~~ the child’s plan ~~NDIS~~ to maintain consistency and stability in the home environment, including relieving caregivers from any stress they may be experiencing.

"[The NDIS should] recognise family burnout exists and establish protocols for prevention, diagnosis and associated treatment options. The whole family suffers from the child's disability, including siblings."

Carer of NDIS Participant, Regional Victoria

"The NDIS needs to recognise that an only child does not mean they should give that child less funding for social and community activities. Like all children, they need opportunities for socialization. We [carers] deserve to have a life and part of the reasonable and necessary supports for the participant needs to factor in what is reasonable and necessary for the carer!"

Carer of NDIS Participant, Remote Victoria

"Support families. For children there needs to be a family centred practice to build the capacity of the parents and you support the child with disability. Many of the group funded or block funded supports for families and siblings have gone. Supporting siblings and families will help prevent future issues and therefore long term costs."

Carer of NDIS Participant, Metropolitan Victoria

"I would like NDIS to take the time to really understand myself and my family's needs and my goals. Help me manage my disability so I can reach my goals and live a normal life. To help support and understand that my siblings need support as well to reach their goals. That my disability impedes all my family members especially my siblings as they miss out on so much emotionally, their education and social activities because my family (informal supports) are always supporting me."

Carer of NDIS Participant, Regional Queensland

"Families report that they are offered clinically based therapy services in their plans which are based on traditional models of one on one support for the child with disability, as opposed to building the capacity of the family to support the development of the child, and to participate in universal services like preschool, education and other community environments."

Children and Young People with Disability Australia

This review acknowledges that before

“[The NDIS should] recognise family burnout exists and establish protocols for prevention, diagnosis and associated treatment options. The whole family suffers from the child's disability, including siblings.”

Carer of NDIS participant, regional Victoria

“Support families. For children there needs to be a family centred practice to build the capacity of the parents to support the child with disability. Many of the group funded or block funded supports for families and siblings have gone. Supporting siblings and families will help prevent future issues and therefore long term costs.”

Carer of NDIS participant, metropolitan Victoria

“I would like NDIS to take the time to really understand myself and my family's needs and my goals. Help me manage my disability so I can reach my goals and live a normal life. To help support and understand that my siblings need support as well to reach their goals. That my disability impedes all my family members especially my siblings as they miss out on so much emotionally, their education and social activities because my family (informal supports) are always supporting me.”

Carer of NDIS participant, regional Queensland

- 6.38. Before the NDIS was introduced families and carers were able to access supports through a number of national and state and territory programs. ~~These~~The supports provided through these programs was commonly called “respite”~~‘respite’~~ but the lexicon of “respite”~~word ‘respite’~~ has not been consistently used under the NDIS. This is in keeping with a philosophy that the word “respite” can be perceived as promoting the incorrect, but unfortunately prevalent, notion that people with disability are a burden on their families and loved ones. However, notwithstanding the word used to describe such supports, this review considers improving the capacity of families and carers is critical to supporting them to provide quality care and capacity building support to their loved one with disability.

- 6.39. Evidence suggests planning outcomes directly relate to the ability of the participant and their family or carer to 'speak NDIS'. This review has also heard that if a family asks for "~~respite~~"~~'respite'~~ in a plan that request is denied on the basis the plan is intended to improve the capacity of the person with disability and the family will get sufficient rest periods because the plan will provide for sufficient services to meet the participant's needs. On the other hand, if they ask the family or carer asks for additional paid care support in the family home or "short term accommodation"~~'accommodation'~~, they will often receive supports which have a similar effect.
- 6.40. At the October 2019 DRC meeting, the NDIA committed to providing an implementation update on the initiatives underway to clarify the language of respite supports and to review internal and external communications, staff practice guides, and training material to embed this change. This review understands that the NDIA is rolling out new changes before the end of 2019 clarify the provision of respite supports under the NDIS, including:
- a. updating the standard text in plans to state that core and capacity building supports can be used flexibly to fund respite activities;
 - b. updating guidance for NDIA planners and delegates and Partners in the Community to clarify the use of the term; and
 - c. promotion of guidance materials to external stakeholders through various mechanisms including the NDIS website, states and territories, the sector and peak bodies, newsletters and fact sheets.
- 6.41. The NDIA has also advised further changes will occur in 2020 to update the catalogue of NDIS supports and NDIS price guide to have an explicit reference to respite, so all participants and providers are clear on the scope and intent of services that can be delivered with NDIS funding.
- 6.40-6.42. The other significant challenge faced by families with children and young people with disability is being unable to work because of their ~~care-giving~~~~caregiving~~ requirements. Some submissions ~~to this review~~ indicated parents and carers would like to work, but are unable to, because caring for the person is seen by the NDIA as their "parental" responsibility. To this extent, consultation feedback suggests there appears to be little understanding of the higher-level support families are required to provide to meet their child's everyday needs, when compared to families or parents of children without disability.

"[There is] no understanding of the intersecting issues of other family members with disabilities and the extra demands on informal supports."

Carer of NDIS Participant, Regional New South Wales

"Expecting carers, who provide huge amounts of unpaid support to participants, to manage a separate program is an unrealistic burden that doesn't take into consideration everyday family life. It also means that carers are forced to take more administrative time away for what their core role should be, caring for the participant, to navigate support provisions to the detriment of the participant."

South Australian Government

"There is no understanding or consideration given to the impact of informal carers. There is no provision to help — even in cases where a person with disability requires 24 hour support and the carer may not have left the house in years, been able to seek medical attention or been able to cook dinner."

Carer of NDIS Participant, Metropolitan Victoria

“[There is] no understanding of the intersecting issues of other family members with disabilities and the extra demands on informal supports.”

Carer of NDIS Participant, regional New South Wales

“Expecting carers, who provide huge amounts of unpaid support to participants, to manage a separate program is an unrealistic burden that doesn’t take into consideration everyday family life. It also means that carers are forced to take more administrative time away from what their core role should be, caring for the participant, to navigate support provisions to the detriment of the participant.”

Unpublished submission

“There is no understanding or consideration given to the impact on informal carers. There is no provision to help – even in cases where a person with disability requires 24 hour support and the carer may not have left the house in years, been able to seek medical attention or been able to cook dinner.”

Carer of NDIS participant, metropolitan Victoria

~~6.41-6.43.~~ To deny the right of families and carers to support, either in the home or not, works against the broader intent of the NDIS in strengthening the capacity of informal supports to provide a stable and supportive environment for ~~their loved one/people~~ with disability. The NDIA should seek to ensure participants and their families and carers are informed about ~~what the~~ supports ~~that~~ can be used to promote and sustain informal care, ~~recognizing~~~~recognising that~~ failure to provide adequate support proportionately increases the risk of families being stretched to breaking point, ~~being unable to dedicate the time needed to build the capacity and skills of the child in the home~~ and in extreme circumstances, relinquishing care of their children.

~~6.42.~~ To this end, there is merit in amending the Supports for Participants Rules to ~~reinforce the determination of reasonable and necessary~~ ~~Consultation feedback also indicated that family-centered~~ supports for a child with disability will take into account the role and capacity of families and carers is critical to maximize the benefits of early intervention.

~~6.43-6.44.~~ Submissions also highlighted the importance of supporting families by providing for supports under the NDIS including ~~such as~~ social and community support,

family capacity building, and peer-group learning and support are typically not funded for young children. The experience of having a child with an intellectual or developmental disability almost inevitably has a significant impact on the family, including siblings, and they need support. The Review heard these activities are not typically funded within the NDIS for young children, such support.

6.45. The Review also heard the planning principles in section 31 of the NDIS Act read well for adults, however is they do not always directed towards strengthening sufficiently emphasise the NDIS will seek to strengthen and building build the capacity of families and carers to support young children- with disability. For example, supports being directed by the participant (section 31(b)) of the NDIS Act and being underpinned by the right of the participant to exercise control over his or her life (section 31(g)). Here, feedback indicates) of the NDIS Act).

6.44-6.46. Further, submissions indicated planners are focusing on individual therapy when developing plans for children, rather than considering what other family and community based supports or activities would be beneficial for the child's development. Best practice approaches have consistently demonstrated that individual therapy should not be the sole focus of planning and that what drives development is meaningful participation in everyday activities and social and community-based environments²³.

"The lack of integration between NDIS and education/care services with young children acts to segregate children. Despite the NDIS aiming to increase participation, it acts to increase exclusion, by being segregated from education and other community based services, and by using a "therapy" medical model."

—Early Childhood Intervention Australia

"Families are denied support and services considered "parental responsibilities", as there is a push to medicalize the supports in the plan rather than consider the natural environments and supports in the community which promote the wellbeing and development of children and young people."

Children and Young People with Disability Australia

²³ Moore, T. (2010). *Early Childhood Intervention Reform Project: Revised Literature Review*.

“The lack of integration between the NDIS and education/care services with young children acts to segregate children. Despite the NDIS aiming to increase participation, it acts to increase exclusion, by being segregated from education and other community based services, and by using a “therapy” medical model.”

Early Childhood Intervention Australia

“Families are denied support and services considered “parental responsibilities”, as there is a push to medicalise the supports in the plan rather than consider the natural environments and supports in the community which promote the wellbeing and development of children and young people.”

Children and Young People with Disability Australia

For these reasons,

6.45. ~~This review considers individual therapy should not be the sole focus of planning for children or young people with disability and acknowledges what drives development is children’s meaningful participation in everyday activities and social and community based environments.²⁴ In addition, the importance of a supportive home environment also needs to be taken into account in the context of planning for young children.~~

6.46-6.47. ~~On this basis, there is substantial merit in amending the Supports for Participants Rules should be amended to reinforce that the NDIS will provide for the supports that are needed/intended to build the capacity and capability of the family in supporting families and carers, recognising that they play a critical role in maximising the benefits of early intervention. The Supports for Participants Rules should also be provide explicit reference to reasonable and necessary support providing families and carers with access to supports in the home and other forms of respite as required to assist them in maintaining their child with disability underscoring the importance of supportive home environments/caregiving roles.~~

²⁴ Centre for Community Child Health (2011). DEECD Early Childhood Intervention Reform Project: Revised Literature Review. Melbourne, Victoria: Department of Education and Early Childhood Development. <https://www.education.vic.gov.au/Documents/childhood/providers/needs/ccislitreviewrevised.pdf>

Recommendation 9: The NDIS Rules be amended to:

- a. ~~to strengthen the role of families in early intervention and parental or carers rights to reasonable supports in the home and other forms of respite; and~~
- b. ~~recognise the importance of family centred planning for children to support them in their natural environment and everyday experiences and activities.~~

Recommendation 12: The NDIS Rules be amended to reinforce that the determination of reasonable and necessary supports for children with disability will:

- a. recognise the additional informal supports provided by their families and carers, when compared to children without disability;
- b. provide families and carers with access to supports in the home and other forms of respite; and
- c. build the capacity of families and carers to support children with disability in natural settings such as the home and community.

Maximising the benefits of early intervention for children

~~6.47-6.48.~~ Early intervention aims to improve a child's functional capacity by providing support at the earliest possible stage. ~~It is~~ Evidence based research generally ~~accepted~~ accepts that, the earlier supports are delivered ~~reduces~~ the less likelihood ~~there will be for~~ the child ~~will~~ to require long-term support. Early identification and intervention are critical in the context of the schemes insurance approach.

~~6.48-6.49.~~ ~~Evidenced~~ Evidence-based early childhood intervention focuses on two key areas, capacity building in the child's life including parents, carers and the family unit, and key interventions including evidence-based therapies for the child. These interventions need to be ~~imbedded~~ embedded into the child's every day routines and activities to provide the maximum benefit. ~~Where ever~~ Wherever possible this should be delivered in natural settings, so the child can grow and develop with other children and their families.

~~6.49-6.50.~~ As at 30 September 2019, 46 per cent of NDIS participants are under the age of 18 years old, and 13 per cent of participants are less than 6 years old²⁵. For many

²⁵ ~~COAG Disability Reform Council~~ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.83.

parents of these children, the NDIS will be their first engagement with the disability support system. In many cases, and like parents of children without disability, they may be reliant on the support of family members and friends to help adjust to their new lives as parents, and will not necessarily have existing ties with disability support providers—or networks.

6.50-6.51. Formal evidence suggests despite having a plan approved, many families of a child with disability do not know what to do with it, or know which services or types of therapies would be best for their child’s development²⁶²⁷. Other submissions made to this review suggested the NDIS legislation (and the very design of the schemeScheme itself) focuses on an adult paradigm that inappropriately positsconceives key decisions made in relation to a very young child’s early intervention needs as a simple exercisingexercise of choice in a market of service providers. This feedback makes it clear more support is needed for families to provide the conditions to enable them to exercise informed choice and control.

“The NDIS has a responsibility, as does early childhood intervention, to support families as whole entities, as this provides the best opportunity to support children’s learning and development. The planning and assessment process needs to reflect this responsibility”

Early Childhood Intervention Australia

6.52. This review considers the NDIS can help toThis feedback makes it clear more support is needed for families to provide the conditions to enable them to exercise choice and control, and importantly, to ensure this choice and control can be considered informed choice and control.

²⁶ Centre for Community HealthArefadib, N. and Moore, T. (2019). Realising the Potential: Early Childhood Intervention under the NDIS. Prepared for the Victorian Department of Education and Training. Parkville, Victoria: Centre for Community Child Health, Murdoch Children’s Institute.

²⁷ Purcal, C., Hill, T., Meltzer, A., Boden, N. and Fisher, K. (2018). Implementation of the NDIS in the early childhood intervention sector in NSW – Final report. (SPRC Report 2/18). Sydney: Social Policy Research Centre, UNSW Sydney.

“The NDIS has a responsibility, as does early childhood intervention, to support families as whole entities, as this provides the best opportunity to support children’s learning and development. The planning and assessment process needs to reflect this responsibility.”

Early Childhood Intervention Australia

6.51-6.53. The NDIS should support the best outcomes for children with disability through quality planning, information, referral and advice. This involves working with families at the pace they feel comfortable and ensuring parents and carers are engaged and well supported ~~through this process.~~ Early childhood intervention best practice evidence ~~show~~shows using strengths-based family ~~centered~~centred approaches is a very strong component for successful outcomes ~~and building.~~ Building trust and collaboration takes time and requires trial and testing to ensure the child and their family ~~circumstance is~~circumstances are well understood²⁸.

6.52-6.54. ~~This review also acknowledges there~~There are many factors that impact on a family or carer’s ~~capability and~~ capacity to support a child and it is critical they understand they make the biggest difference to their child’s development. Other factors such as the family’s ability to implement strategies and support the child can in many cases, take some time to build; ~~and it.~~ It is also important to understand families all have varied resources and ~~capability they~~capacity to bring to this process.

6.53-6.55. ~~As such, this review considers further~~Further attention ~~must~~should be given to developing a model of planning for children that is more streamlined and provides more structured support for families ~~in the early on~~ in their experience with the NDIS, in a way that prepares them for taking full control later in their NDIS journey. While the long-term aims of the NDIS are clear, more efforts ~~needs~~need to be made to support parents and children on the journey from initial inexperience, stress and disempowerment to being able to exercise informed choice and control.

6.54-6.56. As discussed in Chapters 45 and 10, ~~this review considers~~ the Guarantee should prescribe a set timeframe ~~of eight weeks~~ for a plan to be developed following an access decision. However, the development of an early intervention plan for a child

²⁸ Early Childhood Intervention Australia, (2017). *Protecting Best Practice: An evaluation of the transition to the ECEI Approach under the National Disability Insurance Scheme in NSW.*

with developmental delay or disability is multifaceted and on many occasions requires a team approach, ~~and. As such, the setting of~~ a system-imposed timeframe under the Guarantee may, if not set appropriately, inadvertently drive perverse outcomes. Quality for children. Rather, quality plans for children need to be informed by a range of support networks and sources including other early childhood professionals, health professionals, specialists and other family members, and as a result, may take longer to develop.

~~6.55-6.57.~~ On this basis, ~~this review considers~~ the Guarantee should provide inherent more flexibility in the timeframes for plans to be approved for children with developmental delay or disability. To rush the first plan process for a family with a young child with disability could work against what the benefits the NDIS could provide in both the short and longer long term.

~~6.56-6.58.~~ However, the sooner the child and family has access to quality information and best practice interventions, the better their long-term outcomes. Therefore, ~~this Review considers~~ another model is needed to ensure early intervention supports flow as soon as practical even where the family is not ready, or confident, to to start planning and exercise informed choice and control.

~~6.57-6.59.~~ ~~It should be noted the~~ The Australian Government recently announced the introduction of interim plans for children who were unlikely to have a plan in place within 50 days, in order to address the backlog of children who had been deemed eligibility eligible but were waiting for a plan. This response was a necessary response in light of the circumstances, and is an effective short-term solution to ensure early intervention supports commence within a reasonable timeframe. ~~However, interim plans do not directly address the capacity building of families, and therefore may not be a sustainable long-term solution., noting the NDIS Act currently requires a plan to be in place in order for the participant to access funded supports.~~

~~6.60. Therefore, This review understands that a key focus of the NDIA is reducing the time children are waiting for support. Over the September 2019 quarter, the number of children waiting more than 50 days to receive their first plan has reduced from 3,314 to 1,686 and the average wait times for children with a first plan in progress reduced from 104 to 54 days²⁹. While this review notes that wait times and delays in decision making have significantly improved and continue to be a key focus of the NDIA, interim plans may not directly address the need to help families build their capacity, and therefore may not be a sustainable long-term solution.~~

~~6.61. Therefore, considers the approach should be taken further and, with the NDIS Act amended to introduce a new concept of an interim early intervention budget, which would be immediately available to the give the NDIA discretionary powers to provide individualised funds to a family upon a positive access decision is made for their child.~~

~~6.58. This An interim budget funding would not be considered as part of, or attached to a plan, in order to ensure the integrity of an individualised planning process is maintained.~~

~~6.62. Rather, by working closely with their ECEI providers, an interim budget partners and the families chosen quality early intervention provider, it would allow the family to start accessing approved early intervention supports while building their readiness to go through the planning process and.~~

~~6.59-6.63. It would also provide families time to develop their capacity to make informed choices about their child's support needs and goals and aspirations, in line with best practice approaches rather than. This would help avoid traditional therapy based medicalised approaches that have inadvertently characterised the early stages of the ECEI approach and drawn criticism from early childhood experts and the early childhood sector.~~

²⁹ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.18.

~~6.60-6.64.~~ ~~This funding would also refocussupport the ECEI partners existing efforts of ECEI providers in building family capacity, rather than only delivering light touch ECEI supports to a family while theirduring the plan is being developed,development process. This would have the effect of~~ reducing the amount of red tape a family needs to go through to start receiving funding, and in turn improve the overall participant experience.

~~6.61.~~ It would, however, be expected the family would commence formal planning processes once they were ready, including choosing whether to receive an interim early intervention budget immediately following a positive access decision, or to start the usual planning process.

~~6.65.~~ In exercising this discretion, the guarantee should reflect the need for capacity building, and make provision to extend the timeframe for approving a participants plan, from the proposed eight weeks, to a maximum of three months (90 days).

~~6.62-6.66.~~ Further consideration will need to be given to the types of supports and services that could be accessed with the interim budget, and the value of an interim budgetthis funding, noting services for young children with developmental delay or disability should be managed in a context whichthat values capacity building and family centred practice and specialisation in early childhood and can deliver best practice and evidence-informed service response.

Recommendation 10: The NDIS Act be amended to provide for an early intervention payment following an access decision, in order to support the develop the capacity of families new to disability, including their ability to exercised informed choice and control.

~~6.67.~~ Importantly, this proposal is not intended to reinvent the way early childhood intervention supports are currently delivered under the NDIS or the role of ECEI partners. Rather, the provision of this funding is intended to support ECEI partners in their efforts to support families to access best practice strengths-based family-centred supports as early as possible.

~~6.68.~~ Accordingly, providing this funding will support the insurance principles of the scheme by providing children and families with the opportunity to access timely,

comprehensive and well-integrated early intervention support to improve their child's developmental trajectory and overall quality of life.

Recommendation 13: The NDIA Act be amended to provide more flexibility for the NDIA to fund early intervention support for children under the age of seven years outside a NDIA plan, in order to develop family capacity and ability to exercise informed choice and control.

Supported Independent Living

6.63-6.69. ~~SIL is a type of NDIS support that~~ provides funded assistance ~~with~~^{for} and/or supervision of daily tasks with the aim of developing a participant's capacity to live as independently as possible. In most instances, SIL funding is ~~utilised~~^{used} to provide supports in shared or individual living arrangements, but does not cover the cost of the accommodation itself, such as the cost of the capital asset, rent, board or other daily living expenses. SIL does not cover community participation that happens outside the accommodation or support coordination.

6.70. As at 30 September 2019, just 21,654 participants (or 6.9 per cent of all NDIS participants) received ~~committed~~ SIL supports in their plan, however SIL funding accounts for 32 per cent of all NDIS funding. ~~Importantly, the~~³⁰.

6.64-6.71. The way SIL is funded in a plan differs from most other NDIS supports – it is not based ~~completely~~ on an individual assessment of the supports a person needs in the home environment – rather, the value provided in the plan is determined via a quotation provided by a service provider who has a suitable vacancy in a dwelling. This means that SIL is linked to the provider, not the participant, with re quoting required if the participant wishes to move to another home.

³⁰ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.384.

~~6.65-6.72.~~ This review ~~has~~ heard that the process of obtaining SIL supports in plans is disempowering participants and working against the ~~scheme's overarching principles of choice and control.~~ schemes overarching principles of choice and control. Specifically, submissions indicated the SIL quoting process excludes participants, their families and carers in the decision-making process. Although SIL providers must sign a declaration that says the participant has been involved in the process, the current approach means the value of the plan is determined between the NDIA and the provider, with participants potentially having little or no insight into the specific information included in the quote.

~~6.66.~~ In this regard, submissions to this review indicated the SIL quoting process is not including participants, their families and carers in the decision making process. This is because the value of the plan is determined between the NDIA and the provider, with participants having little or no insight regarding what information is or is not included in the quote.

~~[Query for NDIA – can you provide more information about why SIL is based on quotes – what is considered as part of this process – participant involvement etc.]~~

"I get a huge amount of SIL funding but I do not know what I am supposed to get for this."

Family member and carer of NDIS participant, regional Queensland

"The secret SIL business needs to be transparent and participants should be able to see what they are being charged for and how much they are paying."

Family member and carer of NDIS participant, regional Victoria

"I get \$189,000 SIL [funding] but I don't know what my provider is supposed to give me for that amount of money. I also pay them rent. I don't think they provide much for that amount. In the plan it should tell me what I should be getting so I know if they are doing the right thing."

Family member and carer of NDIS participant, regional Queensland

~~6.67-6.73.~~ While ~~this review understands that~~ some supports can only be included in plans through a quoting process, in all cases such processes should be transparent and

~~maximize~~maximise the ability of participants to drive decisions that impact their daily lives. ~~Importantly, and in~~ line with the principles underpinning the NDIS Act, the process of quoting for SIL should not impede participants from having choice and control, including the choice of alternative support arrangements in their home.

6.74. Consultation feedback reinforced contemporary approaches to accommodation for people with disability should, as far as practicable, separate the provision of housing and the support provided in the home. This is a contested issue under the NDIS, with anecdotal evidence suggesting an emerging trend of SDA providers pre-selecting SIL providers to operate exclusively in the dwelling, or SIL providers developing outdated housing options that do not conform with best practice building standards.

These significant issues cannot be considered in isolation. Accordingly, there is merit in the NDIA undertaking a comprehensive review of its operational guidelines for the delivery of SIL under the NDIS, with a view to increasing transparency for participants

~~6.68-6.75. Therefore, this review suggests that the NDIA should undertake a~~ comprehensive review of its operational procedures for SIL, noting the current review into SIL being undertaken by the Parliamentary Joint Standing Committee into the NDIS.

Recommendation 14: The NDIA undertake a review of its operational guidelines when funding Supported Independent Living, with an emphasis on increasing the involvement of participants, families and carers in the decision-making process and in line with the principles of choice and control.

CHAPTER 7 – PURCHASING NDIS SUPPORTS

KEY FINDINGS

- ✓ A key tenet of the NDIS is the participant having flexibility, choice and control over the implementation of their disability supports. Plan budgets are quite rigid and prevent participants from utilising the full value of their NDIS supports.
- ✓ Understanding, managing and implementing a plan is highly complex and confusing, particularly for new participants who have not previously accessed disability supports. Participants need more help, particularly in the early years of a plan, to maximize the benefits of their NDIS funding.
- ✓ Funded support connection and coordination could be more effectively utilised to build participant readiness and capability, increase plan utilisation and lift or sustain participant outcomes.
- ✓ There is merit in providing more defined power for the NDIA to commission flexible service models in areas where choice and control is constrained by a lack of market supply

KEY FINDINGS

- ✓ Plan budgets are too rigid and prevent participants having flexibility, choice and control over the implementation of their disability supports.
- ✓ Understanding, managing and implementing a plan can be complex and confusing, particularly for new participants who have not previously accessed disability supports. Participants need more help, particularly in the early years of a plan, to maximise the benefits of their NDIS funding.
- ✓ More clarity should be provided on the matters that are considered when funding support connection and coordination in participants plan.
- ✓ The NDIA should have more defined powers to commission flexible service models in areas where choice and control is constrained by a lack of market supply or other regulatory restrictions.

- 7.1. Division 3 of Part 2 of the NDIS Act sets out how a participant can manage the funding for supports in their plan and how NDIS amounts are paid to a participant, or to a person who is managing the funding for supports under the plan on the participant's behalf.
- 7.2. I centered my analysis [of this aspect](#) on three key issues:
- how [participant's participants](#) can use their plan budget to help them achieve their goals and aspirations ~~and~~;
 - what additional supports could be provided to help participants get the best outcomes out of their NDIS funding; and
 - safeguards to ensure participants are protected when accessing funded supports from the market.
- 7.3. I also considered the requirements set out in the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules) to the extent they could be amended to provide greater clarity on how the NDIA can support participants to access the services they need, when, how and in the way they need them.

Background to plan implementation

- 7.4. A participant's plan sets out, amongst others, the reasonable and necessary supports that will be funded by the NDIA and identifies how the participant wishes to manage their plan. A participant has three options for managing the supports in their plan ([refer Box 64 refers](#)).

Box 4: Options for managing the supports in a participant's plan

Self-management:

- ◆ The NDIA provides the participant with funding so they can buy supports that will best help them meet their plan goals.
- ◆ The participant's support providers may or may not be registered with the NDIS.
- ◆ The participant can negotiate the price they pay for a support, provided the cost can be met within the plan funding for the duration of their plan.
- ◆ The participant does not need a service booking for their self-managed supports as they pay their providers directly.

Plan-management:

- ◆ The NDIA pays the participant's plan manager, who will pay their providers on the participant's behalf.
- ◆ The participant's plan manager must be registered with the NDIS.
- ◆ The participant's support providers may or may not be registered with the NDIS.
- ◆ The plan manager cannot pay more than the NDIA set price limit for specific supports.

NDIA-managed funding:

- ◆ The NDIA pays the participant's providers on the participant's behalf.
- ◆ The NDIA can only pay providers that are registered with the NDIS and cannot pay more than the NDIA set price limits.

Note: Chapter 2, Part 2, Division 3 of the NDIS Act and Plan Management Rules provide for matters and risks to be assessed in deciding whether a participant may self-manage. These considerations go to whether self-managing their plan would present an unreasonable risk to the participant.

Overtime

Self-management:

- The NDIA provides the participant with funding so they can buy supports that will best help them meet their plan goals.
- The participant's support providers may or may not be registered with the NDIS.
- The participant can negotiate the price they pay for a support.
- The participant does not need a service booking for their self-managed supports as they pay their providers directly.

Plan-management:

- The NDIA pays the participant's plan manager, who will pay their providers on the participant's behalf.
- The participant's plan manager must be registered with the NDIS.
- The participant's support providers may or may not be registered with the NDIS.
- The plan manager cannot pay more than the NDIA set price limit for specific supports.

NDIA-managed funding:

- The NDIA pays the participant's providers on the participant's behalf.
- The NDIA can only pay providers that are registered with the NDIS and cannot pay more than the NDIA set price limits.

Note: Chapter 2, Part 2, Division 3 of the NDIS Act and Plan Management Rules provide for matters and risks to be assessed in deciding whether a participant may self-manage. These considerations go to whether self-managing their plan would present an unreasonable risk to the participant.

- 7.5. Over time, there has been a clear trend towards greater ~~more~~ participants using plan management and self-management. ~~As at options. Between~~ 30 September 2018 and 30 September 2019, ~~17 per cent~~ the number of participants ~~chose~~ choosing to:
- a. fully self-manage their supports, ~~12 per cent chose~~ increased from 13 to 17 per cent;
 - b. partly self-manage, ~~32 per cent chose~~ increased from 10 to 12 per cent;
 - c. use the support of a plan manager, ~~and 39 per cent chose~~ increased from 21 to 32 per cent; and
 - ~~7.5.d.~~ have the NDIA manage the funding in their plan ~~on their behalf~~³¹. ~~decreased from 56 per cent to 39 per cent~~³².
- 7.6. The NDIA currently ~~assign~~ assigns the funding for ~~the~~ participants reasonable and necessary supports into one of three budgets:
- a. Core budget - funded supports that help the participant with everyday activities;
 - b. Capacity Building budget - funded supports that help the participant to build their independence and skills to ~~help~~ reach their long term goals; and
 - c. Capital Budget - funded supports for higher cost pieces of Assistive Technology (aids, equipment and vehicle modifications) and home modifications.
- 7.7. Within these three separate budgets, a ~~participants'~~ participant's funding is further broken down into a number of sub-categories (Box ~~75~~ refers). While participants have flexibility to spend their funds freely across each sub-category within the same budget, participants currently have limited flexibility to move funds across the budget categories.
- a. the core supports budget is the most flexible and participants can use their funding across all the sub-categories, other than the transport subcategory.
 - b. funding in the capacity-building support budget can only be spent for services and supports within the sub-categories in which the funding is allocated.
 - ~~c.~~ funding in the capital supports budget ~~is a specific purpose allocation and cannot be used to pay for any other supports or services.~~

³¹ COAG Disability Reform Council Quarterly Report 30 September 2019, p.78.

³² NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.78; NDIA Quarterly Report to DRC for the period ending 30 September 2018, p.52.

c. However, as it is important to note allocated for a specific purpose.

- 7.8. Importantly, the current practice of segregating plan funding ~~described in plans~~ into core, capital and capacity building budgets is overlaid through NDIA policy and the business systems. There is no documented legislative rationale for the three budget categories, or that they necessarily translate to restrictions in purchasing NDIS supports.

Box 5: Current budget construction of ~~participants~~ participant plans

Core Supports	Capacity Building Supports	Capital Supports
1. Assistance with Daily Life	1. Support Coordination	1. Assistive Technology
2. Consumables	2. Improved Living Arrangements	2. Home Modifications
3. Assistance with Social <u>&and</u> Community Participation	3. Increased Social <u>&and</u> Community Participation	
4. Transport	4. Finding and Keeping a Job	
	5. Improved Relationships	
	6. Improved Health and Wellbeing	
	7. Improved Learning	
	8. Improved Life Choices	
	9. Improved Daily Living	

- 7.9. Depending on the participant's situation, there is a range of people who can help them implement their plan and supportassist them to start receiving supports. For example, the participant can start by themselves if they are self-managing or already have a good idea about whatthe supports they need and which service providers they would like to accessuse. Alternatively, the participant can receivedreceive funded support coordination in their plan or receive support from their local LAC or ECEI Partnerpartner who will assist them to:
- a. understand their plan and the supports and services that can be purchased with their NDIS funding;

- b. find service providers and enter into service agreements and create service bookings with their chosen providers;
 - c. connect with other informal, community and funded supports in their community; and
 - d. answer any questions if participants have any challenges in using the funded supports in their plan.
- 7.10. The NDIA has published a number of documents to help participant's understand and implement their plan, including how they can manage the funding in their plan across the three budget categories. This includes guides to using the portal to create service bookings, understanding how prices for supports in the plan are set, and understanding ~~a participant's~~ participant's responsibilities ~~should~~if they ~~wish to~~ self-manage all or some of their NDIS funded supports.
- 7.11. A number of other fact sheets and tools are also published on the NDIS website to provide guidance on how to ask for help in accessing funded supports, choosing service providers and identifying opportunities to connect with mainstream and community-based services.

Plan support flexibility

- 7.12. Consultation feedback suggests ~~is~~ that the way a participant's plan is constructed ~~restricting~~ participant choice and control and takes away from an emphasis on participant goals and outcomes. Whether there are specific pain points relating to particular budget categories is less clear, but the need for more flexibility, ~~particularly~~ especially being able to move funds between budget categories, was ~~highlighted as~~ a prominent theme.

“The siloing of funds into categories is maddening. A participant (or their carer/delegate) knows what supports are most optimal.”

Carer of NDIS Participant, Regional South Australia

“Make the budget more flexible. If I run out of core but have heaps left in capacity building, I should be able to use that money as it has already been budgeted. At least have the option to reallocate funds across the budget in consultation with the agency.”

NDIS Participant, Metropolitan Victoria

“Give participants flexibility to move funding within your plan into different categories when needed. More choice and control and flexibility for the participants to use funding in there plan. NDIS needs to accept that if you can’t find supports within certain plan categories because of the shortage of community supports workers and allied health professionals you should not lose that funding in your next plan.”

Carer of NDIS Participant, Metropolitan New South Wales

“The fundamental principle of choice and control is being undermined by poor policies and processes, and inflexible rules that just don’t make sense to people. There are too many stories of people running out of funds in one area, having funds remaining in another area, and no capacity to move things around.”

Every Australian Counts

“The principles of choice and control are fundamental to the scheme. They are supported to be central pillars, inherent in the very DNA of the scheme. And yet the way participant plans are currently constructed undermines these two core principles.”

National Disability and Carer Alliance

This review acknowledges the

“The siloing of funds into categories is maddening. A participant (or their carer/delegate) knows what supports are most optimal.”

Carer of NDIS participant, regional South Australia

“The fundamental principle of choice and control is being undermined by poor policies and processes, and inflexible rules that just don’t make sense to people. There are too many stories of people running out of funds in one area, having funds remaining in another area, and no capacity to move things around.”

Every Australian Counts

“The principles of choice and control are fundamental to the scheme. They are supported to be central pillars, inherent in the very DNA of the scheme. And yet the way participant plans are currently constructed undermines these two core principles.”

National Disability and Carer Alliance

- 7.13. [The](#) NDIA recently announced a program of work to simplify plan budget arrangements to give participants more flexibility in using their NDIS funding. This will involve collapsing the existing budget categories of core and capacity building [into one category](#) from 1 July 2020. The NDIA is also seeking to describe more supports generally, so participants have a greater degree of flexibility over their implementation, and [being to be](#) clearer in its communication with participants to provide greater transparency around how plan ~~support~~ budgets are developed.

~~7.14.~~ The NDIA's work to reform how plan budgets are constructed is welcomed to the extent the participant knows which supports ~~were~~~~are~~ intended to be funded and the outcomes those supports ~~were~~~~are~~ intended to achieve. However, consultation feedback suggests many participants already do not know what supports have been funded in their plan or how they can use their NDIS funding ~~across budget categories~~. Therefore, any move to ~~collapsing~~~~collapse~~ budget categories, while ~~enabling~~~~giving~~ participants more flexibility ~~in implementing their plan~~, may ~~still create confusion for participants~~. It may also ~~make it less clear about what supports the participant was actually funded for, and may weaken the NDIA's ability for the NDIA to ensure the funds are spent on the intended~~~~specific~~ purpose ~~they were provided for~~.

~~7.14.~~

7.15. Therefore, in order to ensure participants have a clearer understanding of how their plan budget was constructed, and how their funding should be used, Part 6 of the Plan Management Rules should be amended. This Part currently sets out that some supports in the participant's plan may be described generally, whether by reference to a specified purpose or otherwise, or a support may ~~also~~ be specifically identified. For generally described supports, the Plan Management Rules set out ~~that~~ the participant will have a high degree of flexibility over their implementation. For specifically identified supports, the Plan Management Rules set out ~~that~~ those supports must only be purchased or provided in the way described in the participant's plan.

7.16. The amendment to the ~~rule~~ Plan Management Rules would reinforce that, as a first principle, a participant's reasonable and necessary supports should always be described generally, but with sufficient detail included in the plan so a participant understands what outcome was intended to be achieved with that funding. Importantly, a participant's plan should not provide for a lump sum amount with no clarity on what support ~~was~~~~were~~ funded (or not funded) and why. Such clarity is needed to ensure the participant understands what the NDIS funding was provided for, irrespective of having greater flexibility in how it can be used.

7.17. ~~There is also merit in amending the~~The Plan Management Rules ~~to~~should also prescribe that certain supports (in ~~certain~~~~particular~~ circumstances) will ~~generally~~ always be described specifically ~~in plans~~ and to provide reasons for this. ~~This review~~ It would ~~expect~~~~quotable~~be expected that higher cost capital items, such as assistive technology, home modifications and specialist disability accommodation would ~~always~~ be described specifically, ~~and other supports encouraged to be described~~

~~specifically, such as plan management, support coordination and behavioural intervention support.~~

Recommendation 11: ~~The NDIS Rules be amended to clarify that supports in a participant's plan should usually be prescribed generally (and therefore can be used flexibly), and that they should only be prescribed specifically in limited circumstances.~~

Recommendation 15: ~~The NDIS Rules be amended to clarify that supports in a participant's plan should be used flexibly, except in limited circumstances, such as capital supports.~~

DRAFT

Accessing funded supports

- 7.18. Consultation feedback indicates some participants were not provided with information and guidance on how to implement their plan, including how to find ~~out about the~~ service providers in their community, and what 'quality indicators' they should be looking for in a ~~providers~~provider's service offering. As ~~set-out~~stated earlier, this experience may be linked to the rapid scale up of participants entering the scheme, with planners seeking to push through plan approvals in response to pressure to meet the transition intake targets- [\(Chapter 3 refers\)](#).

"In the whole eight plans we have never had an implementation meeting or support to implement the plan, no clarification on what the responsibility of self-management are, what we can spend our money on and what we can't."

Family member and carer of NDIS Participant, Metropolitan South Australia

"At the 12 month mark I had no idea how to use my plan properly and the review was easy compared to my initial planning meeting"

NDIS Participant, Metropolitan Queensland

"There is confusion about how the participant can or should implement their approved NDIS plan and access supports, particular regarding their first plan, or where there is a need for urgent equipment or accommodation. Once an NDIS plan has been approved, the participant often need assistance to 'get started'."

Western Australian Government

"Families reported that once is approved don't know what is the next step, how to use the funds or to find and compare providers and resulted in underspending and underutilisation of plans."

Children and Young People with Disability Australia

“In the whole eight plans we have never had an implementation meeting or support to implement the plan, no clarification on what the responsibilities of self-management are, what we can spend our money on and what we can’t.”

Family member and carer of NDIS participant, metropolitan South Australia

“At the 12 month mark I had no idea how to use my plan properly and the review was easy compared to my initial planning meeting.”

NDIS participant, metropolitan Queensland

“There is confusion about how the participant can or should implement their approved NDIS plan and access supports, particularly regarding their first plan, or where there is a need for urgent equipment or accommodation. Once an NDIS plan has been approved, the participant often needs assistance to ‘get started’.”

Unpublished submission

“Families reported that once a plan is approved they don’t know what the next step is, how to use the funds or how to find and compare providers, which resulted in underspending and under-utilisation of plans.”

Children and Young People with Disability Australia

- 7.19. Stakeholders also reported, [that](#) despite the volume of information and guidance available on the NDIS website, their planner did not tell them it was there, they could not find what they needed, or what they could find was not [available in a format that was](#) accessible. This is supported by strong survey feedback ~~which~~[that](#) suggests participants do not know how to implement their plan, find providers, or create service bookings and agreements– ([Figure 6 refers](#)).

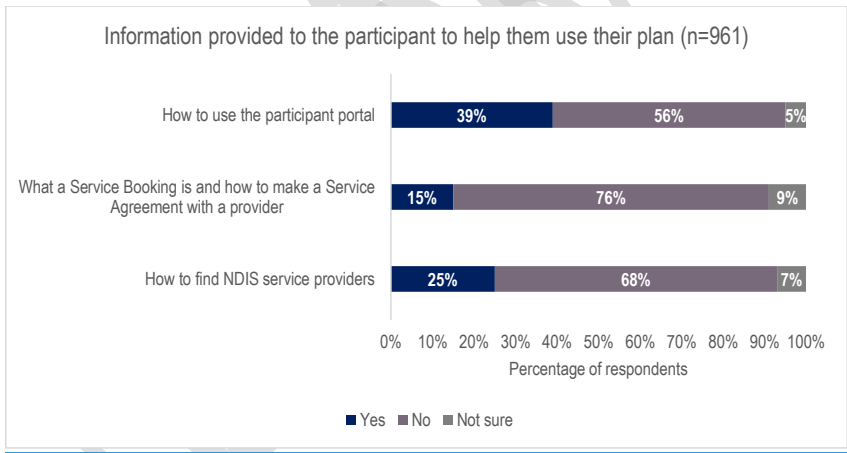
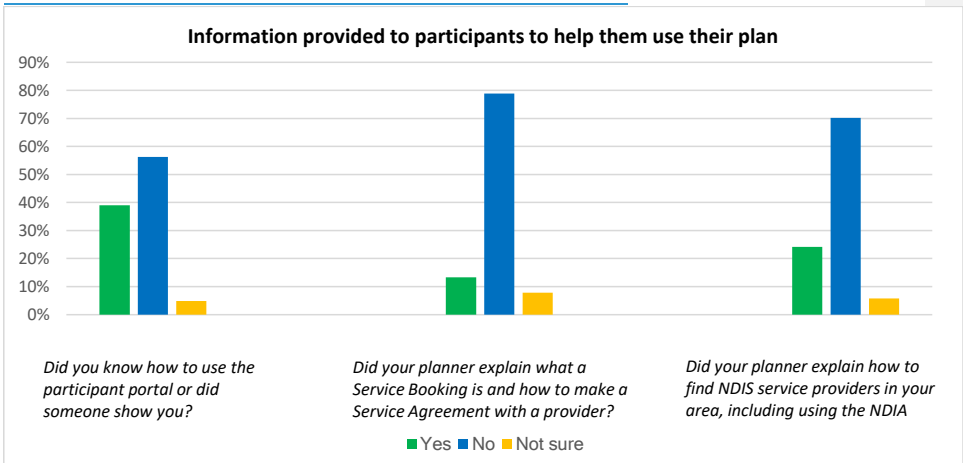


Figure 6: Access to plan implementation information (long-form survey)

7.20. If participants are not provided with accessible information to assist them to understand and implement their plan, this result will be ~~reflected in the~~ underutilisation of their funded supports. Utilisation is the proportion of expenditure (both planned and used) against the total plan budget.

- 7.21. At 30 September 2019, utilisation across all participant plans was ~~just~~ 69 per cent³³. However, when looking over the lifecycle of a participants NDIS ~~plan~~ journey, it is evident ~~that~~ utilisation ~~grows~~ increases the longer the participant stays in the scheme, ~~suggesting~~. This suggests that utilisation improves as ~~a consequence of participant's building~~ participants build their confidence in exercising choice and control. (Figure 7 refers).

[DRC REPORT]

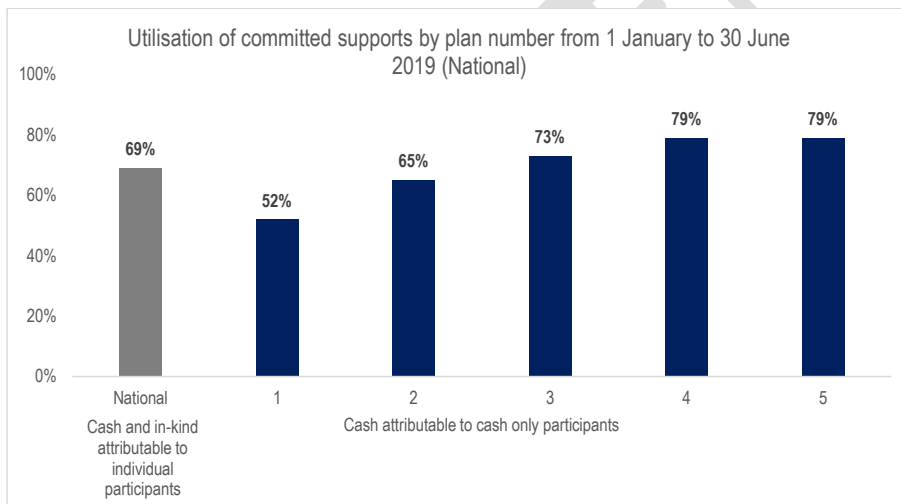


Figure 7: Utilisation of committed supports³⁴

- 7.22. While this data ~~also~~ shows ~~that~~ participants become more ~~experience~~ experienced and confident in understanding, managing and using their plan over time, there remains a need for the NDIA to better support participants, ~~especially new entrants to the Scheme~~, to implement their plan and optimise the benefits of their funded supports. ~~This is particularly important when the participant and their family is new to the scheme and disability~~. Participants should not be ~~penalised~~ disadvantaged in the early years of a plan because they are not properly informed.

³³ COAG Disability Reform Council Quarterly Report 30 September 2019, p.113.

³⁴ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.113.

- 7.23. However, low utilisation is not necessarily solely indicative of the participant not being provided with information on how they can use the funding in their plan. ~~It can also be attributed to a range of other~~Other reasons, ~~including for underutilisation can include~~ the inability to connect with providers, ~~more supports than expected being provided informally through family, friends or the community,~~ the late activation of plans, ~~or to thin markets. Indeed, survey feedback indicates the top five reasons why participants reported they were not likely to spend all their money in their plan relate to:~~ or family, friends and the community providing more informal support than what was expected.
- 7.24. In survey feedback, participants reported the top five reasons they were not likely to spend all the money in their plan were:
- ~~a. their preferred service provider being too busy;~~
 - b.a. they are still looking for a provider in their area;
 - ~~e.b.~~ they want to, but right now it's too hard;
 - c. their preferred service provider being too busy;
 - d. the providers in their area don't deliver the supports or services they need; and
 - e. they need more help from their LAC or Support Coordinator.

“Thin markets, inflexible supports in NDIS plans, crisis situations or transiency have also contributed to difficulties in accessing supports”

Western Australia Government

“Sometimes people can’t find services because there just aren’t services to find. Or when they finally do find a service, they are confronted with closed books and long wait lists. People with disability and their families report lack of services in all areas, but particular in rural and remote areas. This scarcity of support is also true for particular population groups in metropolitan areas. Families with a son or daughter with complex needs, for example, frequently report that there are limited services available just equipped to deal with the complexity of the participant’s life”

Every Australian Counts

“For people with complex needs, access to and the availability of supports, particularly accommodation, is extremely difficult. Service providers will often pick and choose the participants who they are willing to provide support to.”

ACT Human Rights Commission

“Low utilisation may be due to participants and their families having difficulty identifying and negotiating with providers, and providers being unavailable in some geographic areas or for some types of supports.”

Queensland Government

“The process of finding and connecting to services can be overwhelming for participants, particularly those who are new to receiving supports.”

Victorian Council of Social Services

"Thin markets, inflexible supports in NDIS plans, crisis situations or transiency have also contributed to difficulties in accessing supports."

Unpublished submission

"Sometimes people can't find services because there just aren't services to find. Or when they finally do find a service, they are confronted with closed books and long wait lists. People with disability and their families report lack of services in all areas, but particular in rural and remote areas. This scarcity of support is also true for particular population groups in metropolitan areas. Families with a son or daughter with complex needs, for example, frequently report that there are limited services available equipped to deal with the complexity of the participant's life."

Every Australian Counts

"Low utilisation may be due to participants and their families having difficulty identifying and negotiating with providers, and providers being unavailable in some geographic areas or for some types of supports."

Queensland Government

7.24-7.25. Following the approval of a plan, the NDIS Act does not require the NDIA to assist the participant ~~to implement it. In keeping with the intent of the Guarantee, therewith implementation.~~ There is merit in requiring planners to offer a plan implementation meeting following the approval of a participant's plan and this ~~be~~ being included as a requirement under the Guarantee (Chapter 10 refers).

7.25-7.26. This meeting would provide new NDIS participants with a detailed overview on how to use their plan, including how they can spend the funded supports in their plan, how to find NDIS service providers, make service agreements with providers and how to use the participant portal.

7.26-7.27. Plan implementation meetings could also be offered to existing participants to provide further information ~~about~~ on how they can ~~continue to best~~ maximise ~~their~~ the supports within their plan budget and consider alternative service delivery arrangements if they ~~aren't~~ are not satisfied with the ~~current~~ outcomes they are ~~currently~~ getting.

~~7.27-7.28.~~ The offer of a plan implementation meeting would align with feedback that participants are finding it overwhelming when they receive their NDIS plan, and they ~~don't do not~~ understand what their plan means or how they can use it. Despite there being a lot of information on the [NDIS website](#) to help people understand and implement their needs, this review considers that sometimes ~~the~~ participant ~~needs would prefer~~ to talk ~~it through~~ with someone. ~~face-to-face about their individual situation rather than read general information.~~

~~7.28-7.29.~~ Such an approach would build on the NDIA's current plan to roll out joint planning approaches nationally, which includes a follow-up meeting with the participant and their planner that takes place no later than three weeks after the planning meeting. ~~(Chapter 3 refers). It would also support current operational arrangements, where LACs and ECEI partners are contracted to provide ten hours per participant annually for this purpose.~~

Support coordination

~~7.29-7.30.~~ ~~A significant number~~ ~~As at 30 September 2019, 39 per cent~~ of all NDIS participants have ~~"Support Coordination"~~ funded [support coordination](#) in their ~~plan plans~~³⁵. This is a capacity building support [intended](#) to assist the participant to build the skills they need to understand, implement and use their plan. A support coordinator is responsible for working with the participant to connect with informal, community and funded supports, and increase their capacity to maintain relationships, manage service delivery tasks, live more independently and be included in their community.

~~7.30.~~ ~~As at 30 September 2019, 39 per cent~~ [Consultation feedback has demonstrated the importance of all support coordination as part of the NDIS participants have.](#) ~~Participants without~~ funded support coordination [in their plans](#)³⁶. ~~The remainder of participants receive some assistance with plan implementation from their LAC or ECEI Provider to guide the participant through how to use their plan and search for and connect with service providers. This review understands that ten hours annually is intended to be provided to participants for this purpose.~~

³⁵ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.103.

³⁶ COAG Disability Reform Council Quarterly Report 30 September 2019, p.103.

- 7.31. Feedback to this review indicates the presence of a funded support coordinator has been critical for participants in getting the best outcomes from their NDIS funding and that participants without it need reported they needed more support to understand and implement their plan, identify including identifying and connect connecting with providers and use in their plan funding community. In particular, the Review heard that feedback suggests funded support coordination reduced reduces the level of administrative effort required to manage a plan, which otherwise could place a task that often places significant burden on participants, their families or their informal networks.

"We need more support to utilise the plan. We can only do so much organizing and vetting organisations. It's an emotionally draining process and we really do not have the right skills. We feel overburden and pressured to ensure dad's plan is utilised fully. We asked for support coordination, but the LAC said we wouldn't get it."

Family member and Carer of NDIS Participant, Regional Queensland.

"Support coordination is the only way to help me understand what NDIA means for me and my family"

Family member and Carer of NDIS Participant, Regional Victoria.

"As a support worker, I believe support coordination and plan management should already be arranged by the NDIA as a requisite service and be in place once access is approved. Clients, and support workers, NGOs and government mental health services don't have the ability, or time, to understand how to coordinate or manage all this"

Carer of NDIS Participant, Metropolitan Victoria

“We need more support to utilise the plan. We can only do so much organising and vetting organisations. It’s an emotionally draining process and we really do not have the right skills. We feel overburdened and pressured to ensure dad’s plan is utilised fully. We asked for support coordination, but the LAC said we wouldn’t get it.”
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“As a support worker, I believe support coordination and plan management should already be arranged by the NDIA as a requisite service and be in place once access is approved. Clients, support workers, NGOs and government mental health services don’t have the ability, or time, to understand how to coordinate or manage all this.”
Carer of NDIS participant, metropolitan Victoria

- 7.32. The NDIA has ~~provided advice indicating~~advised that participants who have higher and more complex needs are provided with funded support coordination, particularly those who face immediate and significant barriers to plan implementation, such as people with:
- a. severe and multifaceted ~~disability requirements~~disabilities requiring multiple supports;
 - b. conditions of a degenerative nature and those with supports requiring active management and ongoing adjustment due to changing needs;
 - c. psychosocial disability;
 - d. the involvement of multiple service systems, such as health, justice, or child protection; and
 - e. those with a history of changing and challenging service provision.

- 7.33. ~~Funded~~The NDIA has also advised that funded support coordination is not intended to be the principal method to support participants to ~~utilise their plan. One of the principle functions of LAC and ECEI partners is to assist participants to~~ navigate the market and implement their plan. ~~As~~Rather, this is one of the principal functions of LAC and ECEI partners.

~~7.33-7.34.~~ However, as discussed in Chapter 3, the additional burden on ~~Partners~~ ~~of partners in undertaking~~ planning functions is having a distorting effect, and potentially driving up the demand for funded support coordination. ~~(noting reforms)~~ This burden may be addressed, at least in part, through the ~~increase~~ ~~used~~ ~~proposed~~ increased use of functional assessment ~~are anticipated to contribute to easing these issues~~ assessments and its resulting simplification of the planning process (Chapters 4 and 6 refers).

~~7.34-7.35.~~ However, ~~and notwithstanding that~~ Nevertheless, the considerations behind funding support coordination ~~market is immature, submissions provided to this review suggest that support coordination is viewed as essential tool by many participants to utilise funding in their plan. Therefore, this review considers that its function as~~ a reasonable and necessary support, warrants more scrutiny and oversight by all governments, ~~and in turn, that the~~ by amending the NDIS Rules to include principles for NDIS delegates to consider in determining when funded support coordination is reasonable and necessary ~~be elevated from NDIA's operational guidance into the NDIS Rules.~~

~~7.35.~~ This review considers that this approach would provide a stronger, participant focused, signal to the NDIA about the importance of participant being supported to utilise funding in their plan.

~~7.36.~~ While this approach would not mean that some level of funded support coordination must be included in all ~~participant~~ participant plans, ~~as that would remain a reasonable and necessary decision on an individualised basis. Rather,~~ it would formalise ~~critical considerations~~ the factors to be considered when determining what is reasonable and necessary in this context. ~~As such, elevating~~ Further consideration would be required as to what the principles ~~into the NDIS Rules would reinforce support coordination being actively considered in the planning process. Principles could include:~~

~~7.36.~~ [Question for NDIA — what ~~be,~~ but some potential examples ~~are the appropriate boundaries noting balance of R&N and sustainability?~~];

- a. whether the participant is a new entrant to the ~~Scheme~~ scheme or has a newly acquired disability;

- b. the level of complexity of the participant's disability or disabilities and what this means for the range of supports to be managed;
- c. whether the participant's circumstances mean there are one or more intersections with other service systems to manage (e.g. justice, health, child protection, voluntary out of home care, ~~or housing~~);
- d. the stability of the participant's living arrangements;
- e. the participant's location, and any cultural ~~consideration~~ considerations;
- f. the extent, stability and capacity of a participant's informal support network; and
- g. the extent of the participant's social and economic ~~participant~~ participation and engagement.

7.37. However, the market for support coordination is not well established (Chapter 3 refers). Therefore, in ~~increasing the use of funded~~ funding support coordination, the NDIA should continue to build the depth and capacity of the provider market and implement strategies to ensure ~~participants that~~ participants' choice and control is not restricted. This is especially important in thin markets or where the support coordinator's organisation ~~also offers an array of other NDIS services — in these cases, which could pose a~~ conflict of ~~interests may arise~~ interest.

7.38. Anecdotal evidence suggests ~~that~~ particular conflicts of interests have arisen when a participant is receiving SIL ~~supports~~ and support coordination from the same provider. In at least some cases, it appears that ~~these support coordinators have only directed~~ participants ~~towards supports provided by their own organisation, meaning they~~ have been held "captive" and prevented from exercising free choice and control over their other funded supports, ~~with their support coordinator only directing them to options provided within their organisation.~~

7.39. ~~This review considers that, like~~ Like any other support, participants receiving support coordination should not be limited to ~~access~~ accessing supports offered by their support coordination provider. In all cases, participants should not be ~~held or~~ forced to choose from a limited service offering. In one case, this review heard that a participant was evicted from their home on the basis that they did not want to have that ~~provider~~ organisation provide all their other NDIS supports.

7.40. ~~There~~ In order to maximise participant choice and control and prevent conflicts of interests arising, there may be a case in requiring support coordination to be

independent from other service provision, ~~in order to prevent conflicts of interest arising and maximizing opportunities for participants to access their supports from a wide variety of providers~~. However, this would not be appropriate in all cases, such as circumstances where there is only one provider in a community, or where the participant has specific cultural safety needs.

~~7.40-7.41.~~ Importantly, support coordination should not be provided independently of other service provision if ~~it is against the wishes of the participant or if~~ that separation would mean the participant could no longer live in their community. ~~Nevertheless, first principles would suggest that it is reasonable to expect that the provider of support coordination is not the provider of any other funded supports in a participant's plan.~~

~~7.41-7.42.~~ It should also be noted that support ~~coordinators~~coordination, like any other NDIS support, is subject to the provider registration and practice standards rules enforced by the NDIS Quality and Safeguards Commission. ~~This includes, unless the participant is self-managing and using an unregistered support coordination provider. The NDIS Quality and Safeguards Commission's requirements include~~ ensuring participants receive transparent and factual advice about the support options available in their community and ~~that providers~~ have respect for the participant's rights to freedom of expression, self-determination and decision-making.

~~7.42.~~ ~~This review does not consider that legislative amendment~~Legislative amendments should ~~not~~ restrict, in any way, ~~participant~~participants from having choice and control over their NDIS supports. On this basis, ~~this review does the legislation should not recommend requiring~~require support coordination to be independent from other service provision. ~~A participant should always have the choice of who their support coordination provider is.~~

7.43. ~~However, there may be a case to strengthen the legislation to, but rather~~ mitigate the risk of ~~participants being exposed to inappropriate~~ conflicts of interests ~~arising~~. This could be achieved by requiring the NDIA to actively ~~assist participants to choose their support coordination provider, having regard to their other NDIS supports~~assess the risk to participants when supporting them through plan implementation. This would not be limited to participants receiving SIL, but would be of particular importance for this cohort.

- 7.44. ~~The~~In addition, this review also considers further work should be undertaken by notes that the NDIA ~~to consider~~ is currently undertaking a program of work to signal the role of providers performing dual functions importance of support coordinators being independent of other service provision. This work is encouraged to participants and opportunities to build the extent it builds market capacity such that this practices ~~so inappropriate practices~~ can be minimized.

Recommendation 12: ~~The NDIS Rules be amended to outline the considerations the NDIA will have regard to in providing funded support coordination in a participant's plan.~~

- 7.45. Furthermore, the conflicts of interest associated with providers of SIL also providing support coordination requires stronger mitigation strategies lest the risks undermine the intention of the scheme.

Recommendation 16: The NDIS Rules be amended to:

- a. set out the factors the NDIA will consider in funding support coordination in a participant's plan; and
- b. outline circumstances in which it is not appropriate for the providers of support coordination to be the provider of any other funded supports in a participant's plan, to protect participants from conflicts of interest.

Alternative commissioning

~~7.45-~~7.46. The intent of the NDIS is that participants will be ~~supported~~assisted to purchase the supports they need from an open market. For this to work effectively, there is ~~a natural~~an assumption ~~that~~ the provider market will ~~expand~~increase supply ~~in~~of high-demand services and respond to participant demands for high quality services that meet their needs. ~~To the extent~~When these adjustments ~~can't~~cannot or do not occur, or occur too slowly, the market is not able to respond in a timely manner to participant needs.

~~7.46-~~7.47. ~~The primacy of participant's exercising~~Participants' ability to exercise full choice and control over their NDIS supports, including who they receive their supports from, is a key tenet of the NDIS. However, ~~it has been broadly acknowledged~~ some participants are not able to purchase the supports they need through individually approaching the market. This occurs for a range of reasons, including:

- a. gaps between the supply and demand of services (~~“or”~~thin ~~markets”~~);markets';
- b. difficulties in serving a participant's complex needs;
- c. location factors (e.g. lack of providers in rural and remote communities);
- d. regulatory constraints of certain settings; and
- e. where the scale ~~of existing~~and efficiencies ~~and~~of existing service delivery arrangements, as administered by ~~states and territory disability systems~~governments, may not be able to be replicated on an individualised funding basis under the NDIS.

The key issues with the NDIS in my experience is that regional areas are poorly services by a market based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service."

NDIS Participant, Regional New South Wales

"The NDIA needs to ensure that officers and planners are available for participants in remote areas or with accessibility needs"

Western Australia Government

"Participants have stated one of the biggest challenges with utilizing the supports in their plan, depending on where they are located, is finding a service provider in their local area"

Stroke Foundation

Rigid

"The key issues with the NDIS in my experience is that regional areas are poorly serviced by a market-based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service."

NDIS participant, regional New South Wales

"The NDIA needs to ensure that officers and planners are available for participants in remote areas or with accessibility needs."

Unpublished submission

"Participants have stated that one of the biggest challenges with utilising the supports in their plan, depending on where they are located, is finding a service provider in their local area."

Stroke Foundation

7.48. This review understands that the Australian Government is taking action to remedy thin (under-supplied) market issues that are preventing participants from exercising full choice and control over their NDIS supports. The Department of Social Services and the NDIA have jointly commissioned the NDIS Thin Markets Project to develop strategies to address market supply gaps, with extensive national consultation for the project concluding in August 2019.

7.49. This review understands the outputs of the Thin Markets Project will include a framework for addressing thin market challenges, including for rural and remote areas, and a roadmap for developing and delivering practical applications of the framework, to be developed in collaboration with DRC in 2020.

7.47-7.50. However, it may be a while before the benefits of this work can be realised. In addition, rigid adherence to individualisation can have a negative effect, particularly when it is clear that some participants cannot access the supports they need, even when a robust market has been established. To this end, the NDIA does not have a clear legislated power to intervene to ensure that a participant does not go without vital supports.

7.48-7.51. The Plan Management Rules already provides provide some limited powers for the NDIA to respond flexibly in cases where a participant cannot access the supports by approaching the market on an individualised basis. This includes through enabling the NDIA to enter into funding arrangements with particular providers or entities to deliver the supports in a participant's plan, if the NDIA is satisfied that the support would be more efficiently and effectively provided by that provider.

7.49-7.52. However, it appears that exercising this provision relies on the NDIA being satisfied the alternative arrangement represents value-for-money. The NDIS Act and Supports for Participants Rules also do not provide guidance on when it would be appropriate to exercise that power, without diminishing from the primary of the participant's right to choose who they will receive their disability supports from.

7.50-7.53. On this basis, there is merit in amending the NDIS legislation should be amended to enable the NDIA, in limited circumstances, to enter into alternative funding arrangements in cases where it is clear that the participant cannot access the services identified in their plan.

7.51-7.54. This is particularly important in regional and remote communities where market supply may be absent or thin and where it is evident that community-led service delivery responses would yield greater social and economic outcomes for the NDIS participant. In these instances, alternative commissioning arrangements could work hand-in-hand with community-based outreach programs to mitigate the risk of market capture by larger providers.

7.52-7.55. Market intervention could also extend to include for the delivery of NDIS supports in settings where regulatory or other controls prevent the delivery of a free market, for instance within schools.

7.53-7.56. Providing a more defined power for market intervention is intended to enable the NDIA to act quickly to fill service gaps and encourage positive market behavior. Importantly, it is not intended to be a proxy or diminish participant's ability to exercise choice and control over who provides their NDIS supports.

~~**Recommendation 13:** The NDIS rules be amended to clarify the ability for the NDIA to undertake more appropriate market intervention through flexible commissioning models on behalf of participants.~~

Recommendation 17: The NDIS rules be amended to give the NDIA more defined powers to undertake market intervention on behalf of participants.

Informed Choice and Control and Best Practice Service Provision

7.54-7.57. Choice and control is a fundamental design principle of the scheme. However, the effective use of NDIS funding can be dependent on information/marketing and the particular service or therapy chosen. Notwithstanding the role of support coordination, participants may not know how to determine the quality of a service or be aware of what are evidence based practice approaches when exercising choice and control, and. This can lead participants to feel uncertain when navigating the marketplace and exercising choice and control. In some cases, this review has heard that, upon approving a plan, a participant was participants are simply given a list of available providers in particular categories of support.

"Many families don't know what they can apply for and what resources will assist their child/young person."

Support worker and Carer of NDIS Participants, Metropolitan Victoria

"I get yes and no answers about what supports we can purchase all day long!"

Family member and Carer of NDIS Participant, Regional New South Wales

"Most clients indicated they felt they did not adequately understand what funded supports were possible under the NDIS, and reported that they had received inadequate, inconsistent or incorrect information from NDIA representatives in this regard."

Advocacy Tasmania

"Many families don't know what they can apply for and what resources will assist their child/young person."

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Advocacy Tasmania

7.55-7.58. Under section 118(1)(a)(iv) of the NDIS Act, ~~a function~~one of the NDIA ~~in delivering the NDIS~~NDIA's functions is to promote the provision of high quality and innovative supports that enable people with disability to ~~maximize~~maximise independent lifestyles and inclusion in the community.

7.56-7.59. In addition, under section 118(1)(c) of the NDIS Act, it is also a function of the NDIA to develop and enhance the disability sector, including by facilitating innovation, research and contemporary best practice in the sector.

7.1-7.60. As an insurance scheme, the NDIS should ~~always~~ seek to promote services that aim to ~~maximize~~maximise the ~~benefit of funded supports~~benefits for each participant; ~~that and~~ are ~~supported through~~based on a robust research and evidence ~~base~~. This can be achieved through appropriate education ~~of~~on the kinds of supports that can be most effective and beneficial to achieve goals and aspirations, such that NDIS participants can exercise informed choice and control. This issue is also discussed in relation to the benefits of early intervention (Chapter 6 refers).

7.2-7.61. This kind of ~~information~~ education enhances the participant experience and provides appropriate protections ~~from~~against providers seeking to deliver supports with questionable benefits or which may expose a participant to harm, notwithstanding ~~that they~~the provider may have met the quality assurance process ~~through~~and registration ~~with~~requirements of the NDIS Quality and Safeguards Commission.

~~7.3.7.62. Therefore, this review considers that the~~The NDIA should take a more active role in supporting positive participant experiences by working with researchers and experts in the provision of disability support to develop a repository ~~of information~~ that contains accessible information and advice on the kinds of supports that are supported by evidence to achieve positive outcomes for participants.

~~7.4.7.63.~~This repository, while not necessarily needing to be hosted by the NDIA, would work to direct the ~~market~~participant to these kinds of supports, ~~but. It~~ should not, ~~however,~~ be designed to limit the development of new kinds of supports, ~~and therefore.~~ ~~Therefore, it~~ must be dynamic and responsive to the evolution of research and development.

~~7.5.7.64. However, building~~Building market capacity is critical for participants to draw the benefits from their NDIS funding. The ability to exercise informed choice first relies on ~~their~~there being a sufficiently robust market offering that is responsive to participant needs and preferences. To this extent, this review acknowledges the work currently underway by governments to strengthen and build market responsiveness, including through initiatives such as the Commonwealth Boosting the Local Care Workforce Program and new work in developing an NDIS Capability Framework that sets out the behaviors and core capabilities to be demonstrated by providers and workers when delivering services.

~~7.6.7.65.~~This review also acknowledges work currently being undertaken to develop a new e-Marketplace to help link participants ~~to~~with providers, ~~providing and offering~~ the market/sector ~~with~~ information about unmet demand, which will help encourage a greater diversity of services. Momentum on these initiatives should be continued ~~and is as they are~~ vital to ensuring ~~that~~ participants receive the benefits of what the NDIS can offer.

Recommendation 14: ~~The NDIA work with governments, researchers and experts in the provision of disability support to establish a dynamic repository of information about evidence based best practice approaches, to assist participant exercise informed choice and control.~~

Recommendation 18: The NDIA work with governments, researchers and experts in the provision of disability support to establish an accessible source of publically available information about evidence based best practice approaches, to assist participants in exercising informed choice and control.

Choice of plan management

~~7.7.7.66.~~ All NDIS participants are able to choose their providers of supports. Some participants may ask someone else to do it for them (a plan nominee), decide to manage the supports in their plan ~~for~~ themselves (self-manage), or use a registered plan manager. ~~This contrasts with the situation where~~ ~~in other cases,~~ the NDIA and the participant ~~have agreed~~ ~~may agree that~~ the NDIA will be responsible for purchasing and managing the ~~fundings~~ ~~supports~~ in their plan.

~~7.67.~~ ~~People~~ ~~Participants~~ who choose to have the NDIA manage their ~~plans~~ ~~plan~~ for them have the protection of only being able to use registered service providers. The registration process administered by the NDIS Quality and Safeguards Commission includes an assessment of the suitability of a provider and its key personnel to provide NDIS services. It also involves the use of third party auditors in some cases to independently assess the claims made by providers ~~on~~ ~~about~~ their capacity to deliver quality NDIS supports and services. Registered NDIS providers are required to ensure ~~that~~ workers with more than incidental contact with a person with disability undergo worker screening.

~~7.8.~~

~~7.9.7.68.~~ Registered NDIS providers are subject to mandatory incident reporting requirements and must implement additional policies, procedures and practices that assist in identifying and minimising risk of harm to people with disability. This includes promoting positive organisational cultures that do not tolerate abuse, neglect or exploitation; ensuring quality recruitment, selection and screening; and maintaining a focus on education and training.

~~7.10.7.69.~~ On the other hand, self-managing participants or those who use a plan manager can choose to receive their supports from anyone they wish, whether or not they are a registered. The only ~~exclusion to this ability~~ ~~exception~~ is supports which are subject to mandatory registration under section 73B of the NDIS Act – that is

~~specialized~~specialised disability accommodation ~~under a participant's plan~~, specialist behaviour support services and supports involving the use of a regulated restrictive practice.

~~7.11.7.70. Unlike self-management for which the~~The NDIS Act and Plan Management Rules provides for an assessment of matters and risks ~~to be assessed~~ in deciding whether a participant may self-manage. However, the legislation does not apply any such limitations or risk assessment for ~~deciding whether a support can be plan managed~~plan-management. The rationale for this may in part be that under section 42 of the NDIS Act plan managers must be registered NDIS providers and meet the quality and standards set by the NDIS Quality and Safeguards Commission.

~~7.12.7.71.~~ The Review~~review~~ has heard feedback that there are potential risks for participants engaging unregistered providers through plan management without the same risk assessment and guidance that is currently available to self-managing participants. These concerns were raised on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or ~~exploitation~~exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers.

“Participants [are] choosing an unsuitable plan management model due to a lack of understanding”
Neurosciences Unit

~~This review appreciates there~~

~~7.13.7.72.~~ There are a number of key benefits to plan management in ~~regard to~~ improving participant outcomes. This includes plan management services ~~being enablers~~ ~~enabling~~ choice and control, capacity building, self-direction and quality outcomes. For example, plan management services assist participants and the NDIS by:

- a. offering the participant increased control over plan implementation and utilisation through additional financial guidance;
- b. managing and monitoring funded support budgets over a participant’s plan duration, including prompt notification to relevant parties about over-utilisation ~~or under-utilisation~~, underutilisation or potential misuse of funds;

- c. managing payment requests to the NDIA and dispersing payments to providers for delivered services;
- ~~d. supporting payment integrity through evidence based claiming;~~
- ~~e.d.~~ maintaining records and producing regular statements showing the balance of plan managed ~~funded~~ supports in the plan to assist participants ~~plan in planning for~~ ongoing or future supports and ~~also to~~ prevent the over- utilisation or misuse of NDIS funds;
- ~~f.e.~~ enabling access to a wider range of service providers, including non-registered providers while ensuring payments remain in line with the ~~price~~ limits ~~contained within~~ the price guide;
- ~~g.f.~~ providing advice on processes ~~when for~~ engaging non-registered providers; and
- ~~h.g.~~ ~~maximise~~maximising plan utilisation ~~and work in working~~ towards achieving the participant's goals and outcomes.

~~7.14.7.73. However, it is unclear, as an alternative to NDIA managed, why plan management is an option in its own right, rather than a subset under self-management, given it provides for~~ Plan management offers the same level of choice and access to unregistered providers as self-managing participants. ~~This review also notes plan managers are not responsible for assisting a participant to choose and connect with providers. This is management and it is the role of a support coordinator, coordinators and not plan managers to assist participants in choosing and connecting with providers. For these reasons, it is unclear why plan management is an option in its own right rather than a variation of self-management.~~

~~7.15.7.74. This review considers the~~ The NDIA has a responsibility to protect participants who are using plan management options, particularly those with limited decision-making capacity, from procuring unregulated/risky supports and to ensure they have the capacity to make informed decisions about the ~~most appropriate~~ supports or services that would most appropriately meet their needs.

7.16-7.75. On this basis, ~~this review considers~~ plan management should be abridged as a ~~subset form~~ of self-management. This would require a request for plan management to be subject to the same safeguards and risk assessment as self-managing participants, as set out in section 44 of the NDIS Act. It would also have the potential to simplify and provide clarity to providers and the market that any agreement/commercial arrangement is with the participant ~~(i.e. and~~ not the plan manager).

7.17-7.76. However, while ~~this review considers~~ additional protections are required, this should not result in an overall reduction in the proportion of participants being able to self-manage their plans. Therefore, ~~this review also considers~~ the NDIA should undertake additional actions to support participants to choose self-management as their preferred plan management option.

~~**Recommendation 15:** The NDIS Act be amended to redefine the 'plan-managed' management type as a form of 'self-management'.~~

~~**Recommendation 19:** The NDIS Act be amended so a participant who requests to 'plan-manage' their NDIS funding be subject to the same considerations that apply when a participant seeks to 'self-manage'.~~

CHAPTER 8 – REVIEWING AND AMENDING A PLAN

KEY FINDINGS

- ✓ A robust, transparent and accountable review mechanism provides an essential safety net for participants. There are a number of areas in which the NDIA can, and should, improve its administration of reviews to deliver a better experience for NDIS participants.
- ✓ The legislative requirements for varying and reviewing plans are overly prescriptive and drives additional complexity, time and considerable stress and anxiety for participants. This has the flow on effect of removing the ability of providers to respond swiftly when a participant has had a change of circumstances.
- ✓ There is merit in amending the legislation to provide additional guidance on the factors that should be considered by the NDIA when undertaking or initiating unscheduled reviews of a participant's plan.
- ✓ Plans should be able to be amended without requiring a full plan review in certain (limited) circumstances where it is clear the support to be added, or the change to be made, is reasonable and necessary. This ability would be particularly relevant for participants who require Assistive Technology or Home Modifications.

KEY FINDINGS

- ✓ A robust, transparent and accountable review mechanism provides an essential safety net for participants. There are a number of areas where the NDIA should improve its administration of reviews to deliver a better experience for participants.
- ✓ The legislative requirements for varying and reviewing plans are overly prescriptive, creating additional complexity and stress and anxiety for participants. This has the flow on effect of preventing providers from responding swiftly when a participant's circumstances change.
- ✓ Additional guidance should be provided outlining the factors that will be considered by the NDIA when undertaking or initiating unscheduled reviews of a participant's plan.
- ✓ Plans should be able to be amended without requiring a full plan review in certain appropriate circumstances, where it is clear that the support to be added or the change to be made is reasonable and necessary. This ability would be particularly relevant for participants who require Assistive Technology or Home Modifications.

- 8.1. Division 4 of Chapter 3 of the NDIS Act sets out ~~a participant's~~ that a participant's plan cannot be varied or amended once it has been approved by the NDIA. It can only be changed or replaced in two circumstances:
- a. when the participant changes their statement of goals and aspirations – in this instance, a new plan is created comprising the new statement of goals and aspirations and the statement of participant supports in the existing plan; or
 - b. ~~where~~ when it is replaced by a new plan, resulting from:
 - i. the participant requesting an unscheduled plan review (under section 48(2));
 - ii. the NDIA initiating an unscheduled plan review (under section 48(4)); or
 - iii. as part of a scheduled plan review – in which the NDIA must conduct a review of the plan by the date ~~in which,~~ and under the circumstances ~~in which, are~~ specified in the plan (under section 48(5)).
- 8.2. As the NDIS continues to mature, a greater proportion of the NDIA's workload will move towards supporting participants to review their plan, ensuring their funded

supports are working and helping them to work towards, and achieve their goals and aspirations.

8.3. I centered my analysis of Division 4 on options to streamline the barriers currently in the NDIS Act that are driving large numbers of contributing to participants to request/requesting unscheduled reviews of their plans.

8.4-8.3. I also considered opportunities to streamline the process for making changes to a plan without requiring a full review of the participant's plan, such as adding new supports following the receipt of a quote, and the efforts required to improve the timeliness of the NDIA's approach and its communication with participants. Without significant efforts in these areas, there remains a risk that participants' right to review will be undermined and the review process will continue to be a driver of substantial numbers of complaints.

Unscheduled and ~~Scheduled~~ scheduled reviews

8.5-8.4. The NDIA's handling of plan reviews has been a consistent theme in consultation feedback. It is evident poor quality or that rushed planning decisions, or where the planner has not provided reasons for why certain supports have or have not been included in their plan, have plans, has led many participants to request unscheduled reviews of their plan.

"I requested full self-management and they incorrectly made core funding agency managed. I had to submit a review request which was never addressed or rectified."

Carer of NDIS Participant, Metropolitan Victoria

"At the planning meeting for first plan, it was agreed that support coordination would be included in my plan – but when plan was issued later that day, no support coordination was included. I spent the next 7 months trying to get a review to have support coordination included."

NDIS Participant, Metropolitan Western Australia

"A mistake was made at planning where paperwork was lost by the planner so plan was approved without funding for transport and home modifications for a participant with cerebral palsy. The participant is still waiting for a review 10 months later."

Carer of NDIS Participant, Regional New South Wales

"I requested full self-management and they incorrectly made core funding agency managed. I had to submit a review request which was never addressed or rectified."

Carer of NDIS participant, metropolitan Victoria

"At the planning meeting for my first plan, it was agreed that support coordination would be included in my plan - but when the plan was issued later that day, no support coordination was included. I spent the next 7 months trying to get a review to have support coordination included."

NDIS participant, metropolitan Western Australia

"A mistake was made at planning where paperwork was lost by the planner so the plan was approved without funding for transport and home modifications for a participant with cerebral palsy. The participant is still waiting for a review 10 months later."

Carer of NDIS participant, regional New South Wales

8.6.8.5. Consultation feedback indicates participants have three major concerns with the NDIA's administration of plan reviews:

- a. the NDIA did not acknowledge their requests for an unscheduled review;

- b. they were not kept informed about the status or progress of the review; and
- c. the review process took too long, delaying access to much needed supports.

~~8.7.8.6.~~ The NDIA has acknowledged the bilateral targets for access requests, plan approvals and scheduled plan reviews were often prioritised over unscheduled planned reviews, and the demand for these exceeded what had been anticipated. ~~Nevertheless, as a rate of total participant population, this review acknowledges the number of unscheduled reviews is decreasing over time, from 24.3 per cent at 30 September 2017 to 14.3 per cent 30 September 2019³⁷.~~

~~8.7.~~ ~~This review also understands~~Following the NDIA ~~have accepted the Commonwealth's~~Commonwealth Ombudsman's 2018 ~~recommendations on review into the NDIA's~~ administration of reviews, ~~and established at the NDIA has implemented a number of initiatives to assist in improving the handling of reviews. This included establishing a dedicated~~ National Review Team in March 2019 to capture and manage all unscheduled plan review requests.

8.8. The NDIA ~~have~~has provided data ~~which indicates~~indicating that from 4 March 2019 to date, the National Review Team has received more than 40,000 plan review requests and addressed 90 per cent of these requests. This review understands the team is on track to manage outstanding pre-April 2019 review requests by the end of December 2019.

8.9. This review also understands the National Review Team is receiving, on average, 1,000 participant initiated unscheduled plan review requests per week, and has allocated increased resourcing to ensure participants requests are responded to in a timely manner, ~~and ensure that~~ all requests are managed efficiently ~~and in a streamlined manner.~~

8.10. ~~As a result of some of these initiatives, the rate of unscheduled reviews as a proportion of participants is steadily decreasing, from 24.3 per cent at 30 September 2017 to 16.1 per cent at 30 September 2019³⁸.~~ As the number of participants entering the scheme increases, ~~being able~~the ability to amend a plan and ~~providing~~provide more clarity around when ~~an~~ unscheduled review ~~would~~should be conducted may go some way

³⁷ COAG Disability Reform Council Quarterly Report 30 September 2019, p.98

³⁸ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.36.

to ~~decreased~~decreasing the number of unscheduled reviews being lodged (~~paragraphs X to X refers~~).

- 8.11. Furthermore, ~~as discussed in Chapter 3~~, providing more transparency around planning decisions, giving participants more support to implement their plans and providing more flexibility over their plan budget will help build on the NDIA's current initiatives to improve the administration of reviews. (~~Chapters 3 and 7 refers~~).

Timeframes for decision making

- 8.12. Under section 48(3) of the NDIS Act, if the NDIA agrees to a participant's request to conduct an unscheduled review of their plan, the NDIA must commence facilitating the review within 14 days after so deciding, and must complete the review 'as soon as reasonably practicable'. ~~In regard to~~Regarding scheduled plan reviews, section 48(5) of the NDIS Act ~~only sets~~states out it must be conducted before the date specified in the plan. ~~It; it~~ does not impose a timeframe for when the review should commence or when it should be completed.
- 8.13. Consultation feedback indicates both scheduled and unscheduled plan reviews are not being completed in a timely manner. Over 40 per cent of ~~survey respondents~~participants responding to this question in the long from survey indicated it took more than three months for the NDIA to complete the unscheduled ~~review of their plan~~plan review. ~~When asked what timeframe would be appropriate, if a timeframe for this were to be included in the Guarantee, 88 per cent indicated it should within one month following a positive access decision (Figure 8 refers).~~

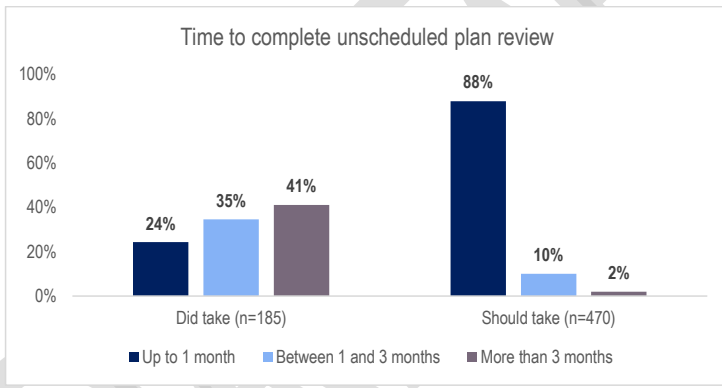
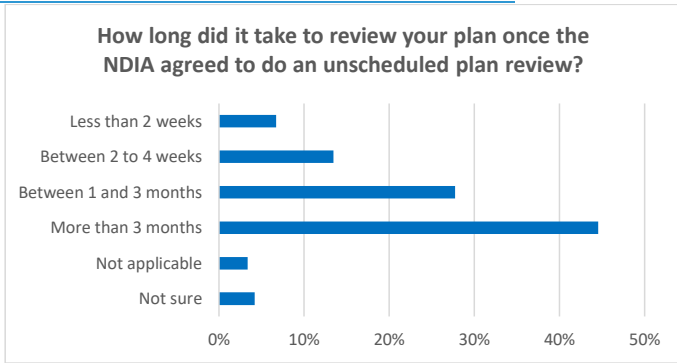


Figure 8: Timeframes for unscheduled reviews (long-form survey)

8.14. In some cases, participants reported [that](#) the delay [in completing the review](#) resulted in material impacts on their health and wellbeing and the impact of their disability worsened as a result of a significant change in circumstances. It is evident [that](#) the NDIA's review process has not always been able to respond [within](#) appropriate timeframes.

"I was not happy with my plan as it read. There were significant mistakes due to the cut and paste option used by the LAC. My condition is deteriorating and this is not accounted for in my current plan. I wish to have more supports but this was denied."

Carer of NDIS Participant, Regional New South Wales

"I had to apply for a review because the intensive capacity funding application was "overlooked" by someone at the NDIA. Whenever I called, no one could tell me what was happening with the application and why it was overlooked. I had to go through the whole review application process and had to pay for more reports. Sadly, she has now regressed as we await the decision."

NDIS Participant, Regional Victoria

"The whole plan was done incorrectly and not suitable for my daughters needs. Wasted a whole year complaining and waiting for a review. While my daughter received no transport funding and no support."

Carer of NDIS Participant, Metropolitan Victoria

An existing participant who suddenly found themselves homeless was supported to lodge a change of circumstances review with a request for a new NDIS plan based on completely new goals; but was kept waiting for five months before a planning meeting was scheduled

Disability Justice
Australia

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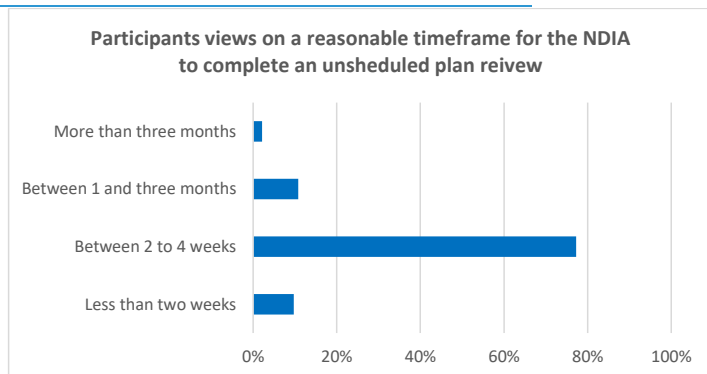
"An existing participant who suddenly found themselves homeless was supported to lodge a change of circumstances review with a request for a new NDIS plan based on completely new goals; but was kept waiting for five months before a planning meeting was scheduled."

Disability Justice Australia

- 8.15. In keeping with the right of participants ~~being afforded opportunity~~ to exercise their rights to seek an unscheduled review of their plan, the Guarantee should provide ~~participants with~~ assurance that an unscheduled plan review will be completed in a timely manner following the NDIA agreeing to conduct it (Chapter 10 refers).

~~In order to inform the timeframes for review decisions set out in~~

- ~~8.16. As the NDIS Act does not currently prescribe a timeframe for the commencement and completion of scheduled plan reviews, the Guarantee, this review asked should also provide~~ participants ~~what they considered would be~~ a reasonable period if the NDIA had all the information required to make the decision. Of the XXX who provided a specific response to this question, XXXXXX



~~8.17-8.16. There is also merit in the Guarantee providing participants with more assurance certainty around when a scheduled plan review will commence, and how long it will take to complete, noting the NDIS Act currently does not prescribe a timeframe for these.~~

~~*“The NDIS Planner needs to consider all reports/information given to them. I believe that very important and relevant information was overlooked when they did my son’s plan review a few months ago. Then they approved the new plan within a couple of weeks, even his previous plan was not due to expire for a couple of months! This NDIS plan was obviously just “rushed through”.*~~

~~*Family member and Carer of NDIS Participant, Regional Queensland*~~

~~*“The plan review meetings were much quicker than the initialing planning meeting. In the plan reviews, the planners seemed to rush the plans through and approve it in a couple of weeks. They did not consider all the relevant information provided; including some very important verbal information and documents/reports.”*~~

~~*Family member and Carer of NDIS Participant, Regional Queensland*~~

~~*“Review one was very rushed and not at a time when my son’s father could attend. Review two was chaotic”*~~

~~*Family member and Carer of NDIS Participant, Metropolitan New South Wales*~~

“The NDIS planner needs to consider all reports/information given to them. I believe that very important and relevant information was overlooked when they did my son’s plan review a few months ago. Then they approved the new plan within a couple of weeks, even though his previous plan was not due to expire for a couple of months! This NDIS plan was obviously just ‘rushed through’.”

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“The plan review meetings were much quicker than the initial planning meeting. In the plan reviews, the planners seemed to rush the plans through and approve it in a couple of weeks. They did not consider all the relevant information provided, including some very important verbal information and documents/reports.”

Family member and carer of NDIS participant, regional Queensland

“Review one was very rushed and not at a time when my son’s father could attend. Review two was chaotic.”

Family member and carer of NDIS participant, metropolitan New South Wales

Guidance for decision makers – unscheduled reviews

8.18-8.17. Consultation feedback indicates that people with disability do not understand how section 48(2) of the NDIS Act operates, including the circumstances in which they should request an unscheduled review of their plan, and the things the NDIA will consider when deciding whether to conduct it. The same confusion applies to knowing when the NDIA would/might decide to initiate a review of their plan under section 48(5).

“There is limited information about what constitutes a change of circumstance for the purposes of an NDIS plan review, the process of this review, the time it will take, the communication during the review, and the evidence required.”

Western Australia Government

“Applicants may experience challenges in the internal review process due to the limited knowledge and understanding of the review procedure and their legal rights. There is also often a lack of understanding regarding the reasons for the original decision and the corresponding gaps in support evidence.”

Advocacy for Inclusion

“There should be clear information available outlining how a participant can apply for a review and how they can lodge appeal with the AAT if they are not happy with the outcome of an internal review.”

Autism Spectrum Australia

“Participants sometimes experience reviews with little to no knowledge of the process which is occurring. People with psychosocial disability, or from Aboriginal and/or Torres Strait Islander communities, from CALD communities, or those with poor literacy skills and particularly vulnerable. They can be ill-prepared to participate.”

Carers Victoria

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Unpublished submission

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“Participants sometimes experience reviews with little to no knowledge of the process that is occurring. People with psychosocial disability, or from Aboriginal and/or Torres Strait Islander communities, from CALD communities, or those with poor literacy skills are particularly vulnerable. They can be ill-prepared to participate.”

Carers Victoria

~~8.19-8.18.~~ The factors the NDIA will consider in determining whether or not to conduct or initiate an unscheduled plan review. ~~This review notes the should be set out in the legislation. The~~ NDIA’s Operational Guidelines already outlines some factors that could be elevated into a NDIS rule for this purpose. ~~This review also notes providing participants with more flexibility in how they spend their NDIS funding to achieve their goals may assist in driving down the number of unscheduled reviews required.~~

~~8.20.~~ However, on balance, ~~it is recommended the~~ The factors to be considered by the NDIA ~~when determining to conduct a review~~ would include:

~~8.19.~~ ~~where whether~~ the participant ~~has~~:

- a. changed their statement of goals and aspirations;
- b. ~~where the participant has~~ had a significant change in circumstances;
- c. ~~where the participant’s~~ experienced deterioration or improvement in functional capacity ~~has deteriorated, or improved~~;
- d. ~~where the participant~~ has a degenerative condition, and experienced any change to their condition; or
- e. ~~after has had~~ a period of early intervention supports.

~~8.21-8.20.~~ The inclusion of these considerations in ~~a rule~~ the legislation would provide participants and NDIA delegates with greater clarity on the circumstances in which the NDIA would ordinarily agree to conduct or initiate a plan review, enabling planners and delegates to make faster decisions. ~~It would also work in well should the NDIA be provided with the ability to amend a plan in certain (limited) circumstances (paragraphs X to X refer).~~

Recommendation 16: ~~That the NDIS Act be amended to introduce a new Category D rule making power that includes criteria on when the NDIA should agree to undertake an unscheduled plan review.~~

8.21. ~~It would also assist in driving down the number of unscheduled reviews when considered alongside new powers to amend a plan in certain (limited) circumstances (paragraphs 8.26 to 8.36 refers) to and providing participants with more flexibility in how they spend their NDIS funding (Chapter 7 refers).~~

Recommendation 20: ~~The NDIS Act be amended to introduce a new Category D rule making power that sets out the matters the NDIA must consider when deciding whether to undertake an unscheduled plan review.~~

Deemed decision making

8.22. Under section 48(2) of the NDIS Act, ~~should~~ if a participant ~~request~~ requests an unscheduled review of their plan, the NDIA must decide within 14 days of the request whether or not to conduct it ~~within 14 days of the participant making the request~~. If the NDIA does not make the decision within 14 days, the NDIA is taken to have decided not to conduct the review and ~~the matter~~ automatically progresses to an internal (merits) review process. The merits review process is further discussed in Chapter 9.

8.23. ~~Stakeholders expressed frustration that the way~~ Consultation feedback indicates this deeming provision ~~operates~~ disadvantages the participant and does not incentivise the right behavior of NDIA planners and delegates. ~~For~~ This review heard that many participants, ~~they were~~ have been forced to undergo an internal (merits) review of the

deemed decision, instead of focusing on the material issue in question—; that is, whether or not the NDIA should have decided to review the plan and the appropriateness of the ~~current~~ supports in it.

“Both the NDIA and Community Partners have an internal policy to escalate s48 review [unscheduled review] to a s100 review [internal review] where a decision has not been made on the initial review for a three week period. This action denies the participant a step in the review process and fast forwarding their application to the last ‘port of call’ before an Administrative Appeals Tribunal application.”
Darwin Community Legal Service

“Both the NDIA and Community Partners have an internal policy to escalate s48 review [unscheduled review] to a s100 review [internal review] where a decision has not been made on the initial review for a three week period. This action denies the participant a step in the review process and fast forwarding their application to the last ‘port of call’ before an Administrative Appeals Tribunal application.”
Darwin Community Legal Service

- 8.24. First principles would suggest a participant should not be penalised ~~as a result of a delay infor the~~ NDIA failing to decide ~~within the prescribed timeframe~~ whether or not to do something ~~in a prescribed timeframe~~. The participant has no control over the action or inaction of the NDIA delegate making the decision.
- 8.25. ~~Therefore, in~~ keeping with the participant-centered approach of the Guarantee and to improve the participant experience ~~withof~~ the administration of plan reviews, ~~there is merit in inverting~~ the deeming provision, ~~so should be inverted~~. As a result, if the NDIA does not make the decision to conduct the ~~unscheduled~~ review within the stated period, ~~they are it is~~ deemed ~~to they~~ have decided to conduct ~~the review it~~ (Chapter 10 refers). ~~This would be uncontroversial noting operational guidance would be elevated so participants know when the NDIA would ordinarily agree to the request.~~

Amending a plan

8.26. As set out earlier, a participant's plan cannot be varied unless a new plan is created under Division 4 of the NDIS Act. In short, this means to make any change to the plan – including making the most minor administrative change to a plan (such as fixing a [typographical error](#) or [changing updating](#) the participant's contact details) – requires the participant to undergo a full plan review. Understandably, this has caused significant frustrations for participants.

"We had to go through the plan review process because of errors made by the NDIS in relation to the miscalculation of money amounts. NDIS basic mistakes should be easy to correct instead of my daughter being dragged through the plan review process."

Carer of NDIS Participant, Regional Victoria

"The second time [requested a plan review] was due to many errors in my plan, including incorrect goals, incorrect information and insufficient funding for transport."

Carer of NDIS Participant, Remote Victoria

"The primary concerns highlighted by participants is that they are unable to make small changes to their plans without triggering an internal review."

Advocacy for Inclusion

"Even minor amendments [to a plan] currently trigger the development of a whole new plan and can leave people without essential supports or in having changes made to a plan that worsen their situation."

Physical Disability Council of NSW

“We had to go through the plan review process because of errors made by the NDIS in relation to the miscalculation of money amounts. NDIS basic mistakes should be easy to correct instead of my daughter being dragged through the plan review process.”

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“The second time [requested a plan review] was due to many errors in my plan, including incorrect goals, incorrect information and insufficient funding for transport.”

Carer of NDIS participant, remote Victoria

“Even minor amendments [to a plan] currently trigger the development of a whole new plan and can leave people without essential supports or having changes made to a plan that worsen their situation.”

Physical Disability Council of NSW

- 8.27. Consultation feedback ~~also~~ indicates that participant’s feel this process might ~~otherwise reassess or materially reduce~~ mean that all the supports in their NDIS plan ~~supports could be reassessed and reduced~~, rather than ~~just consider the review being limited to~~ the matter in contention. ~~A~~ For this reason, a significant number of ~~participants~~ indicated that they, despite needing additional or new supports, are choosing not to request ~~a review~~ unscheduled reviews of their plan ~~for this reason~~. Although, it should be noted the legislation currently requires the NDIA to be satisfied all supports in the plan are reasonable and necessary, ~~irrespective~~ regardless of the ~~reason the review was initiated or the~~ type of change ~~sought~~ the participant asked for.

"I have heard early reviews can take ages and there's no point as you can lose funding and will take 12 months to happen. This is why I haven't done one. Also the stress of it all is too much."

Carer of NDIS Participant, Metropolitan South Australia

"We were told that we couldn't ask for a review as the plan had only just been given. We had to cut our therapy by 30 per cent I again asked for a review & we were threatened that money could be removed from the plan & not to proceed."

Carer of NDIS Participant, Metropolitan Western Australia

"The review process takes so long that it seems not worthwhile and the fact that when participants have sought a review the entire plan gets reviewed and not just the issues of concern has been used to reduce money in other sections of the plan and in some cases people have been kicked off the scheme."

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Carer of NDIS participant, metropolitan Western Australia

"The review process takes so long that it seems not worthwhile and the fact that when participants have sought a review the entire plan gets reviewed and not just the issues of concern. [The review] has been used to reduce money in other sections of the plan and in some cases people have been kicked off the scheme."

NDIS Participant, Metropolitan South Australia

- 8.28. The NDIA ~~have~~has acknowledged this issue, and ~~has~~ been implementing a "~~light touch~~light touch" plan ~~review~~review process in circumstances where only minor

amendments need to be made to the participant's plan. This has been used in circumstances such as:

- a. to implement the result of an internal (merits) review decision;
- b. where the participant requested to change their plan management type;
- c. to make administrative changes to a plan or correct data entry errors; and
- d. to add new supports following receipt of a quote.

8.29. The light touch process involves the planner and the delegate having a conversation with the participant, their plan nominee or child's representative, to inform them of the light touch plan review process, ensuring they agree to undertake a light touch ~~this kind of~~ plan review and ensure they understand the changes which ~~that~~ will be made to their plan.

8.30. The NDIA have ~~has~~ not been implementing a light touch process where there is evidence of a significant change in the participants circumstances, or where:

- a. the participant is seeking additional funding to support a new goal;
- b. there are insufficient funds in the plan that can be used flexibly; or
- c. there is insufficient supporting evidence.

In these instances, a full plan review is completed ~~conducted~~.

8.31. While the "light touch" process has enabled the NDIA ~~NDIS~~ to reduce the time that some participants are waiting to make ~~have~~ certain changes made to their plan, the ~~the~~ process is still burdensome for the participant and the NDIA. This is because the decision to approve the plan requires a formal delegate decision of the whole plan and because, as a new plan is created as a result, the participant needs to re-establish service bookings with their providers.

8.32. Current plan review arrangements are also particularly burdensome for participants requiring Assistive Technology and Home Modifications, where simply adding funding to the plan for the capital item after the receipt of a quote is forcing a full plan review to be conducted. In some cases, consultation feedback suggested that a participant may wait up to 18 months to receive their Assistive Technology supports, after factoring in ~~considering the~~ time it takes for the initial planning conversation, obtaining the quote, making the request for the plan review, having it accepted, and then having the plan review completed and the funding added to the plan.

"A participant has been waiting for approval for an AFO prosthesis for 18 months during which time they could not independently access their local pool to complete their funded hydrotherapy program."

Disability Justice Australia

"The process for approving equipment and home modifications is complex and confusing, and very often lengthy. People are waiting months, even years, for vital equipment and even longer for home medications. Often the process takes so long that quotes "expire" and the process must start again."

National Disability and Carers Alliance

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National Disability and Carer Alliance

8.33. Access to supports already determined as reasonable and necessary ~~supports~~ should not be delayed unnecessarily. On this basis, ~~this review considers~~ a plan should be able to be amended, without ~~constituting~~ requiring a plan review or automatically creating a new plan, in certain ~~(limited)~~ circumstances. ~~A plan amendment would be suitable in cases~~ where the NDIA is satisfied ~~that~~ the change to be made ~~to~~ or the new support to be added ~~to~~ could be considered in isolation from the other supports in the plan.

These circumstances would be:

- a. if a participant changes their statement of goals and aspirations;
- b. if a participant requires crisis/emergency funding as a result of ~~a~~ significant change to their support needs and the CEO is satisfied ~~that~~ the support is reasonable and necessary;
- c. if a participant has obtained information, such as assessments and quotes, requested by the NDIA to make a decision on a particular support, and upon receipt of the information the NDIA is satisfied ~~that~~ the funding of ~~that~~ the support is reasonable and necessary (for example, for Assistive Technology and Home Modifications);
- d. if the plan contains a drafting error (e.g. ~~a type~~ a typographical error);
- e. ~~if plan management type is changed, subject to, after~~ the completion of appropriate risk assessments, ~~plan management type is changed;~~
- f. for the purposes of applying ~~or adjusting~~ a compensation reduction amount, ~~or for adjustment of a compensation reduction amount;~~
- g. ~~to allow supports to be determined as to add~~ reasonable and necessary ~~to be added to a plan~~ supports if the relevant statement of participant supports is under review by the AAT;
- h. upon reconciliation of an appeal made to the AAT; and
- i. to implement an AAT decision that was not appealed by the parties.

8.34. Importantly, giving the NDIA the ability to amend a plan would allow quick adjustments to be made to plans, reserving the formal review process for participants who have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal. ~~It would also mean a participant did not need to be recreated, given current IT solutions.~~

8.34-8.35. Plan amendment powers would ~~thus~~ provide participants with timely access to supports, providers with faster access to funding and reduce administrative burden on the NDIA, allowing more resources to be dedicated to supporting quality planning

and plan implementation processes. ~~It would also mean service bookings did not need to be recreated, given current IT solutions.~~

~~8.35-8.36.~~ ~~Importantly, this review does not consider the~~The action to amend a plan should ~~not be~~ considered a reviewable decision, ~~rather.~~ Rather, the reviewable decision would be the matter for which the plan was amended ~~for.~~ ~~That~~ ~~that~~ is, the plan will be 'taken to be amended' following the original decision. This review notes, however, that not all matters listed above are currently reviewable decisions, and therefore amendment to the NDIS Act will be required to ensure all matters a plan can be amended ~~to be~~ for are reviewable decisions under section 99 of the NDIS Act and for the purposes of section 100 of the NDIS Act.

Recommendation 17: The NDIS Act be amended to:

- a. ~~introduce a new Category D rule making power giving the NDIA the ability to amend a plan in limited circumstances; and~~
- b. ~~require all matters a plan can be amended for to be considered reviewable decisions under section 99 of the NDIS Act.~~

Recommendation 21: The NDIS Act be amended to introduce a new Category D rule making power giving the NDIA the ability to amend a plan in appropriate circumstances.

Plan review gaps and service bookings

~~8.36-8.37.~~ Once a participant has an approved plan, they can create service bookings in the NDIS portal. Service bookings are used to set aside funding for an NDIS registered provider for a support or service they will deliver in accordance with the participant's plan. Generally ~~speaking~~, a service booking will show the type of support to be provided, when it will be provided and the length of time for which it is needed.

~~8.37-8.38.~~ Many participants create their service bookings in advance, and both participants and providers expressed frustration that when a new plan is approved, ~~this ends~~ all the participant's current service bookings, ~~end~~ and ~~requires~~ new service bookings ~~to~~ must be put in place.

“Every time a change is made means a whole new plan with service agreements! Realise that families and carers are affected too. We are busy people trying to care for someone and don't have time to go chasing reports and attend multiple appointments.”

Carer of NDIS Participant, Regional Victoria

“Every time a change is made means a whole new plan with service agreements. I realise that families and carers are affected too. We are busy people trying to care for someone and don't have time to go chasing reports and attending multiple appointments.”

Carer of NDIS participant, regional Victoria

8.38-8.39. Consultation feedback also suggests [that](#) a participants access to their NDIS supports stops if the review of their plan was not completed and a new plan created by the date specified in their plan.

“Guardians have reported on numerous occasions that there have been instances where plans reviews have been undertaken due to a change in circumstances however NDIA has not approved the plan in a timely way and the plan has run out and the support services ceased.”

Western Australia Office of Public Advocate

“There are often delays between old plans expiring, the scheduled of a review, and new plans being approved. As a result, service providers may go into debt if they continue providing the NDIS participant with the supports they need. Others will cease providing services, leaving vulnerable NDIS participants without the required supports, which in some cases has lead to homelessness.”

ACT Human Rights Commission

“Applicants have reported that the delays in the internal review process can cause the review process to extent past the expiration date of their NDIS plan. This can leave the applicant without an ability to pay for their supports, and ultimately lead to their support services being temporarily suspend. This ultimately goes against the proposed principles of ‘timely;’, ‘connected’ and, at best, ‘valued’.”

 Advocacy for Inclusion

"Guardians have reported on numerous occasions that there have been instances where plans reviews have been undertaken due to a change in circumstances, however the NDIA has not approved the plan in a timely way, and the plan has run out and the support services ceased."

Unpublished submission

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Advocacy for Inclusion

8.39-8.40. Both of these issues ~~are artificial and~~ arise ~~out of~~ from the way the ICT system is built. There is no legislative reason for why participants should have their access to NDIS supports stalled because of plan review delays, or for providers to need to recreate service bookings once they have been given a new plan. ~~Understandably, these are causing significant frustrations for both participants and providers.~~

8.40-8.41. The NDIA is currently identifying ~~ICT~~ solutions to both issues. In September 2019, the NDIA launched a new process ~~which~~ that identifies participants with ~~plans expiring~~ plan review dates within seven days, and, in certain circumstances, automatically extends the end date of their plan. This will mean ~~that~~ participants will be able to receive supports regardless of a delay in their new plan being approved. It

also means providers will continue to be able to claim for supports delivered in accordance with the plan until the new plan is approved.

8.41.8.42. ~~Notwithstanding~~ While this work, ~~there~~ is ~~merit in~~ helpful and significant, the NDIA ~~continuing~~ should continue to explore more permanent solutions, including the ability for service bookings to carry across subsequent plans.

DRAFT

CHAPTER 9 – REVIEWABLE DECISIONS AND AAT APPEALS

KEY FINDINGS

- ✓ Internal review processes are not working as intended. Despite efforts to expedite decision-making, participants are experiencing uncertainty and delays and have limited options to exercise their right of appeal.
- ✓ Changes to appeal processes are needed to provide clear and streamlined pathways for participants to resolve issues in relation to their plans and reduce administrative red tape.
- ✓ Parameters need to be established to provide clearer guidance as to when the AAT has jurisdiction to hear a case, and as well as provide clarity of the nature of the decision in question and all of the surrounding circumstances.

KEY FINDINGS

- ✓ Internal review processes are not working as intended. The lack of clear guidance around when an internal review decision will be made prevents prospective participants and participants from exercising their right of appeal.
- ✓ Clearer and more streamlined pathways are needed to enable prospective participants and participants to resolve concerns about NDIA decision-making and reduce administrative red tape.
- ✓ Clarity needs to be provided as to the matter before the AAT in circumstances where a prospective participant or participant has lodged an appeal, including the nature of the decision in question and all of the surrounding circumstances.

- 9.1. Part 6 of Chapter 4 of the NDIS Act outlines what decisions made by the NDIA are reviewable decisions, and the process of administrative review, including both internal review by the NDIA, and external review by the AAT.

- 9.2. While there are many types of decisions subject to internal review, I ~~have~~ centered my analysis on those which involve decisions relating to access and the approval, development or review of a ~~participants~~ participant's plan. I also considered the jurisdiction of the AAT ~~to review~~ in reviewing NDIA decisions, including opportunities to provide clarity on what decision (or what version of the plan) is before the AAT and what ~~happens~~ should happen to a plan ~~where~~ when the scheduled review date occurs during the AAT process.

Triple use of the word “review”

- 9.3. As outlined earlier, participants can seek two types of review under the NDIS Act: a review of their plan (in accordance with section 48) and an internal review of a reviewable decision (in accordance with section 100). A third type of review is created when the participant appeals an internal review decision to the AAT.
- 9.4. Concerns over the ~~duplicate use~~ multiple meanings of “~~review~~” the word ‘review’ has been raised by participants, the AAT, NDIA and disability peak organisations on ~~multiple~~ numerous occasions, ~~including~~ dating back as ~~early~~ far as 2015 when the first review of the NDIS Act was conducted. To date, no amendment has been made to address ~~the~~ this source of confusion.
- 9.5. Some stakeholders maintained ~~this~~ the twin, if not triple use of the word ‘review’ is confusing participants, and, in turn, potentially hindering their rights to exercise their right of appeal of an NDIA decision. The NDIS Act should be amended so the word ‘review’ has only one meaning.

“There has been occasions where a participant has sought an Internal Review (explicitly stated as such) and the NDIA has instead commenced a change of circumstances review.”

Legal Services Commission of South Australia

“People consistently report they find the review process complicated and confusing. There are too many concepts and processes that sound like each other but actually mean completely different things.”

Every Australian Counts

"The review and appeal process has been identified as problematic including the language used by the NDIA staff and its partners which is confusing and unclear."

Children and Young People with Disability Australia

"The confusion resulting from calling all process a 'review' often results in participants who want an internal review of their statement of supports going through an unscheduled reassessment process."

National Legal Aid

"There have been occasions where a participant has sought an Internal Review (explicitly stated as such) and the Agency has instead commenced a change of circumstances review."

Unpublished submission

"People consistently report they find the review process complicated and confusing. There are too many concepts and processes that sound like each other but actually mean completely different things."

Every Australian Counts

"The confusion resulting from calling all processes a 'review' often results in participants who want an internal review of their statement of supports going through an unscheduled reassessment process."

National Legal Aid

Recommendation 22: The NDIS Act be amended to remove the duplicate use of the word 'review'.

~~9.6. The NDIS Act should be amended so the word 'review' has only one meaning. One way it could be implemented is to reframe 'review of participant's plans' as 'XX of participant's plans', as suggested by the NDIS Participant Reference Group.~~

Recommendation 18: ~~The NDIS Act be amended to resolve confusion surrounding the duplication and twin use of the word "review".~~

Internal reviews

~~9.7.9.6.~~ Section 100(2) of the NDIS Act ~~sets out~~states that a person may request the NDIA to review a reviewable decision. If ~~they choose~~the participant chooses to do this, they must make the request within three months after receiving the notice of the reviewable decision. Section 99 of the NDIS Act ~~sets out~~specifies the reviewable decisions related to access and planning are:

- a. a decision a person does not meet the access criteria (sections 20(a), 21(3) and 26(2)(c));
- b. a decision to revoke a participant's status as a participant (section 30);
- c. a decision to approve the statement of participant supports in a participants plan (section 33(2)); and
- d. a decision not to undertake an unscheduled plan review (section 48(2)).

~~9.8.9.7.~~ Under s.100(6) of the NDIS Act, should a person request an internal review of a NDIA decision, the reviewer must '*as soon as practicable*', make a decision to ~~either:~~

- a. confirm the decision;
- b. vary the decision; or
- c. set it aside and replace it with a new one.

9.9.9.8. XX of survey respondents indicated they had asked the NDIA to review a previous decision it made in relation to their access to the scheme or their plan. Of those, the majority reported they [Consultation feedback suggests some participants who have asked for this kind of review](#) experienced stress and anxiety during the process, the process was unclear, their concerns were not being listened to, and they were unhappy with the outcome.

"I had an extreme lack of funding in first plan and I phoned the NDIA and asked for an internal review but no one could tell me exactly how to do it"
Carer of NDIS Participant, Metropolitan Queensland

"My original plan identified my need for a motorised wheelchair. My O/T application was rejected and I was informed of this by phone. I proceeded to the next stage by requesting a review and providing extra information to support that application, but after 3 months that review hadn't been considered"
NDIS Participant, Regional Queensland

"The review process is a legal maze for people with disability and their families to navigate" Autism Family Support Association Inc.

"The conduct of scheduled plan reassessments is a cause of stress and anxiety for many of our clients, where NDIS plans can be reduced following a scheduled plan reassessment for a range of reasons outside the participants' control"
National Legal Aid

"The current processes trigger trauma and deepen the divide for people experiencing disadvantage, with participants who are the least resourced being the most likely to fall through the cracks"
Victorian Council of Social Services

"The review process is a legal maze for people with disability and their families to navigate."

Autism Family Support Association Inc.

"The conduct of scheduled plan reassessments is a cause of stress and anxiety for many of our clients, where NDIS plans can be reduced following a scheduled plan reassessment for a range of reasons outside the participants' control."

National Legal Aid

"The current processes trigger trauma and deepen the divide for people experiencing disadvantage, with participants who are the least resourced being the most likely to fall through the cracks."

Victorian Council of Social Services

9.10.9.9. Consultation feedback also ~~indicates~~indicated that people with disability and their carers are concerned about how long internal review processes ~~took,~~take and that they did not have visibility of the process.

“The review of a reviewable decision was never looked at for a whole year. Despite numerous phone calls and time wasted was finally contacted by someone and told that it would be closed as now due for scheduled annual review. Also repair quote sent to AT, despite numerous phone calls and escalations never received a reply in 12 months.”

Carer of NDIS Participant, Metropolitan Victoria

“The NDIA have turned me down for services I clearly need relating to my disability and that others with my exact disability are getting. I have also had to ask them to include things they agreed they would and then forgot to include. Although I requested reviews, I never heard back and none were conducted.”

NDIS Participant, Metropolitan Queensland

“I am still waiting on a response to my internal review request after nine months and numerous phone calls.”

Carer of NDIS Participant, Regional New South Wales

“Participant often wait from six to 12 months for a decision regarding an internal review, and in the interim, participants are left in the dark about the status of their request.”

Victorian Council of Social Services

"The review of a reviewable decision was never looked at for a whole year. Despite numerous phone calls and time wasted was finally contacted by someone and told that it would be closed as [my plan was] now due for scheduled annual review. Also repair quote sent to AT, despite numerous phone calls and escalations never received a reply in 12 months."

Carer of NDIS participant, metropolitan Victoria

"I am still waiting on a response to my internal review request after nine months and numerous phone calls."

Carer of NDIS participant, regional New South Wales

"Participants often wait from six to 12 months for a decision regarding an internal review, and in the interim, participants are left in the dark about the status of their request."

Victorian Council of Social Services

9.11-9.10. This review understands the NDIA has a range of strategies in place to improve the timeliness of internal reviews, including ~~through~~ establishing an Early Resolution Team in August 2019 to expedite requests that can be resolved quickly. This review understands the team is committed to acknowledging requests within 14 days, completing decisions within 90 days and providing the person with disability with a consistent contact person throughout the review.

9.12-9.11. Data provided by the NDIA indicates the team has been able to settle 16 per cent of internal reviews through a streamlined process, including where the matter is low risk and can be resolved without the need for further information, ~~and on.~~ On average, 35 per cent of requests are currently being completed within 90 days. The NDIA has also indicated that the Early Resolution Team is continuing to build resources and staff capability and is capturing data on the drivers of internal reviews to feedback to the original decision makers so ~~practices~~ practices across the ~~agency~~ NDIA can be improved. The intent of this work is to improve the quality of decision making and ensure that people with disability understand why and how the decision was ~~made at the time it was~~ originally made.

Timeframes for decision-making

9.13-9.12. Notwithstanding the NDIA's work to improve the timeliness of internal review decisions, there is currently no way for a person with disability to be certain a decision maker has not made the internal review decision 'as soon as reasonably practicable', other than to appeal the matter to the AAT.

9.14-9.13. ~~In order to give participants certainty about when decisions will be made,~~ the Guarantee ~~were to~~ should provide ~~a set timeframe~~ for an internal review to be completed in a set timeframe, with an explicit provision that failure to make the decision in the stated time would give rise to a deemed decision, ~~then this would give participants certainty and.~~ Participants should have a clear avenue for meaningful review of NDIA decision-making and should not need to appeal a matter to the AAT in order to compel a decision.

9.15-9.14. This review sought feedback from participants about what would be a reasonable period for the NDIA to finalise an internal review decision. ~~Over XX~~ Of those who answered this question in the long-form survey, over 40 per cent of participants felt ~~respondents who had a review (n=515) stated~~ between 2-4 ~~two to four~~ weeks ~~was~~ would be a reasonable period ~~given.~~ Anecdotal feedback suggested would be appropriate on the basis the NDIA was not considering the substance of the plan or their request, but merely affirming that a previous decision it made was ~~the correct one~~ based on the facts of the circumstances.

9.16-9.15. However, the internal review process, as provided by the legislation, is manually intensive and is broader than a simple desktop audit of a decision. Affirming, varying or setting aside the decision requires due consideration of the facts and evidence of the matter. This includes researching information and fresh consideration of the facts, legislation and policy aspects of the original decision.

9.17-9.16. In practice, the Early Resolution Team is also responsible for speaking to the person who requested the review, other stakeholders as required, and relevant internal teams within the NDIA if the issue(s) requires detailed or technical input before the decision can be made. As such, the Guarantee should provide a realistic timeframe for this work to be completed, without rushing the decision and potentially compromising quality participant outcomes.

9.18-9.17. Prescribing a timeframe for the making of the decision also overcomes issues around AAT jurisdiction. This review acknowledges that the AAT has previously concluded the words “as soon as reasonably practicable”~~practicable~~’ constituted a deemed decision under s.25(5) of the *Administrative Appeals Act 1975*. Therefore, if the AAT found that a decision under s.100(6) of the NDIS Act was not made as soon as was reasonably practicable, it would be deemed that the decision had been made.

9.19-9.18. The NDIA is seeking to avoid the issue of jurisdiction and deliver timely participant outcomes by making expedited internal review decisions. However without further clarity around what “as soon as reasonably practicable”~~practicable~~’ might be, the NDIA and participant will continue to lose the opportunity to address and resolve the substantive issues. TheAccordingly, the Guarantee should provide a clear definition of what this timeframe should be (Chapter 10 refers).

AAT review

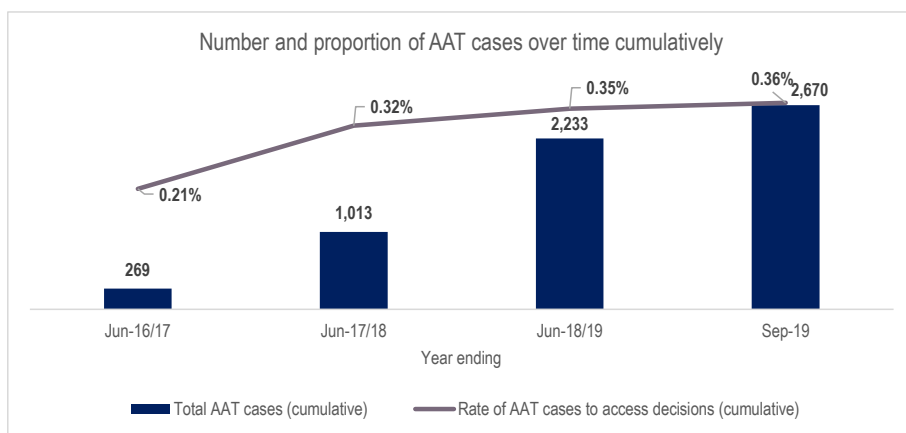
9.20-9.19. Under section 103 of the NDIS Act, a participant may make an application for the AAT to review an internal review decision made under section 100(6). The AAT does not have jurisdiction to review a decision that has not been internally reviewed by the NDIA, nor can it review every decision the NDIA makes.

9.21. ~~AAT lodgements increased from 186 in 2016–17 to 744 in 2017–18 and 1,220 in 2018–19. As at 30 September 2019, there have been 2,670 lodgments, which is less than 0.4 per cent of all access decisions³⁹.~~

9.22-9.20. ~~This review notes, although seemingly significant~~AAT cases as a proportion of total participants has remained low throughout trial and transition. While the raw

³⁹ COAG Disability Reform Council Quarterly Report 30 September 2019, p.102

[number of AAT lodgements has increased](#), this rate of growth is in large part expected and consistent with the rate of participant transition as the NDIS has [progressively](#) rolled out across Australia. It is also relatively low as a percentage of the number of participants in the scheme. [\(Figure 9 refers\)](#)⁴⁰.



[Figure 9: AAT decisions as a proportion of access requests](#)

[9.23-9.21.](#) This review understands [that](#) the NDIA takes a conciliatory approach to AAT matters, with the focus on resolving matters at the earliest opportunity or to proceed as quickly as possible to AAT hearing [on](#)for issues that cannot be resolved. Consistent with this approach over 95 per cent of all matters are resolved without a substantive hearing.

[9.24-9.22.](#) This review also understands [that](#), wherever appropriate, the NDIA offers to enter into partial terms of settlement on matters [which](#)[that](#) have been agreed [upon](#), to ensure the participant can access those supports while the other matters are dealt with in the AAT.

⁴⁰ NDIA Quarterly Report to DRC for the period ending 30 September 2019, p.102.

9.25.9.23. Notwithstanding the NDIA's efforts to resolve issues early, evidence suggests that a number of issues are being driven to the AAT, in part, because there is some confusion by the participant, and at times the NDIA, as to whether the applicant is seeking a review of the decision to approve their statement of participant supports under section 33(2) or the decision (deemed or otherwise) to not review a participants plan under section 48(2). Because both processes are called 'reviews', and the considerations are largely the same, there can be confusion by all parties as to what is actually being sought.

9.26.9.24. The AAT has previously commented on the confusion involved in determining these matters (emphasis added):

In this case, I have set out the steps that the NDIA has taken to illustrate the confusion that would seem to permeate the process of review. To a large extent, ~~the confusion would seem to arise from the structure of the NDIS Act.... To distinguish between decisions regarding the plan and its reassessment and decisions regarding the substance of what it is to which a participant is entitled and which is set out in a statement of participant supports in his or her plan, seems an unnecessary distinction.~~ It is a distinction that leads to cases such as this in which time must be spent to work out what has been decided rather than to work out what it is to which a participant is entitled.

(LQTF and NDIA [2019] AATA 631)

In this case, I have set out the steps that the NDIA has taken to illustrate the confusion that would seem to permeate the process of review. To a large extent, the confusion would seem to arise from the structure of the NDIS Act... To distinguish between decisions regarding the plan and its reassessment and decisions regarding the substance of what it is to which a participant is entitled and which is set out in a statement of participant supports in his or her plan, seems an unnecessary distinction. It is a distinction that leads to cases such as this in which time must be spent to work out what has been decided rather than to work out what it is to which a participant is entitled.

(LQTF and NDIA [2019] AATA 631)

~~9.27-9.25.~~ This review ~~acknowledge~~acknowledges that participants simply want a decision about their support needs, not a decision about another decision. The internal review process could be improved through training, clearer forms and a change in terminology. ~~This review notes – for example,~~ the same form is used to request a section 33(2) review, an unscheduled review under section 48(2) ~~or~~and an internal review of a reviewable decision under section 100 ~~– of the NDIS Act. These could be split into separate forms.~~

~~9.28-9.26.~~ ~~Consideration~~To distinguish it from a request for an unscheduled review under section 48(2) of the NDIS Act, consideration could also be given to operational guidelines confirming, in most cases, a request lodged within three months of a plan being approved is a request for a review of a reviewable decision under section 33(2), ~~to distinguish it from a request for a review decision under section 48(2,) of the NDIS Act.~~

Confirming the matter before the AAT

~~9.29-9.27.~~ The AAT only has jurisdiction to consider the reviewable decision made at the time of ~~lodgment~~lodgement of the application for appeal. The AAT does not have jurisdiction to consider any subsequent decision that the NDIA may have made in relation to the person with disability, including changes to their plan or requests that may have been made by the person with disability. As a consequence, the AAT's decision can quickly become obsolete ~~or outdated~~ if the hearing takes longer than expected.

~~9.30-9.28.~~ For example, while the participant is waiting for the AAT decision ~~the participant, they~~ may have a scheduled plan review, which ~~subsequently changes their plan resulting in the creation of~~creates a new plan. Alternatively, an internal review decision may be made after the ~~lodgment~~lodgement of the application for appeal. Under these circumstances, the AAT's decision will only take into account the plan at the time the ~~decision~~appeal was lodged with the AAT and not any subsequent plan or decision. Understandably, this is creating administrative red-tape and frustrations for both participants and the NDIA.

~~9.31-9.29.~~ Section 26(1)(b) of the AAT Act allows the AAT, with the trilateral agreement of the participant, the NDIA and the AAT, to alter the application before the AAT. However, exercising this provision relies on the NDIA having the power to alter or vary the decision. This power does not currently exist outside the construct of section 100(6) of the NDIS Act. Furthermore, the NDIA is prevented from varying a plan under section 37(2) of the NDIS Act.

~~9.32-9.30.~~ In circumstances where a statement is before the AAT and the scheduled plan review date is imminent, there is merit in allowing the NDIA (where the parties agree, pursuant to s 26(1)(b) of the AAT Act) to vary the plan review date (i.e. ~~push~~by pushing it ~~out~~back until after the AAT has handed down its judgement).

~~9.33-9.31.~~ Further, ~~the ability to amend~~amending a plan ~~in accordance with section 26(1)(b)~~the trilateral agreement of the ~~AAT Act~~parties could also be utilised where, for example, the majority of the supports in contention have been agreed or settled between the participant and the NDIA and can be placed into the ~~participants~~participant's plan and utilised, while the AAT deals with the remaining supports.

~~9.34-9.32.~~ These steps are primarily procedural or jurisdictional but would be expected to reduce the number of unnecessary appeals and ensure ~~that~~ review processes are focused on the participant and facilitated in a way ~~that~~ reduces administrative red-tape and frustrations for participants, the NDIA and AAT.

~~Recommendation 19: The NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended based on trilateral agreement while a matter is before the AAT.~~

~~Recommendation 23: The NDIS Act be amended to clarify the AAT's jurisdiction, including the power for a plan to be amended while a matter is before the AAT.~~

Timeframes for implementing the AAT decision

~~9.35-9.33.~~ The timely implementation of an AAT decision is critical for participants as the decision in question may specifically relate to the reasonable and necessary supports in their plan. However, there is no ordinary or legislated timeframe for AAT decisions to be handed down, ~~or any legislative requirement as~~. The time it takes for the AAT to what would be deliver a reasonable timeframe. This decision is generally dependent on the complexity of the matter ~~and the individual AAT member, before it. In addition, there is no legislated timeframe for the NDIA to implement the AAT's decision.~~

~~9.36-9.34.~~ ~~There are~~ The NDIA is deploying significant operational resources being deployed by the NDIA to improve the experiences of participants undergoing AAT appeal ~~and the administration of reviews~~, including the timely implementation of AAT decisions. NDIA data indicates most AAT decisions are implemented in a participant's plan within one to two weeks of settlement or an AAT decision, unless further information such as a quote is required (e.g. for Assistive Technology).

~~9.37-9.35.~~ However, some stakeholders reported there are lengthy and unexplained delays in amending the participant's plan in line with the AAT's decision implementing AAT decisions. On this basis, there is merit in the Guarantee providing participants with certainty on a timeframe for the implementation of an AAT decision ~~to provide important. This will give the participant~~ assurance the NDIA will honour the AAT decision ~~as stated~~. However, this should be qualified by the fact any person (including the NDIA) who is not satisfied with the AAT decision can appeal it to the Federal Court on a question of law (refer section 44(1) of the AAT Act)⁴¹.

Model litigation

~~9.38-9.36.~~ ~~During consultations, some stakeholders~~ A small number of submissions raised concerns concerns that the NDIA ~~washad~~ not actingacted in accordance with its

⁴¹- To date three NDIA cases have been appealed to the Federal Court of Australia: Mulligan v National Disability Insurance Agency [2015], McGarrigle v National Disability Insurance Agency [2017] and SSBV v National Disability Insurance Agency [2018].

obligations as a model litigant in the conduct of litigation before the AAT. Some submissions noted NDIA solicitors did not read material submitted by the applicant before the hearing, failed to comply with the timeframes agreed in case plans, and in some cases, unnecessarily delayed matters before the AAT. This behavior was attributed as being worse when the assigned lawyer was an NDIA employee. By contrast, solicitors contracted from external law firms to act on behalf of the NDIA were reported to be better prepared for litigation. I have not sought to validate these concerns as they relate to the conduct of some individual matters by the NDIA.

9.39. I have not sought to validate these concerns as they relate to the conduct of individual staff members employed (or engaged by) the NDIA. However, this review strongly reinforces to the NDIA it is obliged to act as a model litigant under the *Legal Services Directions 2017*. This includes in handling claims and litigation, brought by or against the NDIA, the NDIA (or persons employed to act on their behalf) is required to act with complete propriety, fairness and in accordance with the highest professional standards.

9.37. This review notes that the NDIA has taken on a significant program of work to improve its handling of litigation following the Commonwealth Ombudsman's 2018 review of the NDIA's administration of reviews under the NDIS Act. This has included establishing a division within the NDIA for the handling of AAT applications and decisions and the Early Resolution Team discussed previously.

9.38. The NDIA has advised that since these improvements were implemented, feedback from advocacy organisations, legal aid services and participants has been positive, with the early resolution approach receiving strong support. The NDIA has also provided data indicating the average timeframe for resolution of AAT cases has reduced from 170 days to 74 days, with evidence it is continuing to fall as the NDIA continues to invest more resources in resolution of AAT matters.

EDR AAT

CHAPTER 10 – THE NDIS PARTICIPANT SERVICE GUARANTEE

KEY FINDINGS

- ✓ ~~The Guarantee should be legislated through a new rule that includes a balance of qualitative and quantitative measures.~~
- ✓ ~~Commencement of (and reporting against) the Guarantee's quantitative timeliness measures should be staged over two years to 2021-22, to allow sufficient time for the NDIA workforce to build its capacity and capability to provide a quality service experience for NDIS participants.~~
- ✓ ~~The NDIS Act should explicitly provide for the Commonwealth Ombudsman's powers to monitor the NDIA's performance against the Guarantee, as well as clarify that the Ombudsman has powers to obtain information relevant to that purpose.~~

KEY FINDINGS

- ✓ The Guarantee should be legislated through a new NDIS Rule that includes timeframes for decision-making and engagement principles.
- ✓ Commencement of, and reporting against, the timeframes should be staged over two years to 2021-22 allowing sufficient time for the NDIA workforce to build its capacity and capability to provide a quality service experience for NDIS participants.
- ✓ The Commonwealth Ombudsman's powers to monitor the NDIA's performance against the Guarantee should be explicitly provided for in the NDIS Act.

- 10.1. The Terms of Reference for this review focused on the amendments that would need to be made to the NDIS Act to introduce the Guarantee, including legislating timeframes for decision-making by the NDIA.
- 10.2. In assessing NDIS implementation to date, including the underlying reasons for issues being raised by participants, their families and carers, this review considers that a Guarantee based solely around timeframes for decision-making is likely to result in perverse outcomes for participants and risks compromising the quality of the NDIS

participant experience. For example, adherence to timeframes for plan development would be undermined if an approved plan is of poor quality and does not equip the participant as necessary.

10.3. For similar reasons, the Guarantee should not assign timeframes for every interaction a prospective participant or participant may have with the NDIA. There is a continuum in the degree of prescription in legislation, too much will take away from the performance and outcomes focus the Guarantee is seeking to achieve.

10.3-10.4. The Guarantee needs to strike an appropriate balance between the quality of NDIS processes and the speed of those processes. The development of the Guarantee also needs to take into account that a number of the factors causing issues with the participant experience are either a direct result of the scale and speed of the transition period, or are being addressed through operational reforms currently underway by the NDIA.

Three elements of the Guarantee

10.4-10.5. The role of the NDIA is to:

- a. support people with disability, their families and carers to participate in the NDIS;
- b. connect people with disability with information and resources, and offer guidance as they plan for, select and use the supports, services and community activities they need in their lives; and
- c. work with people with disability and the people important to them to develop and maximise the benefits of their individual plans to help them achieve their goals and aspirations.

10.5-10.6. Accordingly, the Participant Service Guarantee and the way it is structured and articulated should:

- a. enhance and strengthen the participant-centered focus of the NDIS, and reinforce fundamental design principles such as statements of goals and choice and control;
- b. enable participants to have a clear understanding of what they can expect at various stages of their engagement with the NDIA or its partner agencies;

- c. support participants to have a clear understanding of what they need to provide to the NDIA and partner agencies, and give participants appropriate time to seek evidence or provide other information required for access or planning decisions;
- d. build greater understanding of the service delivery expectations between the NDIA, its partners, participants and the community; and
- e. support other efforts to ensure the effective operation of the NDIS, including that plans meet participant needs and that supports are well utilised.

10.6-10.7. The Guarantee should set out how the NDIA will work with people with disability in undertaking these functions. Specifically, this review considers ~~that the Guarantee~~ should have three parts:

- a. set out how the NDIA is to engage with and work alongside people with disability;
- b. the timeframes for the NDIA to make decisions or undertake administrative processes; and
- c. key performance metrics, including targets.

10.7-10.8. The Guarantee is intended to cover the full journey of a prospective participant or participant's interactions with the NDIS, including with NDIA staff and its partner organisations. It is envisaged that the NDIA would use the Guarantee metrics therein to inform its statements to partner organisations regarding performance expectations and outcomes.

10.8-10.9. ~~Consistent~~ The qualitative aspects of the Guarantee focus on principles-based outcomes statements supported by underpinning service standards. This approach is consistent with the structure of the NDIS Practice Standards for registered providers (managed by the NDIS Quality and Safeguards Commission), ~~this review proposes that the qualitative expectations of the Guarantee be focused on principles-based outcomes statements supported by underpinning service standards.~~

Part 1 – NDIA ~~Engagement~~engagement

~~10.9-10.10.~~ As part of consultation activities informing this review, six preliminary principles and associated service standards were described in the “*Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing red tape*” discussion paper.

~~10.10-10.11.~~ Consultation feedback indicated that people with disability and the sector more broadly are supportive of a qualitative aspect to the Guarantee to ensure the NDIA remains accountable for the way in which it engages with and works alongside people with disability in delivering the NDIS.

~~10.11-10.12.~~ Following consultation feedback, the proposed principles and service standards have been refined and consolidated and are set out in Table 1. Their articulation is subject to change according to the usual legislative drafting process.

Table 1: [Participant Service Guarantee - Qualitative indicators for inclusion in the Guarantee](#)[Indicators](#)

Proposed Engagement Principle	Proposed Service Standard
Transparent	<p>Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about the NDIS, their plans and supports, that is easy to understand and available in formats that meet their needs.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • ensure that all information, forms, instructions and guidelines are up to date and readily available in various languages and accessible formats and on the NDIS website; • ensure that direct communication with participants and prospective participants is in their preferred format to enable each participant to understand the information for themselves; and • provide clear, consistent, accurate and accessible guidance on the evidence required to demonstrate eligibility for access decisions, including who is qualified to provide this evidence.
Responsive	<p>Participants and people with disabilityprospective participants are supported and their independence is maximised by addressing their individual needs and circumstances.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • promptly acknowledge the concerns or queries of participants, their families and carers; • intervene early to support the best outcome for participants, provide supports where they have the greatest positive impact and resolve issues as they arise; • utilise planning approaches that respond flexibly to the participant's individual circumstances and needs;

Proposed Engagement Principle	Proposed Service Standard
	<ul style="list-style-type: none"> • examine their processes and systems regularly to ensure they are fit for purpose as the NDIS evolves and the needs of participants, their families and carers change; • provide an effective single point of contact so that participants, their families and carers only have to tell their story once and are able to build productive relationships with the NDIS. There should be a single point of contact for multiple participants in a family or other strongly connected groups of participants.
<p>Dignity and Respectful</p>	<p>Participants and prospective participants are valued, listened to and respected.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • enshrine a participant-centered approach by treating participants, their families and carers with empathy, dignity and respect for their diverse experiences, values and beliefs; • ensure staff have a high level of training in disability, including psychosocial disability and other complex conditions, and understand the impact of disability on people's lives; • ensure staff have a high level of training in diversity, including Aboriginal and Torres Strait Islander cultures, culturally and linguistically diverse values and practices, LGBTQI+ and gender considerations; • recognise participants' expertise about their disability and use the recommendations and evidence provided by qualified professionals to assess support needs; and • demonstrate continuous improvement by inviting, considering and incorporating feedback from people with disability and the wider community.

Proposed Engagement Principle	Proposed Service Standard
<p>Empowered Empowering</p>	<p>Participants and prospective participants are empowered to make an access request, navigate the NDIS system, participate in the planning process and use their plan supports.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • actively and appropriately reach out to prospective participants, including those from Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse backgrounds, regional/remote areas and those with psychosocial disabilities to assist them to connect with the NDIS; • assist participants to prepare for their access decisions and planning meetings, and to understand their plans and how to use them, including supporting them to request and receive their approved plan in the format that best suits their needs; • inform participants of their right to bring anyone they choose to help support them through the process; • provide participants and prospective participants with a statement of reasons for all NDIA decisions about them (when requested); • provide all participants with a summary draft plan in advance of their final planning conversation in a format of their choosing discussion; • inform participants and prospective participants about their right to appeal decisions; and how to lodge an appeal; and • report on NDIS performance, as set out below in Part 3 of the PSG Participant Service Guarantee, as varied from time to time, to ensure the NDIS remains transparent and accountable in its undertakings.

Proposed Engagement Principle	Proposed Service Standard
Connected	<p>The NDIA breaks down barriers so that participants and prospective participants are connected to the services and supports they need.</p> <p>The NDIA and its Partners in the Community will:</p> <ul style="list-style-type: none"> • work constructively and collaboratively with Commonwealth and state and territory government service systems, including through data sharing arrangements, to streamline and reinforce the participant-centered approach; • adapt their approaches to connect with participants, their families and carers in different communities, especially in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities; • ensure that funding for supports is not interrupted if a new plan is not in place by the scheduled review date to provide, <u>providing</u> continuity of support and reduce<u>reducing</u> the overall burden of NDIS-related out-of-pocket costs for participants where possible.

~~10.12.10.13.~~ This review also considers the Guarantee should include a reciprocal engagement principle for participants on the basis that building strong relationships is a two-way process, as set out in Table 2.

Table 2: Participant Service Guarantee - Reciprocal Principle

Proposed Principle	Engagement	Proposed Service Standard
Participant Communications	Engagement	<p>Participants, prospective participants and their representatives help the NDIA and its Partners in the Community to deliver the best possible experience of the NDIS.</p> <p>Participants and prospective participants will:</p> <ul style="list-style-type: none"> • provide accurate and up-to-date information to support effective NDIA decision making; • inform the NDIA and its Partners in the Community of any significant changes to their needs, circumstances or goals and aspirations; and • provide constructive feedback on their experience of the NDIS in order to support the continued improvement of the NDIS.

Part 2 – Timeframes

Explanation of decision-making

10.13-10.14. As discussed in Chapter 3, ~~this review considers that~~ the Guarantee should empower an NDIS participant (or prospective participant) to request an explanation of an access, planning or plan review decision made by the NDIA.

10.14-10.15. Generally speaking, the explanation should:

- be provided in an accessible format of their choice;
- be set out in a clear and logical manner than is easy to read and understand^{10.15};
- set out material findings of fact of the matter;
- the evidence and information considered in making the decision;
- provide a basis for conclusions reached, and the reasoning leading to the outcome in the matter; and
- offer advice about any right of appeal, including the time allowed to apply for the appeal and how to apply.

10.15-10.16. This review considers that it is reasonable for this explanation to be provided within 28 days, ~~rather than a shorter timeframe.~~

Table 3: Timeframes for inclusion in the *Participant Service Guarantee* – explanation of decisions

Decision	Current Timeframe	Timeframe from 1 July 2020
Request an explanation of a decision	Nil	28 days

Access decisions

10.16-10.17. As discussed in Chapter 5, this review does not find a compelling reason to amend the current legislated timeframes for the NDIA to make an access request decision. However, this review does consider that a prospective participant should be given more than the 28 days currently ~~provided to source material relevant to their access request, if requested stipulated~~ to provide additional information ~~if requested~~ by the NDIA. This review recommends extending this period to 90 days, with provision for the NDIA to specify a longer period ~~if necessary~~. The NDIA should also be required to make all reasonable efforts to contact a prospective participant before the access request is deemed to ~~behave~~ lapse.

Table 4: Timeframes for inclusion in the *Participant Service Guarantee* (access) decisions

Decision	Current Timeframe	Timeframe from 1 July 2020
Initial CEO Access decision, or request for more information	21 Days days	21 Days days
Participant to provide information	28 days before access request lapses	90 days and access request only lapses after NDIA makes all reasonable efforts to contact
CEO decision after more information provided	14 Days days	14 Days days

Planning and plan review decisions

~~10.17-10.18.~~ In considering timeframes for decision-making in relation to planning and plan review processes, it is important to balance NDIA capacity and capability against community expectations. Importantly, delivering and reporting on the timeframes set out in the Guarantee will require a substantial redesign of the NDIA's existing ICT and workflow management tools, and increased resourcing. ~~As a staggered implementation is appropriate as~~ it will take at least 12 months ~~post implementation~~ for the NDIA to have the tools, ~~this review considers that a staggered implementation is appropriate.~~

~~10.18-10.19.~~ As discussed in Chapters 6 and 7, ~~this review considers~~ the Guarantee should include several new timeframes for the planning process, including the offer of a planning meeting after an access decision and a plan implementation meeting following approval of the statement of participant supports. ~~This review also considers that, at~~ At scheme maturity, ~~it would be expected that~~ a participant ~~will~~ should have a plan put in place no more than eight weeks after an access ~~request~~ decision. Importantly, in adhering to the timeframes set out in the Guarantee, this review considers it is more important that the plan be approved in that eight week timeframe, even if the planning meeting could not occur within the 21 day timeframe.

~~10.20.~~ ~~As discussed in Chapter 6, should the NDIA exercise discretion to provide funded ECEI supports to a child with disability prior to the approval of their first plan, that first plan should be put in place no more than twelve weeks following the access decision.~~

~~10.21.~~ ~~However, This review does not, however, find as discussed in Chapter 3, the Guarantee should also empower participants to be provided with a full draft plan prior to its approval, noting the decision on the supports to be funded by the NDIS is ultimately vested with the NDIA and plans are intended to be approved within a set timeframe.~~

~~10.19-10.22.~~ There is no compelling reason to amend the timeframes ~~currently provided in the NDIS Act~~ for providing a copy of a plan to a participant following the approval of a participant's plan.

Table 5: Timeframes for inclusion in the [Participant Service Guarantee](#) (~~planning~~) decisions

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating the preparation of a plan	As soon as reasonably practicable	21 days following access decision.	21 days following access decision.
Approve statement of participant supports	As soon as reasonably practicable	70 days following access decision	56 days following access decision
Approve statement of participant supports, if the NDIA exercises discretion to provide ECEI supports prior to the approval of the plan	Nil	90 days following access decision	90 days following access decision
Offer and hold a plan implementation meeting ⁴²	Nil	28 days following the plan being approved ⁴³	28 days following the plan being approved ⁴⁴
Plan copy provided to participant following approval of statement of participant supports	7 Days days	7 Days days	7 days

~~10.20-10.23.~~ As discussed in Chapter 8, [this review considers](#) the Guarantee should include several new timeframes relating to unscheduled and scheduled plan reviews, as well as the new plan amendment process.

~~10.21-10.24.~~ In keeping with the proposed timeframes for facilitating a participant's first plan, this review considers that, at [scheme](#) maturity, the NDIA should commence a participant's scheduled plan review at least [fiveeight](#) weeks before the scheduled review date, to enable a seamless move from one plan to another, with a new plan in place by the scheduled plan review date.

~~10.22-10.25.~~ In [supporting regard to](#) the proposed ~~new~~ plan amendment process ~~where a plan may be changed without requiring a plan review to be undertaken, this review considers that,~~ it is reasonable to expect, once [the original decision information](#) has

⁴² Subject to the availability of the participant

⁴³ Subject to the availability of the participant

⁴⁴ Subject to the availability of the participant

been ~~made~~ provided that triggers a plan amendment process, the amendment to the plan will ~~be implemented~~ within 28 days. The one exception is for highly complex quotes, such as home modifications, where it is reasonable to provide the NDIA with additional time to ensure the quote is properly assessed.

~~10.23-~~10.26. This review has proposed reserving the formal unscheduled plan review process for situations where participants have had a significant change in circumstances, a change in their level of informal supports, or require additional NDIS funding to achieve a new goal. On this basis, and in keeping with the intent of the plan amendment power, it seems reasonable that, at scheme maturity, the NDIA should undertake and complete an unscheduled plan review within four weeks following the decision to conduct it.

~~10.24-~~10.27. ~~Furthermore, this review considers that the~~ current process for deeming an unscheduled plan review decision should be reversed, such that if the NDIA does not make a decision in the prescribed period, then the NDIA is taken to have agreed to undertake the unscheduled review. However, and due in-part to the operational resources required to undertake a full plan review, it is reasonable to provide the NDIA with up to 21 days to make the decision before deeming ~~it~~ the decision had been made.

~~10.25-~~10.28. As discussed in Chapter 9, in undertaking an internal (merits) review the NDIA ~~considers~~ considers more than just the documentation made available to the delegate responsible for making the decision in question. As such, the merits review process is broader than a simple desktop audit of the decision, which could ordinarily be completed quickly. On this basis, it seems reasonable that, at maturity, an internal (merits) review should be completed within a period of 60 days.

10.29. As discussed in Chapter 9, a new timeframe should be introduced to require the NDIA to amend a plan in line with an AAT decision within 28 days. This would be in keeping with the timeframe proposed for the new plan amendment process.

~~10.26. On the basis that the NDIA may seek additional information from a participant, or prospective participant, it seems reasonable that at maturity, an internal merits review should be completed within a period of 60 days, unless an extended period is agreed mutually between the parties.~~

Table 6: Timeframes for inclusion in the *Participant Service Guarantee* (plan review and amendment)

Decision	Current Timeframe	Timeframe from 1 July 2020 to 30 June 2021	Timeframe from 1 July 2021
Commence facilitating a scheduled plan review	Nil	No later than 56 days before the scheduled review date	No later than 42 ⁵⁶ days before the scheduled review date.
Review – deciding to undertake an unscheduled review, prior to deemed decision.	14 Days ^{days}	21 days	21 days
Review – undertaking an unscheduled review	As soon as reasonably practicable	28 ⁴² days following the decision to undertake it	28 days following the decision to undertake it
Plan amendment	Nil	28 days following the making receipt of the decision information that triggers a plan amendment process.	28 days following the making receipt of the decision information that triggers a plan amendment process.
Plan copy provided to participant following plan amendment (complex quote)	Nil	7 Days ^{50 days} following the receipt of information, that triggers a plan amendment process.	7 days ^{50 days} following the receipt of information, that triggers a plan amendment process.
Plan copy provided to participant following plan amendment	Nil	7 days	7 days
Review – undertaking an internal review	As soon as reasonably practicable	90 days	60 days

~~10.27.10.1. As discussed in Chapter 10, this review considers that a new timeframe should be introduced to require the NDIA to amend a plan in line with an AAT decision within 28 days. This would be in keeping with the timeframe proposed for the new plan amendment process.~~

Table 7: Timeframes for inclusion in the Guarantee (AAT)

Decision	Current Timeframe	Timeframe from 1 July 2020
Review – implementing a plan variation from an AAT decision	Nil	28 days

Inserted Cells

~~10.28-10.30.~~ Notwithstanding the timeframes specified in Tables ~~4X~~ to ~~5X~~ above, ~~this review considers that~~ the NDIA should not be penalised ~~wherewhen~~ the timeframe cannot be met because actions are required by the prospective participant or participant. For example, in order to complete an unscheduled plan review, a participant may need to provide further information of their functional ~~impact of their impairment capacity~~. In that instance, ~~this review considers that~~ the NDIA should ~~make complete the decision, or do the thing set out in the Guarantee, plan review~~ within 14 days of receiving the information that was requested from the participant, or the timeframe set in the Guarantee, whichever is later.

Other timeframes not prescribed

~~10.29-10.31.~~ Although not expressly discussed in previous chapters, this review has also considered the timeframes relating to the appointment and cancellation of nominees to the extent that they impact participants' experience of NDIA decision-making.

~~10.30-10.32.~~ Currently, the NDIS Act does not prescribe a timeframe for the NDIA to cancel the appointment of a ~~participant-nominated~~ nominee following ~~the a participant's~~ request ~~of a participant. This review considers that the for this to take place. The Guarantee should provide for this, aligned to the and that this timeframe should match the current~~ 14 day timeframe ~~in the NDIS Act~~ for the NDIA to cancel the appointment of ~~the a NDIA-nominated~~ nominee ~~they initiated.~~ This would be in keeping with the ~~intent expectation~~ that the NDIA should act quickly in accordance with participant wishes ~~and expectations~~.

~~10.31-10.33.~~ ~~This review does not, however, find any~~ There is no compelling reason to amend the timeframes for nominees to appeal an action by the CEO to suspend their appointment.

Table 7: Timeframes for inclusion in the Participant Service Guarantee - other

Decision	Current Timeframe	Timeframe from 1 July 2020
Cancel participant requested nominee	As soon as reasonably practicable	14 Daysdays
Cancel CEO initiated nominee	14 Daysdays	14 Daysdays
Appealing the suspension of a nominee	28 Daysdays	28 Daysdays

Special circumstances

As previously discussed, strict adherence to timeframes at the expense of quality decision making may result in perverse outcomes for participants. Therefore, any move to prescribe strict timeframes for decision-making needs to be balanced against the reality that, for some participants, their needs and circumstances may be sufficiently complex, such that the timeframe cannot be met without compromising their experience. Participant engagement in decision-making

~~10.32-10.4~~ The timeframes prescribed

~~10.33. However, irrespective of the complexity of a participant's circumstances, they should still have certainty around when a decision will be made by the NDIA, particularly in regard to the process of developing a plan, amending it, reviewing it, or reviewing a decision the NDIA made.~~

~~10.34. The the Guarantee should allow, if a plan amendment, plan review or internal review could not be made within the timeframes set out above without comprising the quality of the participant's experience, that the timeframe can be extended by up to 50 per cent, but only where certain (limited) circumstances apply.~~

~~10.35. This review considers that those circumstances would be where the to ordinary NDIA administrative processes. Where a participant:~~
~~{NDIA to provide advice on when it is appropriate to extend — need meat on this as we can legislate decision timeframes based on broad percentages — the legislation gathering additional information, or is based on an individual}~~
~~a. has severe and multifaceted disability requirements requiring multiple supports;~~
~~b. the involvement of multiple service systems, such as health, justice, child protection; and~~

- ~~c. the need for complex home modifications and/or assistive technology.~~
- ~~d. [Query – need to consider how these butt up against the new criteria for unscheduled plan reviews – we are restricting unscheduled reviews to similar circumstances – seems odd to say then those same criteria apply in giving the NDIA a longer otherwise unavailable for a period to make the decision]~~

~~10.36-10.34. This review also considers that, should the NDIA determines that one or more of these criteria apply and that the decision cannot be made within the timeframe specified in the Guarantee, the NDIA must inform the (for instance they are on a holiday), the timeframes applied to the NDIA should be paused. The only exception to this requirement would be where a prospective participant, was providing the reasons for that decision and providing certainty about the timeframe in which the decision will be made. This will provide important transparency around the administration of, and reasoning supporting, NDIA decisions, further information to support an access request.~~

~~10.35. If the NDIA is unable to meet the timeframe prescribed in the Guarantee for any other reason, the NDIA should be required to provide the prospective participant or participant with notice in writing explaining why. This notification should provide the prospective participant or participant with certainty about when the decision will be made. This would support a broader transparency agenda and ultimately should be factored into the design of any online tracking system (refer recommendation 5).~~

Part 3 – Performance ~~Metrics~~ metrics

~~10.37-10.36. Section 174 of the NDIS Act currently sets out states that the NDIA Board must provide DRC with a quarterly report on the operations and performance of the NDIA. This report must include information (including statistics) that relates to either or both of from the following in the reporting period to which the report relates: that relate to participants in the NDIS, and the funding or provision of supports by the NDIA.~~

This

~~10.38. The existing participant satisfaction metric included in quarterly reports indicates an overall satisfaction rate of around 90 per cent. However, this review has heard that~~

participants strongly disagree with the way satisfaction is measured and does not reflect a true measurement of the participant experience. This is despite recent changes to measure satisfaction at a number of points in the participant's NDIS journey.

~~10.39. In particular, this review has heard that the current satisfaction metric is gathered at the end of the planning conversation, but before the plan is approved. In doing so, it does not accurately assess a participant's satisfaction with the final plan, or with the engagement by the NDIA to support participants to implement their plan.~~

~~10.40. This review therefore considers that a new measure of participant satisfaction designed by an independent third party should be implemented by the NDIA, and that reporting on this measure be included in the quarterly reports.~~

~~10.41-10.37. This review also considers that the quarterly reporting requirement should be expanded to include a report on the NDIA's performance in delivering against each measure set out in the Guarantee, and specifically:~~

- a. activities undertaken or improvements made in the quarter in relation to each qualitative service standard;
- b. the average response or decision time against each timeframe;
- c. the percentage of decisions made in excess of each timeframe; and
- d. as a proportion of total participants and business as usual targets and expectations, the number of:
 - a-i. access decisions made;
 - b-ii. scheduled plan reviews initiated and completed;
 - c-iii. unscheduled plan reviews initiated and completed;
 - d-iv. plan amendments initiated and completed;
 - e-v. internal reviews initiated and completed;
 - f-vi. applications to AAT, both those settled before a substantive hearing and those progressing to tribunal; and
 - e-vii. average plan duration- (i.e. plan approval date to scheduled review date).

10.38. In instances where the NDIA is unable to report on, or is not yet achieving, a particular measure, the quarterly report should also include details on the activities undertaken by the NDIA in the quarter, or that will be undertaken in future quarters, to meet it. This will provide a clear line of sight as to the NDIA's capacity and performance in delivering an improved participant experience.

10.39. Section 174(1)(b) of the NDIS Act currently provides that the quarterly report must be provided within four weeks after the end of the period to which the report relates. Noting the additional reporting requirements imposed by the Guarantee, it is reasonable to provide the NDIA with six weeks to provide the report. In addition, this review notes that extending the legislated timeframes related to the production of quarterly reports was agreed by COAG following the 2015 Review of the NDIS Act, but that recommendation has not yet been legislated.

10.40. The existing participant satisfaction metric included in quarterly reports indicates an overall satisfaction rate of around 90 per cent. However, this review has heard that participants disagree with the way satisfaction is measured and does not reflect a true measurement of the participant experience. This is despite recent changes to the system that mean satisfaction is measured at a number of points in the participant's NDIS journey.

10.41. In particular, this review has heard that the current satisfaction metric is gathered at the end of the planning conversation, but before the plan is approved. This means it does not accurately assess a participant's satisfaction with the final plan or with the NDIA's engagement in supporting participants to implement their plan.

10.42. A new measure of participant satisfaction should be implemented by the NDIA, with reporting on this measure included in the NDIA's quarterly reports to the DRC. This should be designed independently from the NDIA noting that the NDIS Independent Advisory Council could undertake this task, as part of its statutory function to bring the views of participants, carers and experts in the disability sector to the heart of the NDIS by the provision of independent advice based on the experience of its members and their networks.

~~10.42-10.43.~~ It is also expected the NDIA would embed both the qualitative and quantitative aspects of the Guarantee through its own robust quality assurance practices. In the instance where the NDIA is unable to report on, or is not yet achieving, a particular

measure, the quarterly report should also include details on the activities undertaken by the NDIA in the quarter, or will undertaken in future quarters, to meet it. This will provide a clear line of sight as to the NDIA's capacity and performance in delivering an improved participant experience.

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Recommendation 24: That a new independent participant satisfaction survey be developed, with reporting included in the NDIA's quarterly reporting to DRC.

The legislated form of the Guarantee

~~10.43-10.44.~~ ~~Notwithstanding that~~ While the Guarantee is anticipated to commence from 1 July 2020, the NDIS as a system will be subject to continuous evolution. As a result, the Guarantee needs to be sufficiently flexible and responsive to prevailing circumstances as they evolve.

~~10.44-10.45.~~ Therefore, this review considers it would be appropriate to introduce the Guarantee as a new Category C ~~rule~~Rule, which would allow the Commonwealth Minister responsible for the NDIS to update ~~the Guarantee~~it from time-to-time with the majority agreement of the Commonwealth and states and territories.

~~10.45-10.46.~~ A Category C ~~rule~~Rule is proposed on the basis that ~~rules~~the NDIS Rules currently made under the NDIS Act relating to timeframes for NDIA decision-making are Category C. In addition, reflecting on the ongoing role of states and territories in the governance of the ~~scheme~~Scheme, and as agreed through bilateral agreements between the Commonwealth and each state and territory for full ~~scheme~~Scheme, it would seem appropriate that the ~~rule~~Rule making power relating to the Guarantee would also be a Category C ~~rule~~Rule.

~~10.46-10.47.~~ As this will be the first ~~legislated~~ version of the Guarantee ~~legislated, this, it would be appropriate to~~ review ~~also considers the Guarantee should be reviewed~~it within the first two years of its ~~operation~~enactment to ensure it continues to be fit for purpose.

~~10.47-10.48.~~ ~~For the avoidance of~~To avoid any doubt, ~~this review also considers that~~ relevant timeframes ~~legislated for decision-making currently set out~~ in the NDIS Act ~~should~~ be removed and ~~instead~~ included in ~~at~~the new Guarantee rule; ~~for instance the current 21 day period for the CEO to make an access request decision.~~ This will ensure

there is one consolidated location for all timeframes associated with the participant's journey through the NDIS.

Recommendation 20: That the Guarantee be legislated through a new Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision making move from the NDIS Act to the new rule;
- b. the proposed timeframes, quality indicators and performance metrics;
- c. participants (and prospective participants) being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. a new, independently designed participant satisfaction survey to be introduced; and
- e. the Guarantee to be reviewed within two years of being enacted.

Timeframes for decision-making by the NDIS Quality and Safeguards Commission

10.49. In considering timeframes for decision-making by the NDIA under the NDIS Act, this review noted there are several instances prescribed where the NDIS Quality and Safeguards Commissioner must decide to do a thing, or take an action, in either a specified or unspecified timeframe. For example: providing note of intention to revoke or suspend a providers registration, or issue a banning order against a person from working under the NDIS and having contact with NDIS participants.

10.50. There may be merit in amending the NDIS Act to provide powers for a Category D NDIS Rule to be made for the purposes of timeframes for decision-making for the NDIS Quality and Safeguards Commission, should a Service Guarantee for this purpose be desirable in the future.

Recommendation 25: That the NDIS Act be amended to legislate the Participant Service Guarantee as a Category C rule, to be updated from time to time, with:

- a. relevant existing timeframes for decision-making moved from the NDIS Act to the new rule;
- b. new timeframes for decision-making, engagement principles and performance metrics;
- c. prospective participants and participants being empowered to request an explanation of an access, planning or plan review decision made by the NDIA;
- d. participants being empowered to receive a full draft plan before it is approved by the NDIA; and
- e. a review within two years of being enacted.

The role of the Commonwealth Ombudsman

~~10.48-10.51.~~ The Australian Government has committed \$2 million, across 4 years from 2020-21, to allowenable the Commonwealth Ombudsman's OfficeOmbudsman to monitor the NDIA's performance against the Guarantee and to support NDIS participants pursuing complaints about the timeframes for NDIA-decision making they have experienced.

~~10.49-10.52.~~ The *Ombudsman Act 1976* ~~currently~~(Cth) sets out the Commonwealth Ombudsman's functions, which include investigating the administrative actions of Australian Government departments/agencies, including the NDIA, and prescribed private sector organisations.

~~10.50-10.53.~~ The Ombudsman Act also provides the Commonwealth Ombudsman with a range of powers which will facilitate the functions associated with the Guarantee, ~~including. This includes~~ the ability to investigate complaints, conduct own motion investigations and compel agencies, within ~~their~~ jurisdiction, to provide documentation or information. The Ombudsman Act also gives the Commonwealth Ombudsman jurisdiction to investigate the actions of Commonwealth service providers as if the relevant department or authority had taken those actions.

~~10.51-10.54.~~ The ~~Ombudsman's Office~~Commonwealth Ombudsman will have capacity to investigate individual complaints about the NDIA, based on the ~~Guarantee~~timeframes ~~outlined, as this would be considered a matter of administration for decision-making set out in the Guarantee.~~ As a part of this function, the ~~Ombudsman's Office~~Commonwealth Ombudsman will also monitor complaints with a view to identifying systemic issues. This ~~can~~will be done through data analysis of the complaints received, outreach activity, engagement with other organisations ~~and~~ agencies (such as advocacy organisations) and a range of other activities in order to determine the nature of the issue.

~~10.52-10.55.~~ Additionally, the ~~Ombudsman's Office would also~~Commonwealth Ombudsman will conduct ongoing monitoring and reporting of the NDIA's performance against the service standards set ~~within~~in the Guarantee. If systemic issues are identified, the ~~Commonwealth~~ Ombudsman could then decide whether ~~the Ombudsman's Office should progress~~ to conduct an own motion investigation with the NDIA, which may include reviewing practices and procedures.

~~10.56.~~ Notwithstanding the powers already provided for in the Ombudsman Act, there is merit in amending the NDIS Act to:

- a. clearly establish the ~~Commonwealth~~ Ombudsman's ongoing powers to monitor the NDIA's performance against the Guarantee, ~~as well as to;~~ and
- ~~10.53.b.~~ clarify that the Ombudsman has powers to obtain information from the NDIA relevant to their performance in delivering against the Guarantee despite any other provisions in the NDIS Act.

~~Recommendation 21: That the NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Guarantee~~

~~Recommendation 26: The NDIS Act be amended to clarify the Commonwealth Ombudsman's powers to monitor the NDIA's performance in delivering against the Participant Service Guarantee.~~

Proposed consequences

~~10.54-10.57.~~ This review has considered what should occur if the NDIA fails to meet or work toward the ~~elements~~matters contained in the Guarantee.

~~10.55-10.58.~~ Firstly, the review considered whether to introduce additional deeming decisions, such that if a timeframe in the Guarantee is not met, that would result in a deemed decision in ~~the positive~~for favour of the prospective participant or participant. While this would provide more certainty to people with disability around the outcome of NDIA decision-making ~~in the instance where~~when a timeframe is not met, this ~~review considers there~~would be a substantial risk to the legislative framework ~~in doing so~~, particularly if it were applied to access or reasonable and necessary decisions. This is because the outcome of a deemed decision in the positive could ~~still~~ be out-of-scope or inconsistent with the legislative requirements.

~~10.56-10.59.~~ This review also considered whether a financial penalty to the NDIA should apply. However, this too could create perverse incentives ~~should as it could drive~~ the NDIA ~~be driven toward making~~to make quick but poor quality decisions, in favour of avoiding the financial impact of paying the penalty. Importantly, the consequences of not meeting the Guarantee should work to reinforce ~~the~~its intent ~~of the Guarantee,~~ ~~and,~~ not work against it.

~~10.57-10.60.~~ Therefore, ~~this review considers that~~ transparency and public accountability ~~is~~are likely to be the most effective tool to drive improved participant outcomes. ~~Therefore~~To this end, the ~~proposed~~ Guarantee has been designed to make ~~visible~~

~~areas where it is clear that~~ where the NDIA is meeting, or not meeting, ~~elements/matters~~ required to drive improved participant experiences, enabling governments to have clear oversight of the NDIA's performance.

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CHAPTER 11 – UPDATING THE NDIS LEGISLATION

KEY FINDINGS

- ✓ ~~Elements of the NDIS Act are designed around a scheme that was in a launch or transition phase. As of 1 July 2020, when the transition to the NDIS will be completed in all states and territories, aspects of the NDIS Act will be out of date.~~
- ✓ ~~The NDIS Act should be amended to ensure it is fit for purpose in the context of a maturing and evolving scheme that will be truly national from 1 July 2020.~~
- ✓ ~~The NDIS Rules should also be amended to remove transitional provisions and reflect best-practice drafting standards.~~

KEY FINDINGS

- ✓ Elements of the NDIS Act are designed around a scheme that is in a launch or transition phase. As of 1 July 2020, when the transition to the NDIS will be complete in all states and territories, aspects of the NDIS Act will be out of date.
- ✓ The NDIS Act should be amended to ensure it is fit-for-purpose in the context of a maturing and evolving scheme that will be truly national from 1 July 2020.
- ✓ The NDIS Rules should also be amended to remove transitional provisions and reflect best practice drafting standards.

Updating the NDIS Act

- 11.1. Many provisions in the NDIS Act refer explicitly to trial and transition, or “the NDIS launch”, ~~launch~~. This includes references to the progressive roll-out of the NDIS across Australia and the different phasing arrangements that were to apply in each state and territory (see, for example section 33A of the NDIS Act). As of 1 July 2020, these references will be out of date ~~following the completion of~~as the transition period will be complete.

- 11.2. Currently, the NDIS Act differentiates between a 'host' and a 'participating' jurisdiction. In short, a host jurisdiction is a ~~reference to a~~ state or territory in which the NDIS is ~~operating available~~ and a 'participating' jurisdiction is a ~~reference to a~~ state or territory ~~wherein which~~ the NDIS Quality and Safeguards Commission is operating.
- 11.3. As the NDIS had not commenced in each state and territory when the NDIS Act first came into force, ~~the NDIS Act~~ it needed to be able to differentiate between ~~them~~ jurisdictions in which the NDIS was operating and those in which it was not. Using the term 'host jurisdiction' was the way this was done.
- 11.4. Similarly, the term '~~participating~~ jurisdiction' was introduced to reflect that states and territories would not all come under the remit of the NDIS Quality and Safeguards Commission at the same time. The Commission commenced operations in New South Wales and South Australia on 1 July 2018, and ~~all other states~~ the Northern Territory, Australian Capital Territory, Victoria, Queensland and territories (except Western Australia) Tasmania on 1 July 2019. The Commission will commence operations in Western Australia on 1 July 2020.
- 11.5. Because the NDIS is ~~operating now available~~ across Australia, all jurisdictions are now considered "~~host~~ jurisdictions" and from 1 July 2020, all jurisdictions will ~~also~~ be considered "~~participating~~ jurisdictions". It would therefore be appropriate to replace all existing references to 'host' or 'participating' jurisdictions with 'states and territories'. This will reflect that the NDIS is truly a national system of ~~disability~~ support for people with severe and profound disability.
- 11.6. The NDIS Act also differentiates between the registration requirements that would apply to ~~an~~ NDIS provider in a host jurisdiction that is not a participating jurisdiction, and the arrangements that apply to NDIS providers in host jurisdictions that are ~~also~~ participating jurisdictions. ~~The~~ From 1 July 2020, the former provisions ~~can~~ will be ~~removed from 1 July 2020, obsolete~~ as there will be no host jurisdictions that are not participating jurisdictions. From 1 July 2020, the registration of all NDIS providers across Australia will be managed by the NDIS Quality and Safeguards Commission and subject to the Commissioner's registration powers at Chapter 4, Part 3A of the NDIS Act and the NDIS ~~rules~~ Rules made for the purposes of that part.
- 11.7. The NDIS Act also references a number of 'firsts'. For example, arrangements that apply to the appointment of the first CEO of the Agency, the first reviewing actuary,

the first report that must be provided to the Board about the scheme's performance and the first review of the NDIS Act to occur in 2015. These provisions can also be removed as these events have already occurred.

11.8. While none of these changes are strictly required for the NDIS to operate under full scheme arrangements, amending the NDIS Act ~~to reflect a full scheme environment as proposed~~ will reduce complexity and confusion, ~~as well as and~~ provide an important signal that the NDIS has moved beyond the roll out stage. A full list of the suggested amendments to be made to the NDIS Act is provided at Appendix ~~D-E~~.

~~11.8.~~

2015 Independent Review of the NDIS Act

11.9. In accordance with existing legislative provisions, the NDIS Act was reviewed in 2015. The purpose of the review was to assess the operation of the NDIS Act, ~~as well as to~~ and consider whether or not any amendments could be made to ~~better~~ enable ~~government~~ governments to further the objects and principles of the NDIS Act.

11.10. The 2015 review recommended a number of minor and technical amendments to help governments manage risks proactively, so the NDIS stays on time, on budget and keeps delivering positive outcomes for people with disability. The ~~Review~~ review also made a number of recommendations that show there are opportunities to provide greater clarity to the legislative framework. To date, these amendments have ~~yet to~~ been legislated.

11.11. ~~This Review considers that~~ There is no compelling reason not to proceed with the 2015 review recommendations. On this basis, any update ~~that is~~ made to the NDIS legislation to give effect to the Guarantee should also ~~implements~~ implement the 2015 Act review recommendations, as agreed by COAG in December 2016 ~~as there is no compelling reason not to proceed with the proposed amendments. These.~~ The 2015 recommendations include:

~~f.e.~~ removing moderating language;

~~g.f.~~ including amendments to reflect the centrality of people with disability and their inclusion in a co-design capacity; and

~~h.g.~~ amending the principles of the NDIS Act to acknowledge the unique experiences of women and LGBTQIA+ people with disability.

A full list of the suggested amendments to be made to the NDIS Act as a result of the 2015 Review ~~review~~ is provided at Appendix EE.

Updating the NDIS ~~rules~~ Rules

11.12. A significant number of NDIS Rules were created to give effect to trial and transition periods and will ~~no longer~~ not be relevant from 1 July 2020. These include:

- a. the *National Disability Insurance Scheme (Facilitating the Preparation of Participants plans – Australian Capital Territory) Rules 2014* and equivalent

rules relating to New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and Western Australia.

- b. the *National Disability Insurance Scheme (Prescribed Programs – New South Wales) Rules 2016*;
- c. the *National Disability Insurance Scheme (Prescribed Program – Western Australia) Rules 2018*;
- d. the *National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*; and
- e. the *National Disability Insurance Scheme (Timeframes for Decision Making) Rules 2013* (to be replaced by a new rule giving effect to the [Participant Service Guarantee](#)).

~~This review considers that these rules~~ [These Rules](#) should be repealed.

11.13. This review has not considered the SDA Rules as a separate review process is underway to refresh ~~the rules~~ [them](#) in line with the 2018 [Review](#) of the SDA Pricing and Payments Framework. In addition, this review does not propose any amendments to the information disclosure or accounting for compensation ~~rules~~ [Rules](#), as these ~~rules~~ [Rules](#) are ~~currently~~ [better](#) considered ~~broadly fit for purpose~~ [in parallel with the suggested additions to DRC's future work program, as discussed in Chapter 2.](#)

11.14. ~~For all~~ [All](#) remaining ~~rules~~ [Rules](#) made for the administration of the NDIS by the NDIA, ~~this review considers that that these should~~ be repealed and replaced with ~~rules~~ [Rules](#) that have been drafted in accordance with best practice drafting standards. This will ensure consistency and clarity of interpretation, ~~to correct~~ [correction of](#) drafting errors, and ~~removal~~ [removal of](#) unnecessary repetition ~~of the NDIS Act~~, without altering the intention of the rule. In particular, the rules at Box 8 should be repealed and replaced:

Box

Table 58: NDIS Rules recommended/proposed to be repealed and replaced

Name of Rule	Description
National Disability Insurance Scheme (Becoming a Participant) Rules 2016	<ul style="list-style-type: none"> Repeal and replace based on best practice drafting standards. Provide clearer guidance for the NDIA in considering whether a psychosocial impairment/s are permanent (Chapter 5 refers). Clarify the definition of appropriate medical treatments when considering functional impairment/s as permanent (Chapter 5 refers).
National Disability Insurance Scheme (Children) Rules 2013	<ul style="list-style-type: none"> Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Nominees) Rules 2013	<ul style="list-style-type: none"> Repeal and replace based on best practice drafting standards.
National Disability Insurance Scheme (Plan Management) Rules 2013	<ul style="list-style-type: none"> Repeal and replace based on best practice drafting standards. Clarify that supports in <u>plans a participant's plan</u> should <u>usually be described generally, and prescribed specifically used flexibly, except in certain (limited) circumstances, such as capital supports</u> (Chapter 7 refers). <u>Allow/Provide</u> the NDIA <u>more defined powers</u> to undertake <u>flexible commissioning models/market intervention</u> on behalf of participants (Chapter 7 refers). <u>Redefine Outline that requests for participants to 'plan management as manage'</u> their NDIS funding <u>be subject to the same considerations that apply when a form of participant seeks to 'self-management/manage'</u> (Chapter 7 refers).
National Disability Insurance Scheme (Supports for Participants) Rules 2013	<ul style="list-style-type: none"> Repeal and replace based on best practice drafting standards. <u>Strengthen/Reinforce that the role/determination of reasonable and necessary supports for children with disability will:</u> <ul style="list-style-type: none"> <u>recognise the additional informal supports provided by their families in early intervention and</u>

	<p>parental or carer rights and carers, when compared to reasonable children without disability;</p> <ul style="list-style-type: none"> o provide families and carers with access to supports in the home and other forms of respite (Chapter 6 refers); and o Recognise build the importance capacity of family centered planning approaches for children families and carers to support children with disability in natural settings such as the home and community (Chapter 6 refers). <ul style="list-style-type: none"> • Clarify the boundaries and responsibilities of the NDIS and other service systems following DRC decisions (Chapters 3 and 6 refers). • Outline the <u>considerations for the provision of funded matters to be considered in determining support coordination in plans as reasonable and necessary</u> (Chapter 7 refers).
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~~Recommendation 22: That the NDIS Act and accompanying rules be amended to:~~

- ~~a. remove trial and transition provisions; and~~
- ~~b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act.~~

The National Disability Strategy

Recommendation 27: The NDIS Act and Rules be amended to:

- a. remove trial and transition provisions;
- b. reflect agreed recommendations arising from the 2015 Review of the NDIS Act;
and
- c. reflect current best-practice drafting standards, and other amendments as proposed in this review.

The National Disability Strategy 2010-2020 ~~(the~~

11.15. The Strategy) provides a ten-year national policy framework for improving the lives of people with disability, their families and ~~Ac~~-carers. The Strategy represents the

commitment of all Australian governments to a unified, national approach to policy and program development and has a vision of enabling an 'inclusive Australian society that enables people with disability to fulfil their potential as equal citizens'. In giving effect to the objects of the NDIS Act, regard must be had for the Strategy as endorsed by COAG on 13 February 2011.

- 11.16. The Strategy helps incorporate the principles of the [United Nations Convention on the Rights of Persons with Disabilities UNCRPD](#) into government policies and programs ~~affected~~[that affect](#) people with disability, their families and carers.
- 11.17. The current Strategy is due to finish at the end of 2020. This [Review](#) recognises the disability landscape has changed significantly since the current Strategy was endorsed ~~with~~[by](#) COAG, particularly with the introduction of the NDIS. This [Review](#) also recognises that governments across Australia are working together to design a new National Disability Strategy to replace the current Strategy from the start of 2021.
- 11.18. Therefore, ~~this review considers~~ the NDIS Act should be amended to have regard for the Strategy as it is in force from time to time rather than referring specifically to the current Strategy that will finish at the end of 2020.

Recommendation 22: ~~That the NDIS Act be amended to reference the National Disability Strategy as in in force from time to time.~~

Recommendation 28: ~~The NDIS Act be amended to reference the National Disability Strategy as in in force from time to time.~~

- 11.19. Over the last three years, there have been a number of reviews and inquiries that have made recommendations to improve the effectiveness of the current Strategy. These reviews showed that while some things are working well and progress has been made, there is still room for improvement.
- 11.20. This [Review](#) considers that the new Strategy should make reference to how it complements and builds on the NDIS by driving improved outcomes for people with disability in all areas of their lives, ~~irrespective~~[regardless](#) of whether or not they are

NDIS participants. This includes driving improvements in the performance of mainstream service systems in delivering outcomes for all people with disability.

- 11.21. Despite being the most substantial reform driving the disability policy agenda, the NDIS should not remove governments' policy attention ~~en~~from other aspects of the Strategy, such as learning and skills, employment and accessible communities. The NDIS should not be the sole focus and effort of governments as it cannot be the only vehicle through which people with disability receive the services and supports they need to live an "ordinary ~~life~~ life".
- 11.22. Rather, it ~~needs to~~should be recognised that the Strategy's focus on improving mainstream services and community access will be vital to ensuring the long-term viability and effectiveness of the NDIS in improving outcomes for people with disability. This is because people with disability use a broad range of Commonwealth, state and territory government-funded services and supports that are outside the scope of the NDIS and all governments have an ongoing responsibility to support the accessibility and inclusion of people with disability in all aspects of their community.

~~Recommendation 23: The new National Disability Strategy being developed for beyond 2020 should make reference to how it compliments and builds on the NDIS by driving improved outcomes for all people with disability in all areas of their lives.~~

~~Recommendation 29: The new National Disability Strategy being developed for beyond 2020 make reference to how it compliments and builds on the NDIS.~~

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APPENDIX A

List of organisations who made written Public submissions to the Review

<u>Organisations-List of submissions</u>
Autism Family Support Association Vic
Public Trustee & Guardian ACT
Barkly Regional Council
Perth Inner-City Youth Service Inc
A4: Autism, Aspergers Advocacy Australia
ACT Disability Aged and Carer Advocacy Service (ADACAS)
ACT Human Rights Commission
ACT Public Trustee and Guardian
Advocacy for Inclusion
Advocacy Tasmania
Alliance20
Association for Children with a Disability
Australian Small Business and Family Enterprise Ombudsman
Australian Society of Rehabilitation Counsellors
Autism Family Support Association Victoria
Autism Spectrum Australia (Aspect)
Barkly Regional Council
Blind Citizens Australia
Brain Injury SA
Cara Inc South Australia
Carers ACT
Carers Australia
NSW Carers Advisory Council Australia NSW
Carers Australia Victoria
Carers Tasmania
Children and Young People with Disability Australia
Cochlear Ltd, First Voice and Cicada
Commonwealth Ombudsman
Community Lifestyle Accommodation Ltd

Consumers of Mental Health WA
Darwin Community Legal Service
Dementia Australia
Dieticians Association of Australia
Disability Advocacy Vic, Rights Information and Advocacy Centre, Disability Discrimination Legal Service and Leadership plus
Disability Justice Australia
Early Childhood Intervention Australia (ECIA)
Every Australian Counts
Fragile X Association of Australia
Haines, Dr Helen MP
Health & Community Solutions
Horses for Hope
Ideas
Independent Advocacy in the Tropics
Intellectual Disability Rights Service
Maurice Blackburn Lawyers
Melbourne Disability Institute
Mental Health Australia, Community Mental Health Australia and Mental Illness Fellowship of Australia
Mental Health Carers Australia
Mental Health Victoria
Mind Australia
Mission Australia
Motor Neurone Disease Australia
Mudgeeraba State Special School P&C Association
My Plan Manager
National Disability and Carer Alliance
National Disability Services
National Legal Aid
National Mental Health Commission
Neurodevelopment and Behavioural Pediatric Society of Australasia
Noah's Ark
North Metropolitan Health Service WA
NSW Carers Australia Advisory Council
NSW Government

NSW Trustee and Guardian
Dementia Occupational Therapy Australia
O'Donovan, Dr Darren
People with Disabilities WA
Vision People with Disability Australia
Perth Inner City Youth Service Inc
Physical Disability Council of NSW
Plan Partners
PointZero5 Disability Campaign
Prader-Willi Syndrome Australia
Public Interest Advocacy Centre
Purple Orange
Queensland Advocacy Inc
Queensland Alliance for Mental Health & Community Solutions
Carers Australia NSW
NSW Queensland Government
Ideas Queensland Public Advocate
Noah's Ark Queensland Public Guardian
Queenslanders with Disability Network
RoundSquared
Royal Australian and New Zealand College of Psychiatrists (RANZCP)
Royal Australian College of General Practitioners
Royal Australian College of Physicians
Scope Australia
St Vincent's Mental Health
Settlement Services International
Solve Disability Solutions
South Australian Government
Speech Pathology Australia
State Trustees Victoria
Stroke Foundation
Summer Foundation
Syndromes without a Name (SWAN)
Mental Health Australia, Community Mental Health Australia and Mental Illness Fellowship of Australia Tandem
Women with Disabilities ACT
Tasmanian Government

Alliance20
Darwin Community Legal Service
Maurice Blackburn Lawyers
Occupational Therapy Australia
RoundSquared
Youth Connections
Carers Australia Vic
WA's Individualised Services
Mind Australia
Royal Australian College of Physicians
Solve Disability Solutions
Australian Society of Rehabilitation Counsellors
Scope Australia
Dr Helen Haines MP
ACT Disability Aged and Carer Advocacy Service
Cara Inc South Australia
Victorian Healthcare Assn
Autism Spectrum Australia (Aspect)
Blind Citizens Australia
Public Interest Advocacy Centre
My Plan Manager
Motor Neurone Disease Australia
State Trustees Vic
Mudgeeraba State Special School P&C Association
Settlement Services International
Association for Children with a Disability
Women with Disabilities Vic
Speech Pathology Australia
Mental Health Carers Australia
Queensland Advocacy Inc
Brain Injury SA
Intellectual Disability Rights Service
The Disability Trust
Victorian Council of Social Services
Melbourne Disability Institute Victorian Healthcare Association
Summer Foundation Vision 2020 Australia
Cochlear Ltd, First voice and Cicada
Independent Advocacy in the Tropics

Australian Small Business and Family Enterprise Ombudsman
Dieticians Assn of <u>Vision</u> Australia
Stroke Foundation
National Disability <u>WA's Individualised</u> Services
PointZero5
People <u>Women</u> with Disabilities <u>WAACT</u>
Advocacy Tasmania
Physical Disability Council of NSW
Mental Health <u>Women with Disabilities</u> Victoria
Neurodevelopment and Behavioural <u>Pediatric Society of Australasia</u>
Royal Australian College of General Practitioners
Mission Australia
Plan Partners
Community Lifestyle Accommodation Ltd
Purple Orange
Advocacy for Inclusion
The Public Advocate QLD
National Mental Health Commission
Vision 2020 Australia
National Legal Aid
Young People In Nursing Homes National Alliance
Queensland Government <u>Youth Connections Group</u>
Disability Advocacy Vic, Rights Information and Advocacy Centre, Disability Discrimination Legal Service and Leadership plus
ACT Human Rights Commission
National Disability and Carer Alliance
Department of Communities WA
Every Australian Counts
People with Disability Australia
Commonwealth Ombudsman
Carers Tasmania

* ~~This~~ The submissions list contains the ~~name~~ names of organisations, including government agencies that made submissions, including Government agencies, to the Review and, it also includes some individuals who made submissions in their professional capacity. The Review received 196201 submissions in total (7980 from individuals), but not all yet, of which 152 submissions have been authorized for publication-published on the engage.dss.gov.au website.

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APPENDIX B

Survey data analysis

Approximately 2,100 respondents started the long-form and short-form versions of the survey; however, some people only completed part of the opening questions of each survey. Therefore, 1,273 respondents form the usable sample for analysis of the long-form survey and 467 respondents form the sample of analysis of the short-form survey.

Five respondents completed the survey using the AUSLAN video survey link. Their responses are included in the analysis of long-form survey data.

This appendix sets out the demographic details of the survey respondents (long and short-form combined), and key findings relating to the administration of access, planning and plan review decisions.

Respondent Demographics

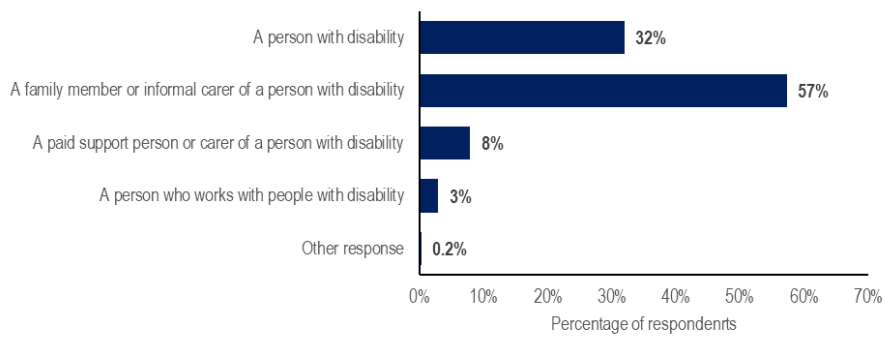


Figure 10: Respondents main role of interest in the NDIS (n=1,740)

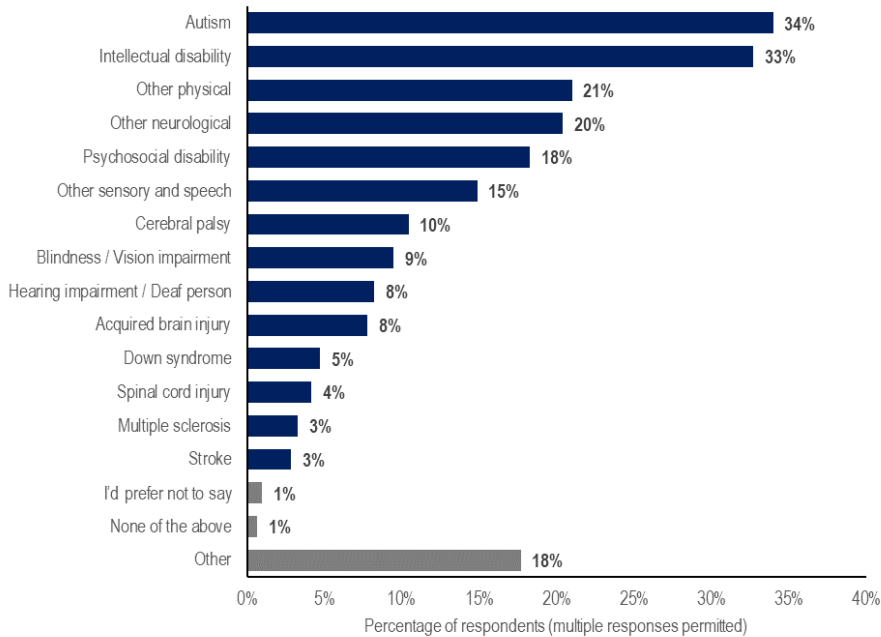


Figure 11: Disability type of respondent or of the person they care for (n=1,740)

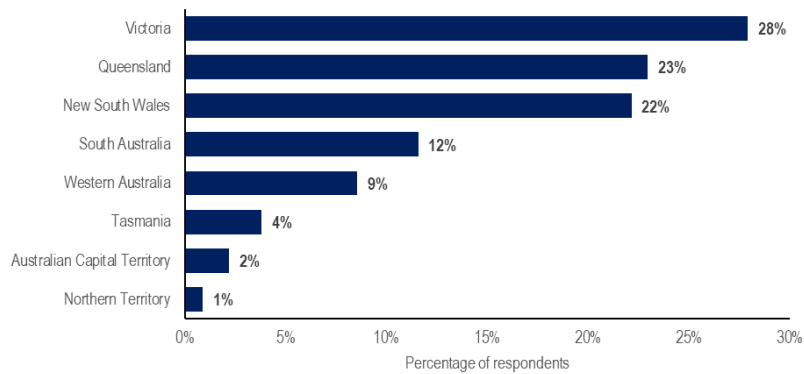


Figure 12: Respondents state or territory of residence (n=1,734)

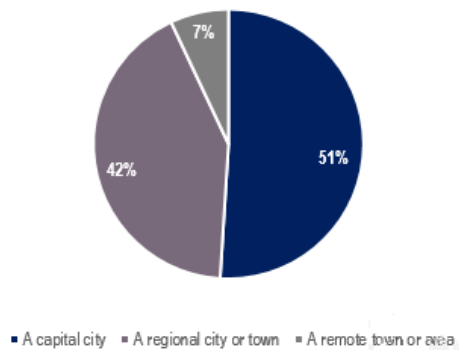


Figure 13: Respondents geographic remoteness (n=1,731)

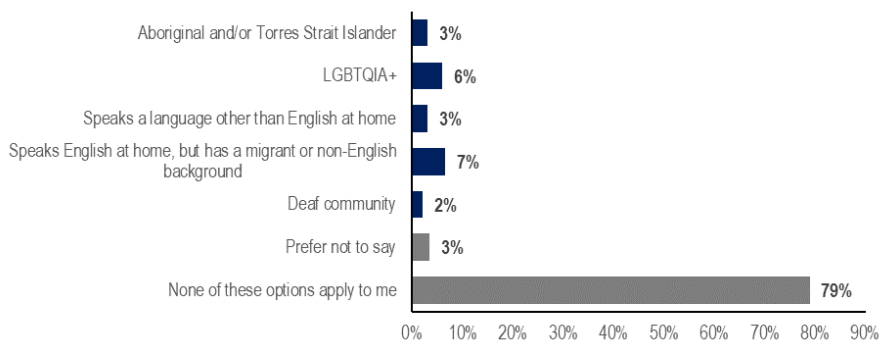


Figure 14: Specific population groups for respondents (n=1,729)

Participant's perceptions of the NDIS

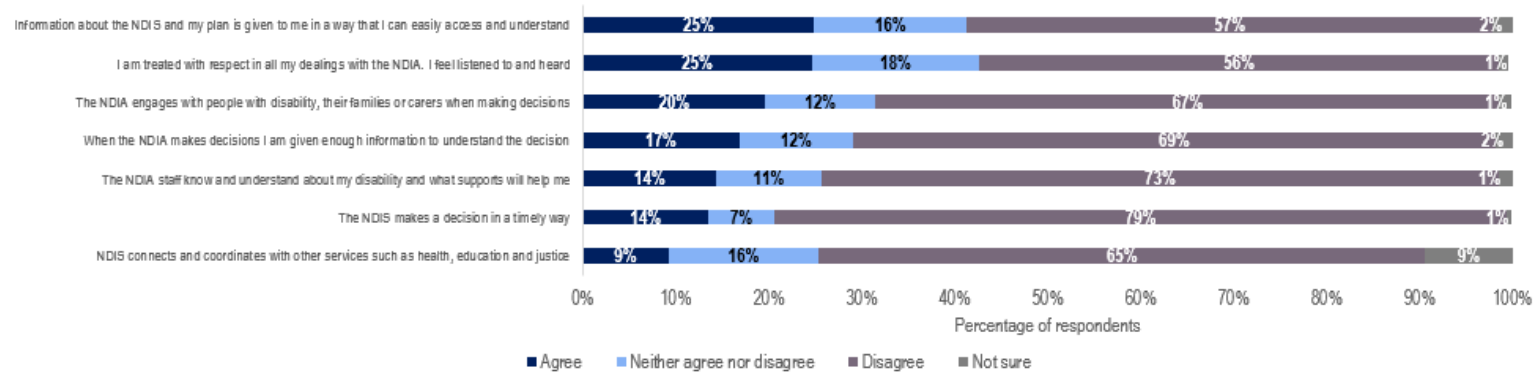


Figure 15: Perceptions of the NDIS (n=1,273) (Long-form survey)

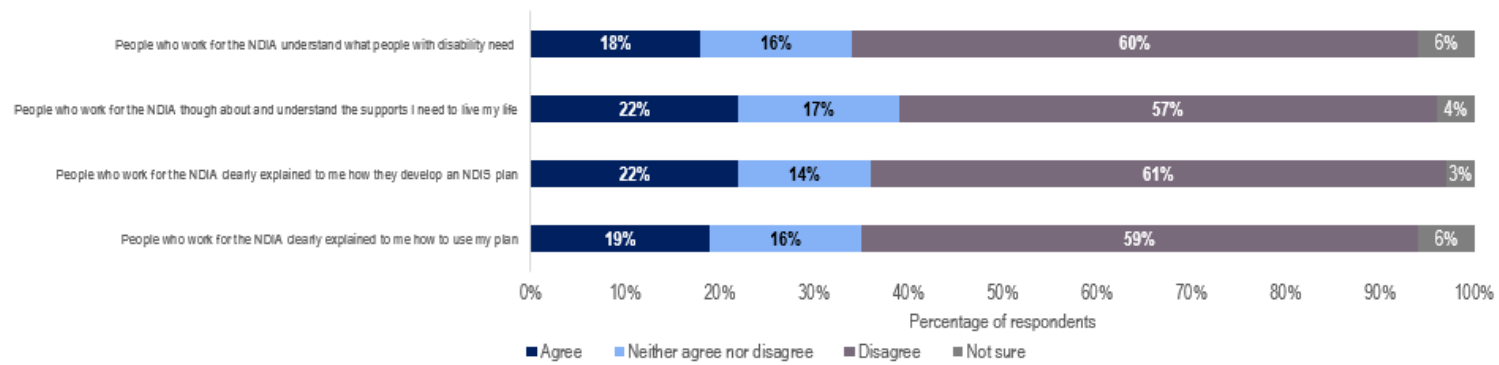


Figure 16: Perceptions of the experience of people who work for the NDIA (n=383) (Short-form survey)

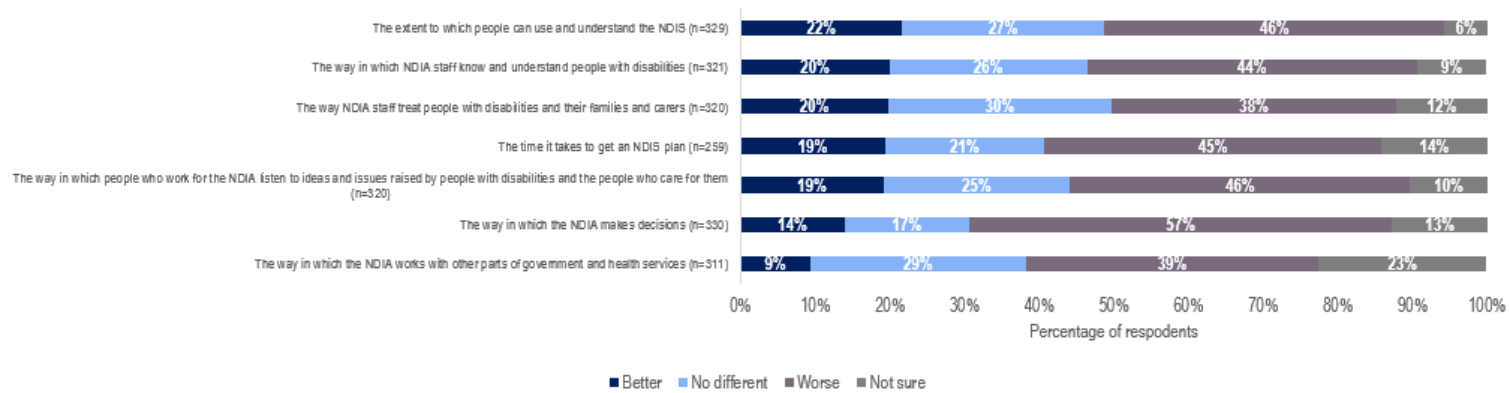


Figure 17: Perceptions of the NDIS over time (Short-form survey)

Applying to the NDIS

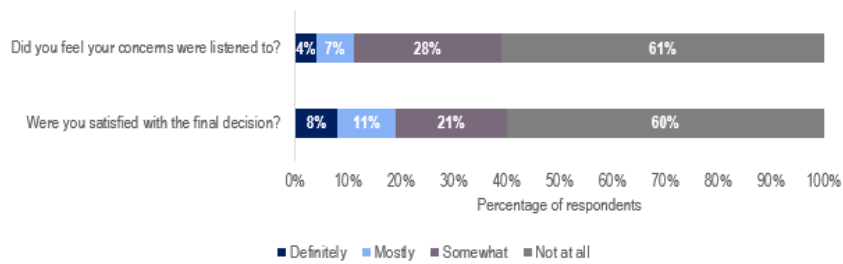


Figure 18: Respondents who required help to make an application (Long-form survey)

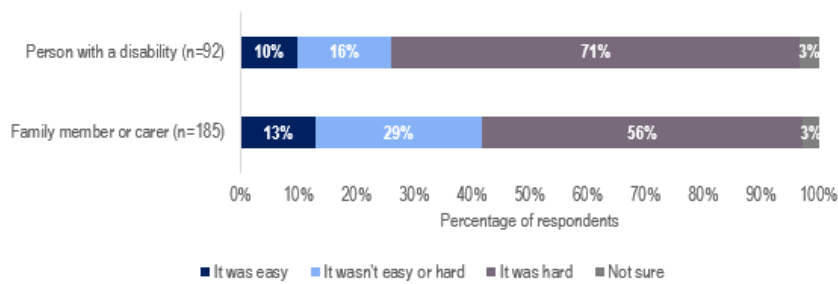


Figure 19: How easy or hard was it to apply for the NDIS, by respondent role (Short-form survey)

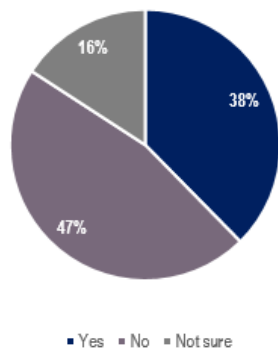


Figure 20: Did you find the process of filling out the Access Request form or making a Verbal Access Request easy to understand? (n=1,075) (Long-form survey)

Preparing for planning meetings

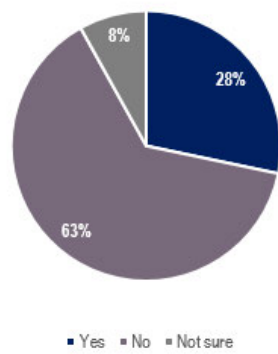


Figure 21: Once you were told you had been approved to access the NDIS, was there enough information provided to you about what would happen next? (n=1,056) (Long-form survey)

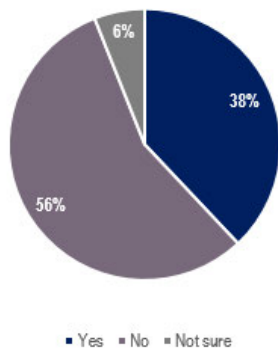


Figure 22: Did you know where to find information to help you start preparing for your planning meeting? (n=1,056) (Long-form survey)

Planning meetings

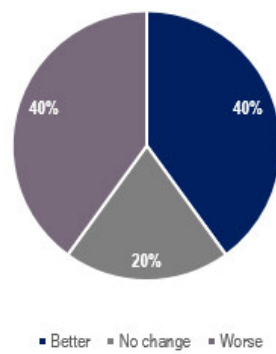


Figure 23: Changes in respondents' experience of the planning process since their first plan (n=705) (Long-form survey)

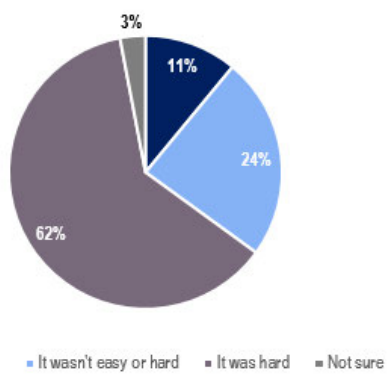


Figure 24: How easy or hard was it to set up your first plan? (n=214) (Short-form survey)

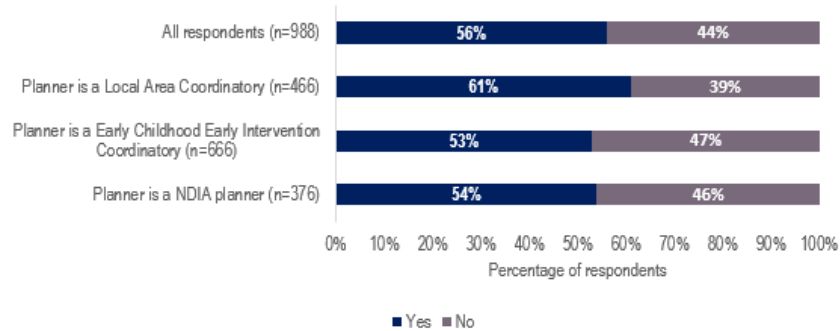


Figure 25: Do you think your planner listened to you? (by type of planner) (Long-form survey)

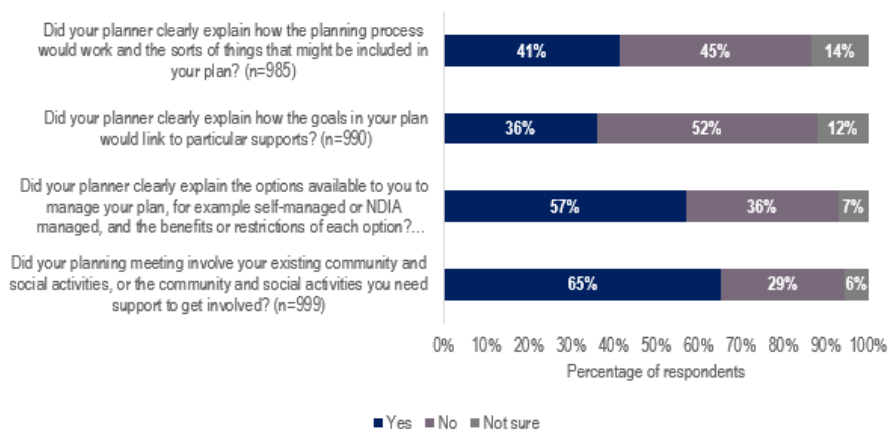


Figure 26: Information covered in planning meeting (Long-form survey)

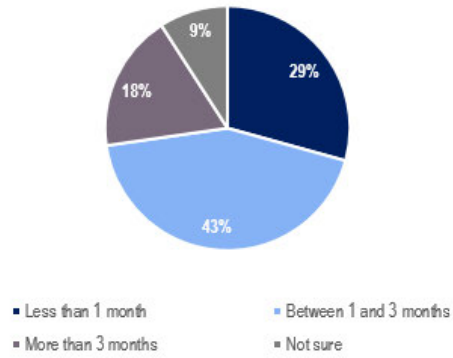


Figure 27: Time taken for NDIA to approve plan from first planning meeting (n=994) (Long-form survey)

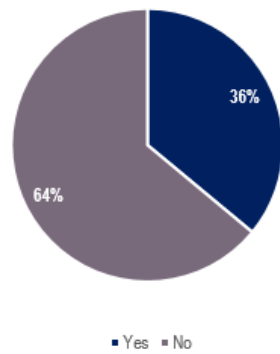
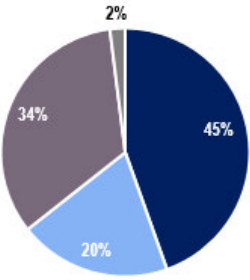
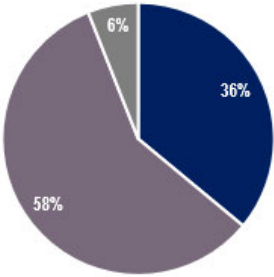


Figure 28: Did you receive the level of support you expected in your plan? (n=965) (Long-form survey)



■ I was happy ■ I wasn't happy or unhappy ■ I was unhappy ■ Not sure

Figure 29: Were you satisfied with the level of support in your plan? (n=208) (Short-form survey)



■ Yes ■ No ■ Not sure

Figure 30: Did you understand everything in your plan? (n=963) (Long-form survey)

Using your NDIS plan

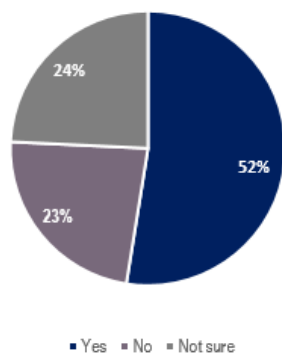


Figure 31: Are you likely to spend all your money in your plan? (n=961) (Long-form survey)

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Reason	Percentage
I'm still looking for a provider in my local area	41%
I want to use my money, but right now it's too hard	38%
I have found a provider but they are too busy to support me	37%
The providers in my area don't deliver the types of supports or services I need	36%
I need more help from my Local Area Coordinator or Support Coordinator	29%
I'm being cautious with the money in my plan in case I overspend	21%
I don't know what type of supports I should purchase	19%
I cannot move funding between support categories in my plan*	18%
I don't know how to purchase supports or who from	17%
I have found a provider but I am not happy about using them	13%
My family and friends provide me with some of the supports I need	8%
I don't know how much money I have in my plan	6%
I have more money in my plan than I need	4%
None of these options apply	3%
Other	39%

Percentage of respondents (multiple responses permitted)

*derived from free text responses to the survey question

Figure 32: Reasons for not being likely to spend all of money in plan (n=224) (Long-form survey)

Response	Percentage
Yes	44%
No	49%
Not sure	7%

■ Yes ■ No ■ Not sure

Figure 33: Did you get help to use the supports in your plan? (n=960) (Long-form survey)

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Changing or reviewing NDIS plans

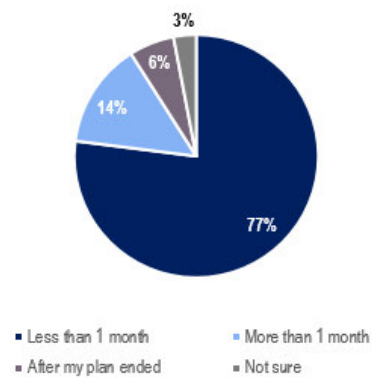


Figure 34: How long before your plan was due to end did someone contact you to make an appointment for your plan review? (n=472) (Long-form survey)

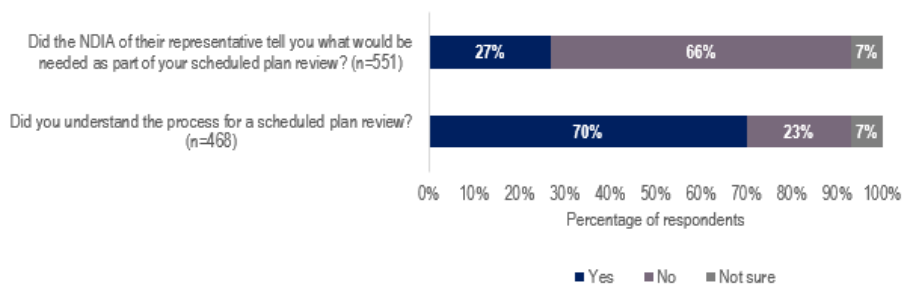


Figure 35: Respondents understanding of the scheduled plan review process (Long-form survey)

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Question	Yes	No	Not sure
Did you know you can ask for a review of your plan before it is due to be reviewed, if your circumstances change or you are unhappy with what's in your plan? (n=550)	86%	12%	2%
Have you ever asked for an unscheduled review of your plan before it was due to be reviewed? (n=919)	53%	47%	0%
If you asked for an unscheduled review, did the NDIA or their representative respond and set up an unscheduled plan review? (n=490)	40%	49%	11%

Figure 36: Respondents understanding and experience of the unscheduled plan review process (Long-form survey)

NDIA decision-making [List of persons](#)

Question	Yes	No	Not sure
When the NDIA made a decision (about your plan, supports, or access), did you understand why they made it the way they did? (n=930)	21%	71%	8%
Were you told that you had the right to ask for a review of any NDIA decisions that you did not agree with? (n=912)	62%	29%	9%
Have you asked the NDIA to review a decision? (n=930)	56%	40%	3%

Figure 37: Respondents understanding of NDIA decision-making and internal review process (Long-form survey)

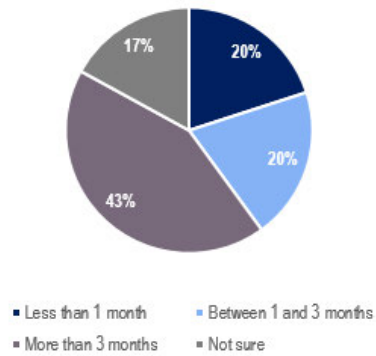


Figure 38: Time taken for the NDIA to tell respondents if they would review their decision (n=460) (Long-form survey)

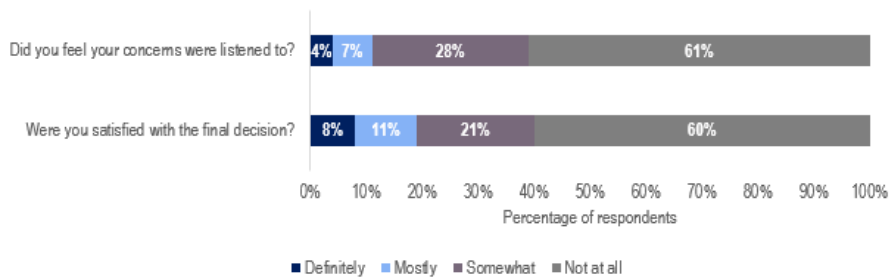


Figure 39: Satisfaction with review decision (n=515) (Long-form survey)

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Response	Percentage
Yes	33%
No	60%
Not sure	7%

Figure 40: If you were still unhappy after the NDIA reviewed the decision, did you make an appeal to the Administrative Appeals Tribunal? (n=232) (Long-form survey)

Response	Percentage
Yes	28%
No	63%
Not sure	9%

Figure 41: Is the review and appeals process for the NDIS clear to you? (n=232) (Long-form survey)

APPENDIX C

Persons and organisations met with in conducting this Review the conduct of the review

Persons and organisations
Persons and organisations Mr Tune met with:
The Hon. Stuart Robert MP, Minister for the National Disability Insurance Scheme, and senior officials from the Commonwealth Department of Social Services
The Hon. Gareth Ward MP, New South Wales Minister for Families, Communities and Disability Services, and senior officials from the New South Wales Department of Family and Community Services
The Hon. Luke Donellan MP, Victorian Minister for Disability, Ageing and Carers, and senior officials from the Victorian Department of Health and Human Services
The Hon. Coralee O'Rourke MP, Queensland Minister for Disability Services, and senior officials from the Queensland Department of Communities, Disability Services and Seniors
The Hon. Stephen Dawson MLC, Western Australia Minister for Disability Services, and senior officials from the Western Australia Department of Communities
The Hon. Robert Jaensch MP, Tasmanian Minister for Disability Services and Community Development, and senior officials from the Tasmanian Department of Disability and Community Services
Ms Suzanne Orr MLA, Australian Capital Territory Minister for Disability
Senior officials from the South Australian Department of Human Services
Senior officials from the Northern Territory Department of Health
The Chair of the National Disability Insurance Agency (NDIA) , the NDIA Board , NDIA Board and senior NDIA officials
First Peoples Disability Network
Disability Advocacy Network Australia and other advocacy partners, including:
<ul style="list-style-type: none"> • Independent Advocacy in the Tropic • Speak Out Advocacy • VALID • Queensland Advocacy Inc • Leadership Plus • Action for More Independence and Dignity in Accommodation

Children and Young People with Disability Australia
Every Australian Counts
National Disability Services
Carers Australia
Australian Federation of Disability Organisations
Autism Aspergers Advocacy Australia (A4) and associated member organisations
Boston Consulting Group
Brotherhood of St. Laurence
Carers Australia
Children and Young People with Disability Australia
Community Mental Health Australia
Disability Advocacy Network Australia and other advocacy partners, including:
<ul style="list-style-type: none"> • Independent Advocacy in the Tropics Inc • Speak Out Advocacy • VALID • Queensland Advocacy Inc • Leadership Plus • Action for More Independence and Dignity in Accommodation
Every Australian Counts
First Peoples Disability Network
Mental Health Australia
National Disability Services
Mental Illness Fellowship of Australia
Brotherhood of St. Laurence
On Mr Tune's behalf, the Review Secretariat met with:
Disability Justice Australia
Legal Aid Australian Capital Territory
Legal Aid New South Wales
Legal Aid Queensland
Legal Aid Tasmania
On my behalf, the Review Secretariat also met with:
Legal Aid Western Australia
Legal Aid Queensland
Legal Aid Victoria
Legal Aid Tasmania Western Australia

Legal Aid New Services Commission South Wales Australia
Legal Aid Australian Capital Territory NDIS Independent Advisory Council
Office of the Public Advocate Victoria
Legal Services Commission South Australia
Disability Justice Australia

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APPENDIX

~~NDIA~~Information provided by the NDIA on operational reforms

Participant and Provider Pathway Reforms

~~4.49. Following its 2017 review, the NDIA redesigned the participant pathway implemented to provide more simplified interactions from a participant's perspective and introduced other reforms to improve the participant experience, including:~~date

- ~~a. specific pathways for participants with complex needs, or who enter under the ECEI gateway;~~
- ~~b.a. specific service streams for people with psychosocial disability and hearing loss, to deliver targeted support that provides those participants with an experience more suited to their specific disability needs; and~~
- ~~c. service enhancements to meet the communication and engagement needs of people from different backgrounds or areas, including Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people living in remote and very remote communities, and people who identify as LGBTIQ+.~~

~~4.50.2.1. In June 2019, the NDIA commenced the national roll out of baseline service improvements to give effect to the pathway reforms, including:~~

- ~~a. a stronger focus during planning on how community, other government, informal and employment supports may be able to support the participant and their families/carers;~~
- ~~b.a. a consistent point of contact for participants;~~
- ~~c.a. enhanced planning communication products in a variety of formats;~~
- ~~d.a. face to face pre planning and plan implementation meetings at the discretion of the participant;~~
- ~~e.a. improved linkages between NDIA planners and the Partners in the Community workforce, including LAC's and ECEI Partners; and~~
- ~~f.a. improved training for NDIA planners and Partners in the Community.~~

~~4.51.2.1. Provider improvements have also been rolled out or are underway, including:~~

- ~~a. more clarity on pricing, following an independent price review in 2017;~~
- ~~b. efficiencies to payment processing and the creation of a dedicated provider payment team, including working to develop and implement a solutions that address the root causes of provider payment issues, and developing a payments strategy to support an improved future payments platform;~~
- ~~c. the implementation of a National Providers Engagement team who help providers engage with and navigate the NDIS; and~~
- ~~d. improved MyPlace provider portal functionality.~~

Improvements to Assistive Technology

4.52-D.1. The NDIA has been working to make it easier and quicker for NDIS participants to access Assistive Technology ~~with consideration for, including~~ better tracking to ensure more timely outcomes. As at 1 July 2019, the NDIA had made several process improvements, including:

- a. Assistive Technology under \$1,500 can be purchased without further quotes or approvals once it is approved in a participant's plan;
- b. planners have clearer guidance to ensure sufficient funding is included in plans for the repair and maintenance of Assistive Technology, and the requirements for replacing worn out or outgrown Assistive Technology have been simplified;
- c. improved Assistive Technology assessment templates have been released to support better information sharing between professionals and the NDIA; and
- d. Assistive Technology codes ~~were have been~~ revised with updated, market-based benchmark prices to minimise delay when considering quotes provided by participants.

4.53-D.2. In addition, the NDIA has developed and is evaluating more complex process improvements for people with disability requiring Assistive Technology, including:

- a. improvements to processes and systems, ~~plus and instigating~~ an independent Assistive Technology assessor panel, to improve the quality and timeliness of recommendations for participants requiring complex and non-standard Assistive Technology; and
- b. methods to facilitate flexible access to the right Assistive Technology for participants with changing needs ~~to the right Assistive Technology when they~~

~~need it.~~ The development of libraries or loan banks of relevant Assistive Technology, and safe access to refurbished or ~~pre-~~used Assistive Technology are also being explored with the market.

Improvements to Specialist Disability Accommodation

4.3. The NDIA has been working to improve access to SDA for eligible participants and with governments to improve provision of accessible and well-designed housing for people with disability. Reforms already implemented by the NDIA include:

- a. establishing a dedicated team to fast-track eligibility decisions; and
- 4.54-b. developing an ~~Innovation Plan~~ innovation plan to detail the actions that the NDIA will take to encourage more innovation in SDA and accommodation support models.

4.55-D.4. This work supplements the actions taken by governments to change the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016* to give participants greater flexibility in their choice of living arrangements, including who they live with.

Communications, ~~Engagement~~ engagement and ICT

4.56-D.5. The NDIA is continuing to review its communications approach and has a range of initiatives in place to improve its communications and engagement practices.

4.57-D.6. In January 2019, through an extensive redevelopment, the NDIA improved the structure, functionality, accessibility and information available through the NDIS website, ~~through an extensive redevelopment.~~ The website redevelopment includes

a clear pathway prominently throughout the website, ~~which that~~ was designed ~~along~~ with extensive user testing and consultation with key stakeholders such as Blind Citizens Australia and Disability Advocacy Network Australia.

4.58-D.7. Through 2018-19, the NDIA transitioned the National Contact Centre to a new supplier. This transition has seen a reduction in:

- a. the average speed of answer (from four minutes and 43 seconds to 28 seconds);
- b. a reduction in ~~abandon~~~~abandoned~~ call rates (from 17.5 per cent to 1.5 per cent);
- c. an increase in first contact resolution (from 70 per cent to 85 per cent); and
- d. quality score results averaging ~~on~~ 91 per cent.

4.59-D.8. The NDIA has also released three new participant booklets to support people with disability and participants throughout their NDIS journey. The booklets are intended to be a practical tool to help people with disability, participants, their families, carers and the wider community to learn more about the NDIS, prepare for a planning meeting and to implement their plan. The NDIA has also recently released a suite of information on employment supports available through the NDIS in an easy read format.

4.60-D.9. In addition, the NDIA has:

- a. simplified access to and use of interpreting services for NDIS participants, NDIA staff, the Partners in the Community workforce and providers from CALD ~~background~~~~backgrounds~~;
- b. undertaken extensive stakeholder engagement to resolve inconsistencies in terminology and phrases used to describe supports in the NDIS price guide, MyPlace portal and participant plans;
- c. provided participants ~~with~~ the option to request their plans in the format of their choice (e.g. large font, audio, e-text and braille); and
- d. reviewed all existing NDIA publications, fact sheets and brochures to ensure the NDIA is providing up-to-date information that is aligned ~~te~~~~with~~ recent DRC decisions to make it easy to understand and available in a number of accessible formats and languages.

4.61-D.10. The NDIA has acknowledged that a good ICT system will reduce administrative burden and ensure consistency of NDIA internal operations and decisions and facilitate improved outcomes for participants. To this end, the NDIA has been working to simplify and streamline existing ICT arrangements and is providing more assistance to participants and providers to use the portal and make payments and claims.

4.62-D.11. In August 2019, the NDIA introduced ICT changes to ensure participants can continue to access supports if a plan review is not completed by the scheduled plan review date. This change reflects the [current provisions in the](#) NDIS Act, in that a plan does not lapse in the event [that](#) a scheduled plan review is not completed by the plan review date. The extension also means [that](#) providers can continue to claim for the supports they have provided until the new plan is approved.

4.63-D.12. In November 2019, the [Agency NDIA](#) updated their ICT, planner guidance and public communications to provide the opportunity for participants in a stable situation [the ability to have and request longer plans with a scheduled plan review date](#) of up to three years ~~after the plan is approved~~. A longer plan review duration means participants can carry on with their lives without needing to go through an annual plan review process.

4.64-D.13. Other recent changes to the MyPlace Portal include, but are not limited to:

- a. enhancements to the Provider Finder Tool that make it easier for participants to find providers;
- b. interface and accessibility improvements for participants, including the ability for participants to receive [SMS communication text messages](#) when a provider has changed a service booking and ~~an~~ improvements in the way a participants budget is ~~display~~[displayed](#), including how much funding is committed or used; and
- c. new functionality for providers that ~~provides~~[offers](#) greater flexibility in managing service bookings, including a new dashboard for providers to see the participants that they work with.

Workforce training and development

4.65-D.14. The NDIA has acknowledged that a participant's engagement with NDIA staff, including planners and the Partners in the Community workforce significantly impacts how participants and their families and carers perceive the NDIS. The NDIA has also acknowledged participant feedback that planners do not possess specialist skillsets, particularly in disability awareness, and that there is a need to strengthen communications and training resources, particularly for those planners supporting people with complex needs and vulnerable backgrounds.

4.66-D.15. To this end, the NDIA has been investing in staff training to support workforce growth and assist in the implementation of the pathways reforms. The NDIA has indicated that their service delivery employees—(, which includes NDIA ~~Planners~~planners and Partners in the Community), undertake a range of training programs prior to supporting participants, including a six week New Starter Program that includes face-to-face sessions, eLearning and on-the-job training. Example modules include:

- a. disability-specific training, including awareness of psychosocial ~~awareness~~disabilities;
- b. ~~agency~~NDIA-specific training, including work health and safety, fraud awareness and NDIA induction;
- c. service delivery specific training on the participant pathway. ~~This includes,~~ including reasonable and necessary supports, mainstream support interfaces, housing, employment support, self-management and ~~AT~~assistive technology; and
- d. specific training to support the implementation of disability-related health supports ~~which participants need as a direct result of their disability, and as part of their daily life, through their~~in NDIS plans.

4.67-D.16. The NDIA has advised that ongoing training is provided to build and maintain the specialised skillset of planners and partners and that key areas of future focus include:

- a. training in pathways service enhancements and building cultural awareness of Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, and people who identify as LGBTIQ+; and
- b. collaborating with the Disability Advocacy Network of Australia and other peak bodies to raise disability awareness and help improve the participant experience, including through:
 - e.i. learning for planners on Contemporary Disability Rights;
 - e.ii. videos where participants share their lived experience of their disability; and
 - e.iii. a facilitator led workshop ~~focussing~~focusing on how the NDIA can be more inclusive and respectful with participants, their families and carers.

Outreach and engagement strategies

4.68-D.17. The NDIA has a significant body of work underway to enhance pre-access and engagement for diverse and hard to reach populations. This work is in addition to the pathway service enhancements and local engagement strategies being implemented by NDIA state and territory offices to engage with and facilitate successful contacts ~~with~~between the NDIS ~~for~~ Aboriginal and Torres Strait Islander ~~and~~communities, CALD populations ~~as well as~~and people with psychosocial disability.

Aboriginal and Torres Strait Islander communities

4.69-D.18. The NDIA has entered into 31 Aboriginal Community Controlled Organisations across Western Australia, the Northern Territory, South Australia and ~~Queensland~~ Queensland servicing 244 communities to employ local community connectors in remote areas. This program, referred to as the Remote Community Connector (~~RCC~~) Program, is a cultural brokerage which aims to engage, inform and assist people from Aboriginal and Torres Strait Islander backgrounds and rural and remote communities through the NDIS pathway process. The RCC program has proven to be critical in supporting the rollout of the scheme in remote and very remote regions and is in the process of expanding to more communities.

4.70-D.19. The NDIA is also undertaking targeted engagement in remote and rural schools to raise access about the NDIS. The NDIA is also working closely with the local shire, particularly Early Learning Centres to build awareness of the NDIS and identify potential participants. Engagement focuses on information exchange and building trust with elders and members of the community to build trust before being invited to work within a community.

4.71-D.20. The NDIA is also engaging of Aboriginal Community Controlled Organisations, at a national, state and territory and community level to work collaboratively on resolving issues in local communities, including the cost, availability and accessibility of culturally appropriate services, access to assessments, and build trust in the scheme and the benefits it can offer the community. A pilot program is operating in South-East Queensland to support at least 500 Aboriginal and Torres Strait Islander people to access the NDIS and through the ~~pre-plan and plan-build cycle~~ planning process.

4.72-D.21. The NDIA and Partners are also supporting local Aboriginal engagement initiatives, working with and attending local community days and event to support engagement and understanding of the NDIA, and developing targeted communication products for Aboriginal and Torres Strait Islander communities.

People from CALD backgrounds

4.73-D.22. The NDIA has enhanced language navigation tools for the NDIS website and key NDIS participant planning information is available in languages other than English. The NDIA is also engaging with language interpreters to support their understanding

of the NDIS so when they are called to support individuals from CALD backgrounds they are confident with terminology and able to assist in getting the best ~~out of~~ interactions/outcomes for ~~people in communities~~ that person.

4.74-D.23. The NDIA has also entered into partnerships with National Ethnic Disability Alliance to improve engagement with CALD communities in targeted locations, in particular through the Department of Social Services Humanitarian Support Program, which assists new arrivals in Australia. The NDIA is also working actively with settlement services and multicultural support services to educate and inform support workers and case managers on the NDIS, providing additional trusted people in communities to support people from culturally diverse communities to identify potential participants and support them to engage with the NDIS.

4.75-D.24. The NDIA currently employs two Cultural Liaison officers in South east Queensland to work with CALD population to engage, inform and assist people from CALD backgrounds through the NDIS pathway process. In time, this will be expanded to cover more communities across Australia through the national community connector program and employ local people from local communities to be trusted and informative sources supporting access to and use of the NDIS.

People with psychosocial disability

4.76-D.25. The NDIA has implemented a number of pathway enhancements for participants with psychosocial disability and has been working with all governments, Mental Health Australia and other sector stakeholders to examine what further improvements could be made to improve outreach and referral services to bring people with psychosocial disability into the NDIS. This work includes:

- a. streamlined access processes that ~~support~~ support prospective ~~participant~~ participants to ~~verbally~~ begin their access request verbally with a support worker or another trusted person;
- b. new resources to resolve confusion about the information needed to demonstrate evidence of disability for people with psychosocial disabilities;
- c. enhancing the role of Partners in the Community and Community Connectors to undertake outreach ~~and support~~ activities to increase access to the NDIS for people with psychosocial disability, with role specifications completed by April

- 2020, ~~following~~after which new information and marketing strategies will be rolled out;
- d. projects to support Primary Health Networks and provider organisations to support people transitioning to the NDIS from Commonwealth mental health ~~programmes~~programs;
 - e. improving linkages and referrals to mainstream mental health supports and the community mental health sector for people not eligible for the NDIS, with new arrangements commencing from March 2020;
 - f. establishing a new psychosocial disability recovery framework, including a new psychosocial recovery coach support pricing item by 1 July 2020; and
 - g. strengthening information sharing and working arrangements between Commonwealth, state and territory governments and the NDIA, including the provision of six-monthly NDIS data reports ~~(June and December)~~ on psychosocial disability ~~for so that~~ jurisdictions ~~to can~~ monitor developments.

APPENDIX DE

Provisions in the NDIS Act to revoke, or amend, from 1 July 2020

Section	Currently states	Description
3(d)	<i>The objects of this Act are to...</i> Provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and	Strike the word 'launch'.
3(2a)	<i>These objects are to be achieved by...</i> providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and	Strike the word 'launch'.
3(3a)	In giving effect to the objects of the Act, regard is to be had to... a. the progressive implementation of the National Disability Insurance Scheme.	Strike point a.
3(3ci)	In giving effect to the objects of the Act, regard is to be had to... the broad context of disability reform provided for in: (i) the National Disability Strategy 2010-2020 as endorsed by COAG on 13 February 2011; and	Add 'and as updated from time to time' after 13 February 2011.
4(17a)	It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the CEO, the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to:	Strike point a.

Section	Currently states	Description
	<ul style="list-style-type: none"> a. the progressive implementation of the National Disability Insurance Scheme; and b. the need to ensure the financial sustainability of the National Disability Insurance Scheme. 	
8	Depending on where a person with disability lives, he or she may receive supports or services from registered providers of supports (Part 3 of Chapter 4) or from registered NDIS providers (Part 3A of Chapter 4). Supports and services may also be received from providers who are not registered.	Strike 'from registered providers of supports (Part 3 of Chapter 4) or'.
8	This Act also provides for the establishment of the National Disability Insurance Scheme Launch Transition Agency (Chapter 6).	Strike 'Scheme Launch Transition'.
9	Agency means the National Disability Insurance Scheme Launch Transition Agency established by section 117.	Strike 'Scheme Launch Transition'.
9	FaHCSIA agreement means the enterprise agreement known as the Department of Families, Housing, Community Services and Indigenous Affairs Enterprise Agreement 2012-2014 approved on 24 April 2012 in decision [2012] FWAA 3549.	Strike definition.
9	<i>Host jurisdiction</i> has the meaning given by section 10.	Strike definition.
9	<p>National Disability Insurance Scheme means:</p> <ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to a prescribed area; and 	Strike everything after Chapter 3 in point b.

Section	Currently states	Description
	<ul style="list-style-type: none"> c. the arrangements referred to in paragraph (b) as they apply when those arrangements are not limited on the basis of residence in a prescribed area. 	
9	<p>National Disability Insurance Scheme launch means:</p> <ul style="list-style-type: none"> a. the arrangements set out in Chapter 2; and b. the arrangements set out in Chapter 3 in relation to people who meet the residence requirements because of their residence in a prescribed area and meet the age requirements (if any) in relation to the prescribed area. 	Strike definition.
9	participant means a person who is a participant in the National Disability Insurance Scheme launch (see sections 28, 29 and 30)	Strike 'launch'.
9	<i>Participating jurisdiction</i> has the meaning given by section 10A	Strike definition.
9	Prescribed area means an area prescribed by the National Disability Insurance Scheme rules for the purposes of paragraph 22(2)(a) or subsection 23(3).	Strike definition.
9	<p>registered plan management provider means:</p> <ul style="list-style-type: none"> a. for a provider providing supports to a participant in a participating jurisdiction—an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a); or b. otherwise—a registered provider of supports who is approved in relation to managing the funding for supports under plans as mentioned in paragraph 70(1)(a). 	Strike point b.

Section	Currently states	Description
9	Registered provider of supports means a person or entity approved under section 70 as a registered provider of supports.	Strike definition.
10	Definition of host jurisdiction The Minister may, by legislative instrument, specify that a State or Territory is a host jurisdiction , with the agreement of that State or Territory. <i>Note: — Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</i>	Strike definition.
10A	Definition of participating jurisdiction The Minister may, by legislative instrument, specify that a host jurisdiction is a participating jurisdiction, with the agreement of that host jurisdiction. <i>Note: Section 42 (disallowance) of the Legislation Act 2003 does not apply to the instrument (see subsection 44(1) of that Act).</i>	Strike definition.
18	Person may make a request to become a participant A person may make a request (an access request) to the Agency to become a participant in the National Disability Insurance Scheme launch.	Strike 'launch'.
21(2)	If the CEO is not satisfied as mentioned in subsection (1), the person meets the access criteria if the CEO is satisfied of the following:	Strike point a.

Section	Currently states	Description
	<p>a. at the time of considering the request, the person satisfies the requirements in relation to residence prescribed as mentioned in subsection 23(3) (whether or not the person also satisfies the requirements mentioned in subsection 23(1));</p>	
22(1-2)	<p>(1) A person meets the age requirements if:</p> <p>a. the person was aged under 65 when the access request in relation to the person was made; and</p> <p>b. the person satisfies any other requirements in relation to age that are prescribed by the National Disability Insurance Scheme rules.</p> <p>(2) Without limiting paragraph (1)(b), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <p>a. may prescribe that a person must be a prescribed age on a prescribed date or a date in a prescribed period only if the person resides in a prescribed area of Australia; and</p> <p>b. may prescribe different ages and different dates in relation to different areas of Australia.</p>	Strike 1(b) and all of point 2.
23(1-3)	<p>(1) A person meets the residence requirements if the person:</p> <p>a. resides in Australia; and</p> <p>b. is one of the following:</p> <p>i. an Australian citizen;</p> <p>ii. the holder of a permanent visa;</p> <p>iii. a special category visa holder who is a protected SCV holder; and</p>	Strike 1(c) and all of point 3.

Section	Currently states	Description
	<p>c. satisfies the other requirements that are prescribed by the National Disability Insurance Scheme rules.</p> <p>(2) In deciding whether or not a person resides in Australia, regard must be had to:</p> <ul style="list-style-type: none"> a. the nature of the accommodation used by the person in Australia; and b. the nature and extent of the family relationships the person has in Australia; and c. the nature and extent of the person's employment, business or financial ties with Australia; and d. the nature and extent of the person's assets located in Australia; and e. the frequency and duration of the person's travel outside Australia; and f. any other matter relevant to determining whether the person intends to remain permanently in Australia. <p>(3) Without limiting paragraph (1)(c), National Disability Insurance Scheme rules made for the purposes of that paragraph:</p> <ul style="list-style-type: none"> a. may require that a person reside in a prescribed area of Australia on a prescribed date or a date in a prescribed period in order to meet the residence requirements; and b. may require that a person has resided in a prescribed area for a prescribed period in order to meet the residence requirements; and c. may require that a person continue to reside in a prescribed area of Australia in order to meet the residence requirements; and 	

Section	Currently states	Description
	<p>d. may require that a person satisfy a prescribed requirement relating to either or both of the following:</p> <ul style="list-style-type: none"> i. the purpose for which the person resides in a particular geographical area; ii. exceptional circumstances applying in relation to the person. 	
28(1)	<p>When a person becomes a participant</p> <p>(1) A person becomes a participant in the National Disability Insurance Scheme launch on the day the CEO decides that the person meets the access criteria.</p>	Strike 'launch' from point 1.
29(1)	<p>When a person ceases to be a participant</p> <p>(1) A person ceases to be a participant in the National Disability Insurance Scheme launch when:</p> <ul style="list-style-type: none"> a. the person dies; or b. the person enters a residential care service on a permanent basis, or starts being provided with home care on a permanent basis, and this first occurs only after the person turns 65 years of age; or c. the person's status as a participant is revoked under section 30; or d. the person notifies the CEO in writing that he or she no longer wishes to be a participant. <p>Note: Residential care service and home care have the same meanings as in the <i>Aged Care Act 1997</i>.</p>	Strike 'launch' from point 1.

Section	Currently states	Description
30(1)	<p>Revocation of participant status</p> <p>(1) The CEO may revoke a person's status as a participant in the National Disability Insurance Scheme launch if:</p> <ul style="list-style-type: none"> a. the CEO is satisfied that the person does not meet the residence requirements (see section 23); or b. the CEO is satisfied that the person does not meet at least one of the following: <ul style="list-style-type: none"> i. the disability requirements (see section 24); ii. the early intervention requirements (see section 25). <p>(2) The CEO must give written notice of the decision to the participant, stating the date on which the revocation takes effect.</p>	Strike 'launch' from point 1
32A	Rules about preparation of plans	Strike entire section.
33(6)	<p>To the extent that the funding for supports under a participant's plan is managed by the Agency, the plan must provide that the supports are to be provided only by:</p> <ul style="list-style-type: none"> a. for supports provided to a participant in a participating jurisdiction—a registered NDIS provider; or b. otherwise—a registered provider of supports. 	Strike points a and b. Strike 'only' and add 'a registered NDIS provider' to the end of the heading.
55(2)	<p>Power of CEO to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme</p> <p>(2) The matters are as follows:</p>	Replace 'registered provider of supports' in

Section	Currently states	Description
	<ul style="list-style-type: none"> a. whether a prospective participant meets the access criteria; b. whether a participant continues to meet the access criteria; c. whether a person purporting to act on a person's behalf for the purposes of this Act has the authority to do so; d. the preparation or review of a participant's plan; e. the monitoring of supports funded for, or provided to, a participant; f. whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant's plan; g. whether a participant or other person has complied with section 46; h. whether a participant receives: <ul style="list-style-type: none"> i. supports or funding through a statutory compensation scheme or a statutory care or support scheme; or ii. any other disability support; i. whether an applicant for approval as a registered provider of supports meets the criteria for approval; j. whether a registered provider of supports continues to meet the criteria for approval; k. the functions of the Agency. 	<p>points i and j with "registered NDIS provider'.</p>
Chapter 4, Part 3	Registered Providers of Support	Strike entire part.

Section	Currently states	Description
s.99	Reviewable decisions and decision-makers	Strike items 7 and 8 in the table at 99(1)).
Chapter 6	Chapter 6 – National Disability Insurance Scheme Launch Transition Agency Part 1 – National Disability Insurance Scheme Launch Transition Agency s.117 Establishment (1) The National Disability Insurance Scheme Launch Transition Agency is established by this section.	Strike ‘Scheme Launch Transition’ in Chapter and Part heading and in 117(1).
144 (1)	Function of the Advisory Council (1) The Advisory Council’s function is to provide, on its own initiative or at the written request of the Board, advice to the Board about the way in which the Agency: <ul style="list-style-type: none"> a. performs its functions relating to the National Disability Insurance Scheme; and b. supports the independence and social and economic participation of people with disability; and c. provides reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and d. enables people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and e. facilitates the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and f. promotes the provision of high quality and innovative supports to people with disability; and 	Strike ‘launch from point 1(c)).

Section	Currently states	Description
	<ul style="list-style-type: none"> g. raises community awareness of the issues that affect the social and economic participation of people with disability, and facilitates greater community inclusion of people with disability. 	
144(3)	<p>(3) Advice provided by the Advisory Council must not relate to:</p> <ul style="list-style-type: none"> a. a particular individual; or b. the approval of a person or entity as a registered provider of supports or the revocation of that approval; or (ba) the registration of a person or entity as a registered NDIS provider, or the variation, suspension or revocation of that registration; or c. the corporate governance of the Agency or the Commission; or d. the money paid to, or received by, the Agency. 	Strike point b.
160(6-8)	<p>(6) Despite subsection (1), the first CEO is to be appointed by the Minister.</p> <p>(7) Before the Minister makes an appointment under subsection (6), the Minister must consult the host jurisdictions about the appointment.</p> <p>(8) This Part (other than subsection (1)) applies to the CEO appointed under subsection (6) as if the CEO had been appointed under subsection (1).</p>	Strike sections 6, 7 and 8.
171A	<p>Transitional provisions for staff of the Agency</p> <p>Schedule 1 has effect</p>	Strike.

Section	Currently states	Description
174(5)	<p>Quarterly report to the Ministerial Council - First report</p> <p>(5) If this section commences on a day other than a day (a quarter start day) mentioned in paragraph (1)(a):</p> <ul style="list-style-type: none"> a. the Board members are not required to prepare a report for the period ending immediately before the next quarter start day; and b. the first report under this section must be for the period: <ul style="list-style-type: none"> i. starting on the day this section commences; and ii. ending immediately before the second quarter start day after the day this section commences. 	Strike all of point b.
180D(5)	<p>Reviewing actuary for first 3 years</p> <p>(5) The Board must nominate the Australian Government Actuary under subsection (1) as the first reviewing actuary, as soon as reasonably practicable after the commencement of this section. The nomination has effect for 3 years, despite subsection (2) of this section and subsection 33(3) of the <i>Acts Interpretation Act 1901</i>, but subject to subsection (3) of this section.</p>	Strike.
203(1)	<p>Application of Act to unincorporated bodies</p> <p>(1) This Act applies to an entity that:</p> <ul style="list-style-type: none"> a. is a registered provider of supports; or b. wishes to apply for approval as a registered provider of supports; or c. is a registered NDIS provider; or 	Strike points a and b.

Section	Currently states	Description
	<ul style="list-style-type: none"> d. wishes to apply for registration as a registered NDIS provider; or e. is an NDIS provider; as if the entity were a person, but with the changes mentioned in subsections (3), (4) and (5).	
Chapter 7, Part 4	Review of the Act	Strike entire part.
209(5)	(5) The Minister must not make Category B National Disability Insurance Scheme rules relating to: <ul style="list-style-type: none"> a. an area, law or program of a host jurisdiction; or b. the commencement of the facilitation of the preparation of plans of participants who are identified (wholly or partly, and directly or indirectly) by reference to a host jurisdiction; unless the host jurisdiction has agreed to the making of the rules. 	Strike point b.
Schedule 1	Transitional provisions for staff of the Agency	Strike entire Schedule schedule .
If not addressed through the amendments as proposed above....		
Other references to launch	179	Strike reference.

Section	Currently states	Description
References to 'host jurisdictions'	120(4), 121(3), 125(3), 131(2), 134(3), 134(4a), 134(3bii), 135(2), 151(2), 155(3), 155(4)a), 155(4bii), 156(2), 173(2), 174(2a), 174(2b), 175(1a), 175(1b), 175(2)(a), 175(2)(b), 175(2)(c), 179, 201(2), 207(2)(note), 209(4), 209(5a), 209(6), 209(7), 210(2)(a), 210(2b)	Strike reference, replace with 'states and territories'.
References to 'participating jurisdictions'	Definition of 'registered plan management provider' (point a), 73A, 73E(1b)	Strike reference, replace with 'states and territories'

APPENDIX EF

2015 NDIS Act Review Recommendations

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
4. 1.	Amend principles that directly reference carers so that they align with the 'recognise and respect' terminology of the Carer Recognition Act 2010 (Cth).	Agreed	Supported	<p>Add a new subsection after 4(12) which reads:</p> <p><i>"(12A) The relationship between people with disability and their carers is to be recognised and respected."</i></p> <p>After a new paragraph after 31(c) which reads:</p> <p><i>"(ca) where relevant, recognise and respect the relationship between participants and their carers; and"</i></p>
2.	Amend section 5(d) to reference lesbian, gay, bisexual, transgender and intersex status.	Agreed	Supported	<p>Remove "and the gender" from paragraph 5(d) and add "and the sex, gender, gender identity, sexual orientation and intersex status of people with disability". The subsection will then read:</p> <p><u>The proposed new subsection 5(d) will read:</u></p> <p><i>"(d) the cultural and linguistic circumstances, and the sex, gender identity, sexual orientation and intersex status of people with disability should be taken into account."</i></p>
3.	Amend relevant principles to remove moderating language (e.g., 'to the extent of their ability' and 'to the full extent of their capacity').	Agreed	Supported	<p>Remove "to the extent of their ability" in subsection 4(2) and "to the full extent of their capacity" in subsection 4(8).</p>

Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
4.	Add a new principle to section 4 that reflects the concepts of the centrality of people with disability and co-design.	Agreed	Supported	The proposed new subsection 4(9)(a) will read: <i>"(9A) People with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity"</i>
5.	Add a new principle to section 4, reflecting the importance of a diverse and sustainable market that provides choice and control and high quality supports to people with disability.	Agreed	Supported	Remove existing subsection 4(15) and add: <i>"(15) In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted."</i>
6.	Provide greater definition on ILC in the legislative framework.	Agreed	Supported	Remove existing subsection 14(a), and replace it with: <i>"(a) for the purposes of enabling those persons or entities to provide information in relation to disability and disability supports or services; or</i> <i>(ab) for the purposes of enabling those persons or entities to provide assistance in building capacity within the community in connection with the provision of goods and services to people with disability and their families and carers; or</i> <i>(ac) for the purposes of enabling those persons or entities to assist people with disability to realise their potential for physical, social, emotional and intellectual development; or</i>

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
				<i>(ad) for the purposes of enabling those persons or entities to assist people with disability, and their families and carers, to participate in social and economic life; or"</i>
7.	Clarify the intent of section 17A (relative to sections 4 and 5).	Agreed	Supported	<p>Add a subsection under section 17A which requires the NDIA Chief Executive Officer (CEO) to take into account the principles outlined in section 4 of the NDIS Act.</p> <p>The proposed subsection 17A(1A) will read: <i>"(1A) In performing the CEO's functions and exercising the CEO's powers under this Chapter, the CEO must have regard to the principles in this section."</i></p> <p>The proposed subsection 17A(4) will read: <i>"(4) The principles in this section are in addition to the principles in section 4 to which the CEO is to have regard in performing the CEO's functions and exercising the CEO's powers under this Act."</i></p>
8.	Amend the legislative framework to include principles on how the disability requirements are intended to operate for people with chronic health conditions.	Agreed	Supported pending further policy development	While there is merit in clarifying the boundaries of the NDIS and chronic health conditions, further policy development is required to support a legislative framework that does not create perverse outcomes for people with disability. This issue is addressed through recommendation 1 of this review.

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
9.	Remove section 24(1)(e) (unless this requirement is amended to support recommendation 8).	Agreed	Supported pending further policy development	While there is merit in clarifying the boundaries of the NDIS and chronic health conditions, further policy development is required to support a legislative framework that does not create perverse outcomes for people with disability.
10.	Amend section 29 to include a 'cooling-off period', during which a participant's decision to revoke their participant status (under section 29(1)(d) could be reversed.	Noted	Out of Scope	In accordance with COAG's view, this review considers the NDIA should consider incorporating the recommendation into the Operational Guidelines, instead of amending the legislation,
11.	Amend the legislative framework to align the access request process with bilateral agreements and the phasing rules made under section 32A.	Agreed	Superseded	With the transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
12.	Remove 'where possible' from section 31(d).	Agreed	Supported	The amended paragraph 31(d) will read: <i>"(d) strengthen and build capacity of families and carers to support participants who are children; and"</i>
13	Amend the Supports for Participants Rules to provide further guidance on how value for money could be determined.	Agreed	Supported pending further policy development	Further scheme experience is required before deciding if an amendment in this area is required. It is recommended this issue be considered as part of the next review of the NDIS Act, currently scheduled for 2021. This issue is proposed to be addressed through contemporizing the National Disability Insurance Scheme (Supports for Participants) Rules 2013, as proposed in Chapter 11.

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
14	Amend the Supports for Participants Rules to provide greater guidance on the matters that may be used for the purposes of deciding whether a support will be, or is likely to be, effective and beneficial for a participant.	Agreed	Supported pending further policy development	Further scheme experience is required before deciding if an amendment in this area is required. It is recommended this issue be considered as part of the next review of the NDIS Act, currently scheduled for 2021. This issue is proposed to be addressed through contemporizing the National Disability Insurance Scheme (Supports for Participants) Rules 2013, as proposed in Chapter 11.
15	Add a statement to clause 3.4 of the Supports for Participants Rules to require the CEO to consider 'the extent of any other caring responsibilities'.	Agreed	Superceded Supported	This issue is addressed through recommendation X12 of this review.
16	Amend the legislative framework to provide greater guidance on the rights of participants to request a review of their plan.	Agreed	Superceded Supported	This issue is addressed through recommendation X12 of this review.
17	Consider amending section 55 to broaden the powers of the CEO to obtain information to ensure the integrity of the NDIS.	Agreed	Supported	Add an additional paragraph under paragraph 55(2)(a), which will read: <i>"(aa) whether a person with disability may be eligible for services or supports under the National Disability Insurance Scheme;"</i>
18	Add a new provision to section 60 authorising the NDIA to collect	Agreed	Supported	Subsection 60(1) should be deleted from the NDIS Act, as the <i>Privacy Act 1988</i> (Cth) already permits the NDIA to collect the

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
	information that would satisfy the NDIS Act definition of protected information.			information this subsection provided. As such, the subsection is unnecessary. It is also proposed to remove section 61, which is an offence provision relating directly to subsection 60(1) and has no other application. Remove all other references to section 60(1) and 61.
19	Amend the legislative framework to provide greater clarity on the purpose of NDIA registration during the period leading up to full Scheme.	Agree in principle.	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
20	Consider the feasibility of amending the legislative framework to allow for a probationary form of registration.	Agreed	Superseded	With transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.
21	Operationalise the Australian Law Reform Commission (ALRC) recommendations relating to the NDIS in the 2014 report <i>Equality, Capacity and Disability in Commonwealth Laws</i> .	Noted	Noted	Further consideration This intention of this issue is required before proceeding with NDIS Act amendments addressed through recommendation 1 of this review .
22	Amend section 90 to allow the CEO to cancel or suspend a nominee	Agreed	Supported	Adding a new subsection 90(3A) which reads: <i>"Nominee no longer has guardianship etc.</i>

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
	appointment if the nominee ceases to be the guardian of the participant.			<p>(3A) The CEO may, by written instrument, cancel the appointment of a nominee if:</p> <p>(a) at the time the appointment was made, the nominee was a person who, under a law of the Commonwealth, a State or a Territory:</p> <p>(i) had guardianship of the participant; or</p> <p>(ii) was appointed by a court, tribunal, board or panel (however described) who had power to make decisions for the participant and whose responsibilities in relation to the participant were relevant to the duties of a nominee; and</p> <p>(b) the nominee no longer has guardianship of the participant or holds the appointment referred to in subparagraph (a)(ii) (as the case requires)."</p>
23	Amend the legislative framework to limit the term 'review' to 'review of decisions'.	Agreed	Superseded Supported	This issue is addressed through recommendation X22 of this review.
24	Amend section 104(3)(f) to reference carers.	Agreed	Supported	The proposed amended paragraph will read: <p>"(f) the impact of the requirement to take action on the participant or prospective participant and his or her family or carers."</p>

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
25	Amend section 118 to reflect the functions of the NDIA in relation to ILC.	Agreed	Supported	The intention of this recommendation is implemented to the extent that section 14(a) is amended to provide greater definition on ILC (RefItem 6)- in this table
26	Clarify the intent of section 127(2)(a) in terms of it encompassing 'lived experience with disability'.	Agreed	Out of Scope	NDIS Governance matters are out of scope for this review. Matters relating to the governance of the NDIS are not in scope of this review. However, it is noted that this recommendation is broadly supported by governments, NDIA and the public. Making this proposed amendment to the NDIS Act would not be controversial.
27	Amend the legislative framework to require the Principal Member of the Independent Advisory Council (IAC) to be a Board member as well	Noted	Out of Scope	NDIS Governance matters are out of scope for this review. Matters relating to the governance of the NDIS are not in scope of this review. However, it is noted that this recommendation is broadly supported by governments, NDIA and the public. Making this proposed amendment to the NDIS Act would not be controversial.
28	Consider the legislated timeframes related to the production of the quarterly reports.	Agreed	Supported	As discussed in Chapter 10 of this report, to allow time for in-depth data analysis in the context of reporting on the Participant Service Guarantee, it is recommended to remove "1 month" from paragraph 174(1)(b) and replace it with "6 weeks".
29	Amend the NDIS Act to replace the 'National Disability Insurance Scheme Launch Agency' with the 'National Disability Insurance Agency'.	Agreed	Superseded	This issue is addressed through recommendation 27 of this review.

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Ref	Recommendation	COAG's position in 2016	Recommended by this Review	Description
30	Amend section 182(2)(c) to exclude from its application, payments relating to approved supports that have already been delivered.	Agreed	Supported	Replacing the existing paragraph 182(2)(c), with: <i>"(c) the payment was made in respect of reasonable and necessary supports funded under a participant's plan and the participant died before the supports were provided."</i>
31	Conduct a further review of the NDIS Act in two-to-three years.	Agree in principle	Out of Scope	Decisions in relation to the timing of reviews of the NDIS Act is a matter for Government consideration, however, it is noted that a full review of the NDIS Act is currently scheduled to occur in 2021.
32	Amend section 209(3) to reference the objects and principles of the NDIS Act.	Agreed	Supported	Replacing the existing subsection 209(3), with: <i>"(3) When making National Disability Insurance Scheme rules, the Minister must have regard to: (a) the objects and principles of this Act; and (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme."</i>
33	Consider what, if any, amendments to the legislative framework are required to support the operationalisation of the bilateral agreements between the Commonwealth and the States and Territories.	Agreed	Superseded	With the transition period complete as of 1 July 2020, this intent of this recommendation is now out-of-date.

APPENDIX F

~~Survey data analysis~~

~~Overall, 1,740 respondents started the long form and short form versions of the survey; however, some people on completed part of the opening questions of each survey. Therefore, 1,273 respondents form the sample for analysis of the long form survey and 467 respondents form the sample of analysis of the short form survey.~~

~~Five respondents completed the survey using the AUSLAND video survey link. These are included with the long form data.~~

~~A third of respondents were people with disability and just over half were family members or informal carers of people with disability. Every Australian state and territory were represented by respondents to the survey.~~

~~Owing to the focus of the review on areas that can improve partisan experiences, the Review notes that responses to the survey may not reflect a representative sample of all participants' experience — that is, responses to this survey are likely to have a negative bias.~~

~~Section 1: Respondents demographics (combined)~~

- ~~• Respondents main role of interest in the NDIS~~
- ~~• Type(s) of disability reported by respondents~~
- ~~• Respondents state or territory of residence~~
- ~~• Respondents geographic remoteness~~
- ~~• Specific population groups for respondents~~

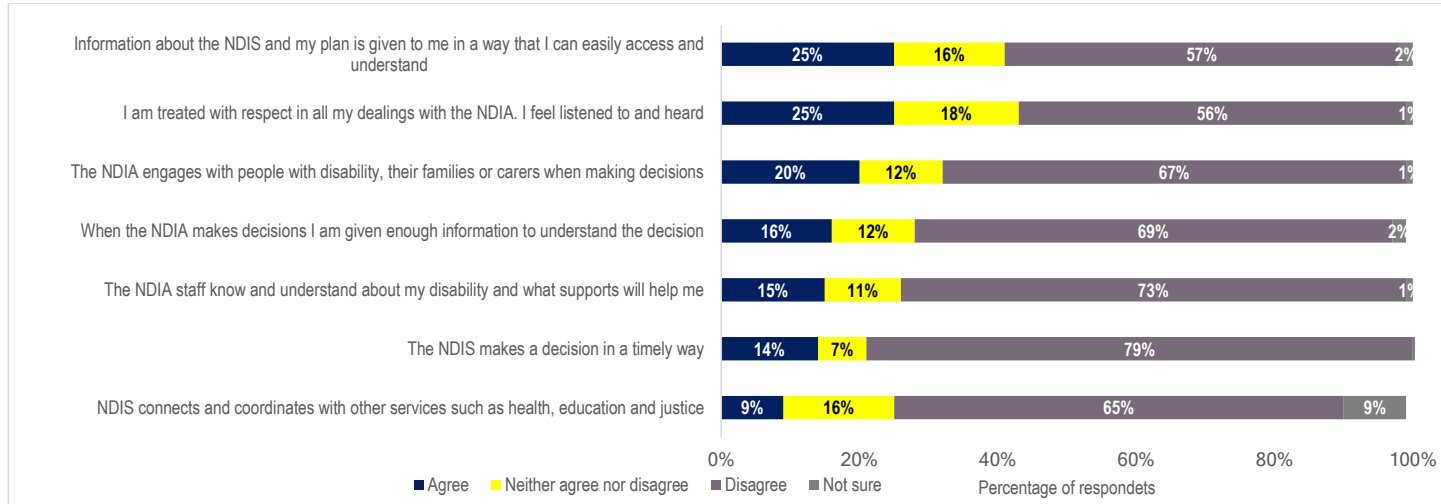
~~[Awaiting final analysis from the Social Deck on respondent demographic data and short form survey]~~

As at 20/11

LONG FORM SURVEY – WHAT WE HEARD

Section 2: The Participant Service Guarantee

Figure X: Perceptions of the NDIS (n=1,273)



* Update once received final analysis

As at 20/11

Section 3: Applying to the NDIS

Figure X: Respondents who required help to make an application

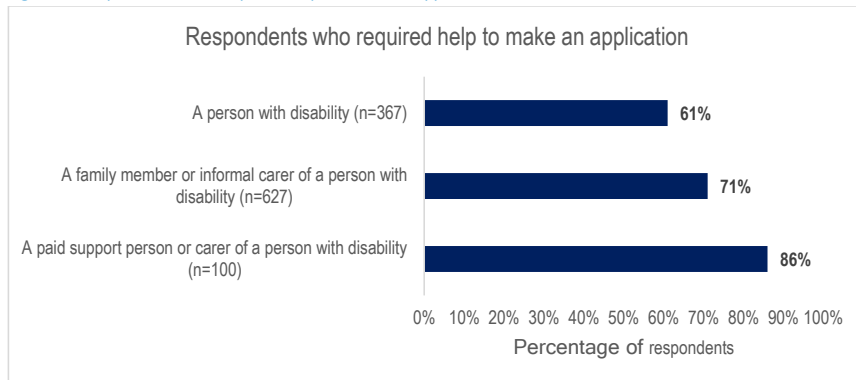
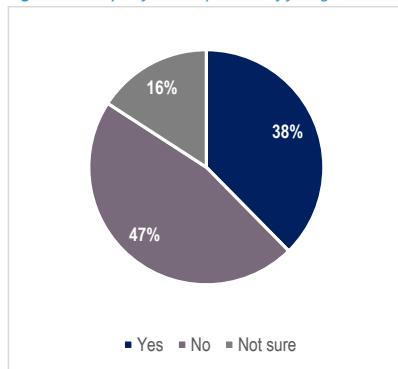


Figure X: Did you find the process of filling out the Access Request form or making a Verbal Access Request easy to understand? (n=1,075)



As at 20/11**Section 4: Preparing for planning meetings**

Figure X: Once you were told you had been approved to access the NDIS, was there enough information provided to you about what would happen next? (n=1,056)

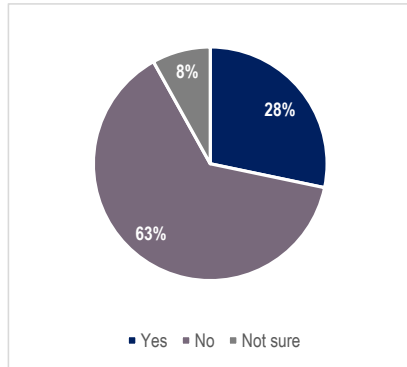


Figure X: Did you know where to find information to help you start preparing for your planning meeting? (n=1,056)

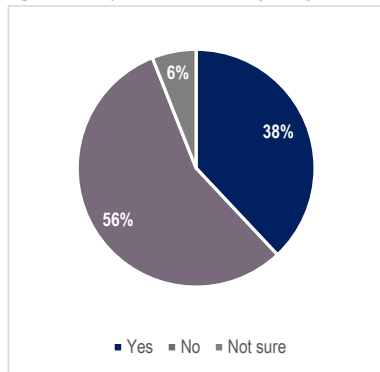
**Section 5: Planning meetings**

Figure X: Changes in respondents' experience of the planning process since their first plan (n=705)

As at 20/11

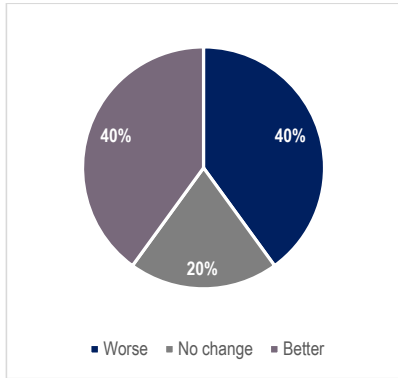


Figure X: Do you think your planner listened to you? (by type of planner)

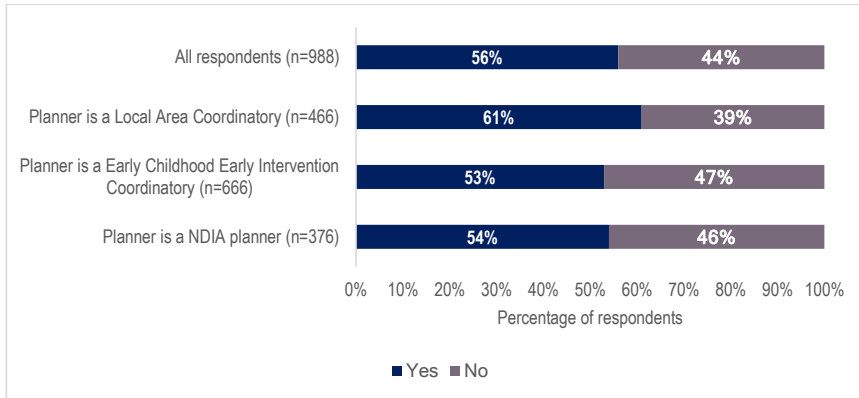


Figure X: Information covered in planning meeting

As at 20/11

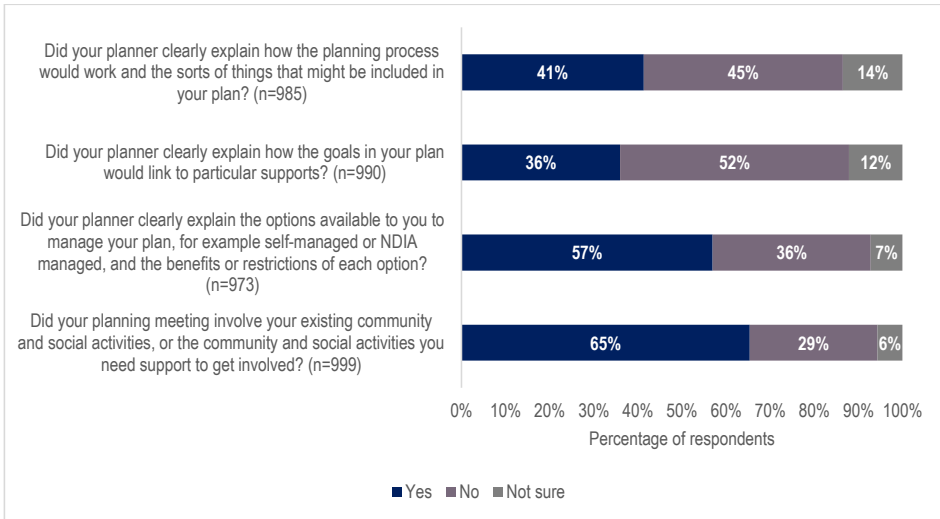


Figure X: Time taken for NDIA to approve plan from first planning meeting (n=994)

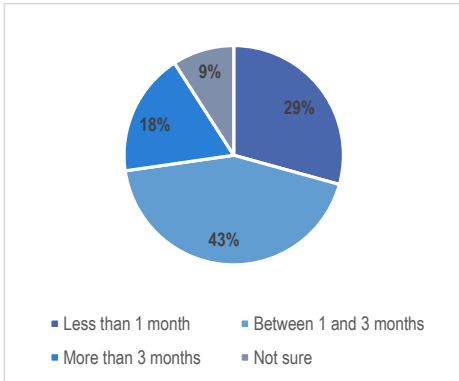


Figure X: Did you receive the level of support you expected in your plan? (n=965)

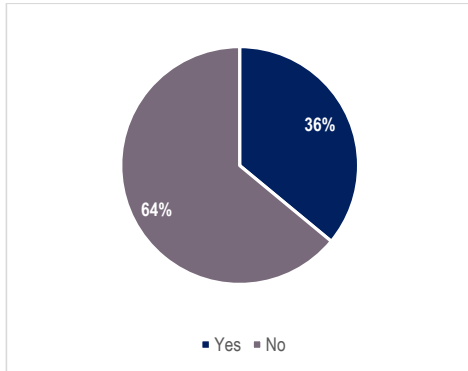
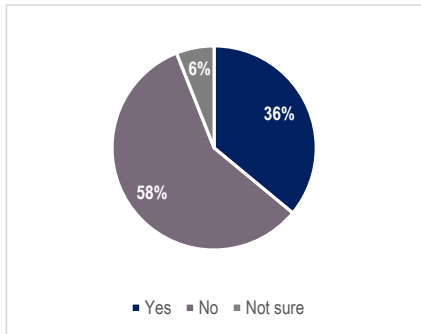
As at 20/11

Figure X: Did you understand everything in your plan? (n=963)



Section 6: Using NDIS Plan

Figure X: Are you likely to spend all your money in your plan? (n=961)

As at 20/11

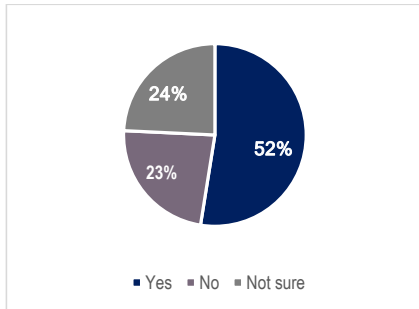


Figure X: Reasons for not being likely to spend all of money in plan (n=224)

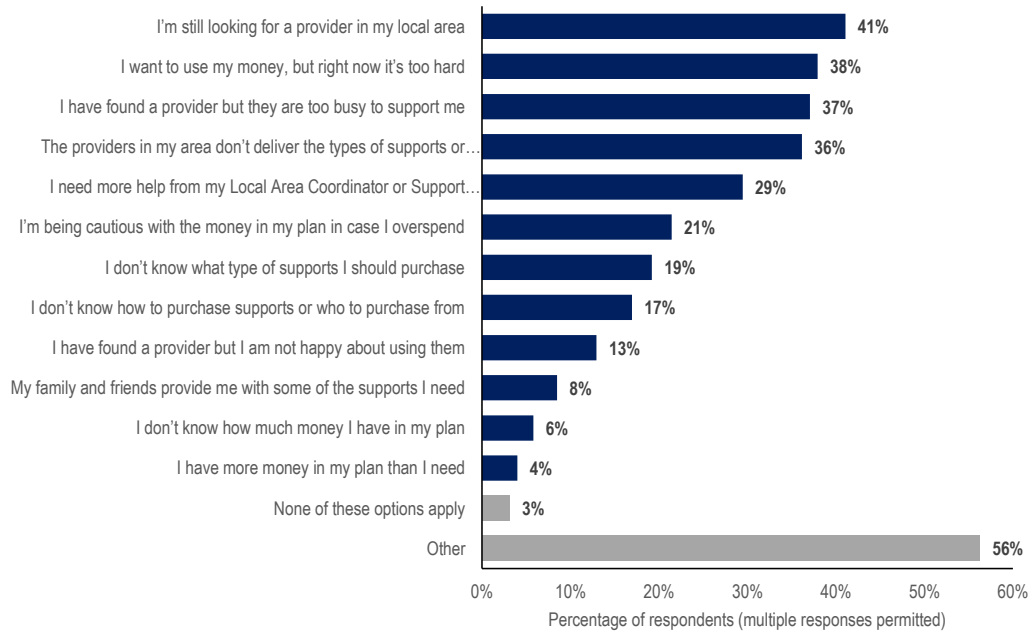
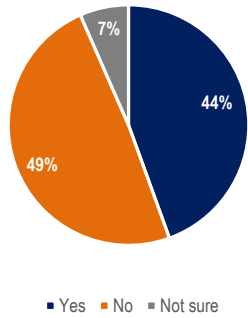


Figure X: Did you get help to use the supports in your plan? (n=960)

As at 20/11

Section 7: Changing of reviewing NDIS plans

Figure X: How long before your plan was due to end did someone contact you to make an appointment for your plan review? (n=472)

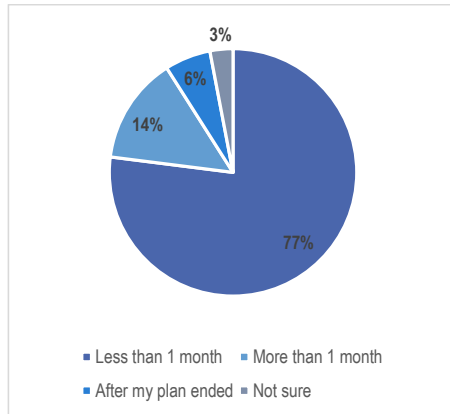


Figure X: Respondents understanding of the scheduled plan review process

As at 20/11

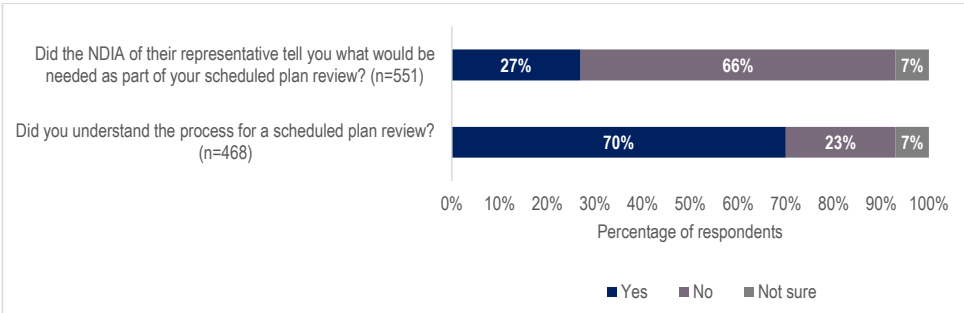
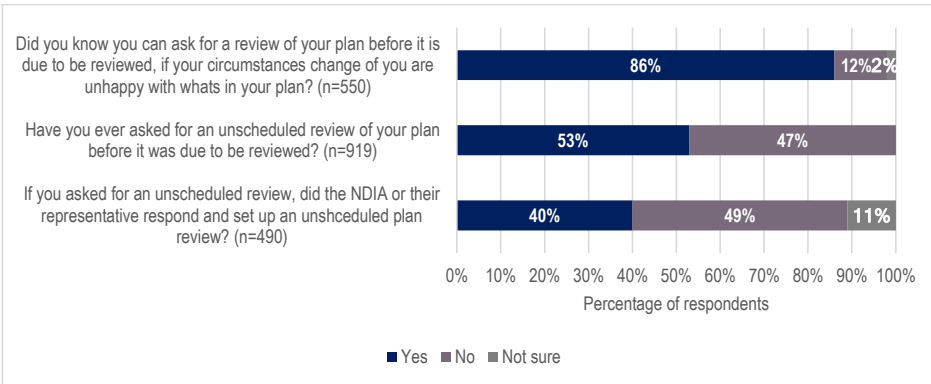


Figure X: Respondents understanding and experience of the unscheduled plan review process



Section 8: NDIA decision-making

As at 20/11

Figure X: Respondents understanding of NDIA decision-making and internal review process

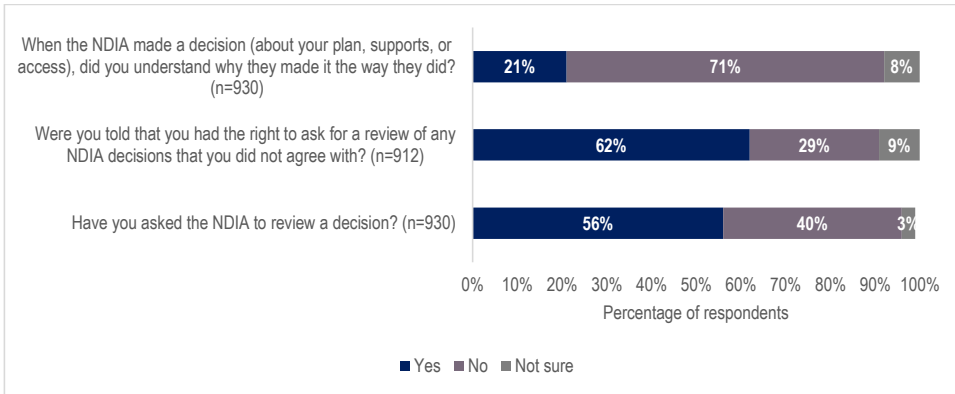


Figure X: Time taken for the NDIA to tell respondents if they would review their decision (n=460)

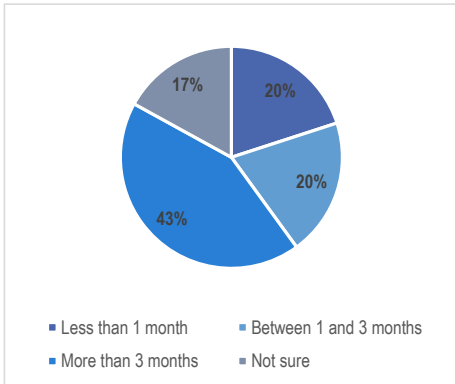


Figure X: Satisfaction with review decision (n=515)

As at 20/11

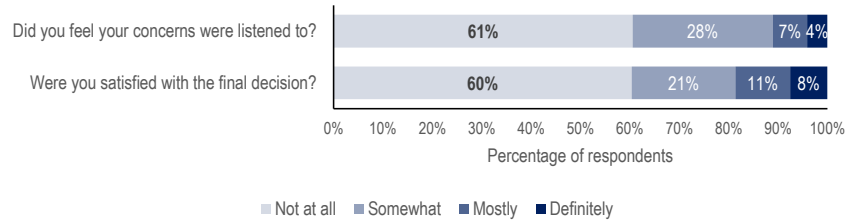


Figure X: If you were still unhappy after the NDIA reviewed the decision, did you make an appeal to the Administrative Appeals Tribunal? (n=222)

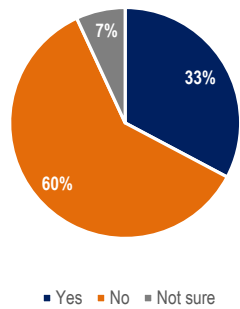
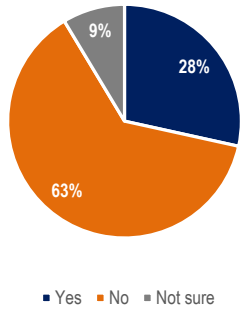


Figure X: Is the review and appeals process for the NDIS clear to you? (n=222)

As at 20/11



As at 20/11

Short form survey — what we heard

Section 2 — Applying for the NDIS

Section 3 — Getting your first NDIS plan

Section 4 — Your experience with the NDIA

[Pending analysis from the Social Deck]