

**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



David Tune AO PSM

02 December 2019

Table of contents

Letter of Transmittal	2
Glossary	6
Executive Summary.....	7
The legislative framework of the NDIS	8
The Participant Service Guarantee.....	10
Conclusion.....	12
Recommendations	13
CHAPTER 1 – INTRODUCTION.....	17
Scope of the review	17
Consultation activities	19
Reports that have informed this review.....	20
Structure of this report.....	21
CHAPTER 2 – BACKGROUND AND CONTEXT	23
About the NDIS.....	23
Summary of the legislative architecture.....	25
The NDIS rollout	27
Implementation challenges	28
New 2019 commitments	34
Future focus	35
Other issues.....	36
Chapter 3 – ENGAGEMENT AND NAVIGATION	39
Key findings.....	39
Reforms to the planning process	40
Navigation support	44
Reasonable and necessary.....	46
Transparency.....	49
Draft plans.....	52
Accessible information	54
CHAPTER 4 – EVIDENCE TO SUPPORT DECISION-MAKING	59
Key findings.....	59
Strengthening the use of functional capacity assessments.....	60
Individualised planning.....	63
Consistency of decision-making.....	64

A new model – independent sourcing of functional capacity assessments.....	65
Mitigating cost as a barrier to producing information.....	68
Recognising the impact of secondary impairments.....	69
CHAPTER 5 – BECOMING A PARTICIPANT.....	71
Key findings.....	71
Eligibility criteria.....	72
Timeframes for making an access decision.....	77
Deeming of access decisions.....	79
Assertive outreach.....	80
CHAPTER 6 – DEVELOPING A PLAN.....	89
Key findings.....	89
Background to planning.....	90
Timeframes for commencing planning.....	91
Timeframes for plan approval.....	93
The interface between NDIS and other service systems.....	95
Family-centred approaches.....	99
Maximising the benefits of early intervention for children.....	103
Supported Independent Living.....	107
CHAPTER 7 – PURCHASING NDIS SUPPORTS.....	109
Key findings.....	109
Background to plan implementation.....	110
Plan support flexibility.....	113
Accessing funded supports.....	114
Support coordination.....	118
Alternative commissioning.....	122
Informed choice and control and best practice service provision.....	124
Choice of plan management.....	126
CHAPTER 8 – REVIEWING AND AMENDING A PLAN.....	129
Key findings.....	129
Unscheduled and scheduled reviews.....	130
Amending a plan.....	136
Plan review gaps and service bookings.....	140
CHAPTER 9 – REVIEWABLE DECISIONS AND AAT APPEALS.....	143
Key findings.....	143
Triple use of the word ‘review’.....	143

Internal reviews.....	144
Timeframes for decision-making.....	146
AAT review	147
CHAPTER 10 – THE PARTICIPANT SERVICE GUARANTEE.....	153
Key findings	153
Three elements	154
Part 1 – NDIA engagement	155
Part 2 – Timeframes	159
Part 3 – Performance metrics	166
The legislated form of the Guarantee	168
The role of the Commonwealth Ombudsman	169
Proposed consequences	171
CHAPTER 11 – UPDATING THE NDIS LEGISLATION	173
Key findings	173
Updating the NDIS Act.....	173
Updating the NDIS Rules.....	175
The National Disability Strategy 2010–2020.....	177
References	179
Appendix A – Public submissions to the review	181
List of submissions.....	181
Appendix B – Survey data analysis.....	184
Preparing for planning meetings.....	190
Appendix C – Persons and organisations met with in the conduct of the review	200
Persons and organisations Mr Tune met with.....	200
Persons and organisations the Review Secretariat met on Mr Tune’s behalf	201
Appendix D – Information on NDIA operational reforms implemented to date	202
Improvements to assistive technology.....	202
Improvements to Specialist Disability Accommodation.....	203
Communications, engagement and ICT.....	203
Workforce training and development.....	205
Outreach and engagement strategies.....	206
Appendix E – Provisions in the NDIS Act to revoke or amend from 1 July 2020.....	209
Appendix F – 2015 NDIS Act Review Recommendations.....	218

GLOSSARY

Acronym/abbreviation	Term
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
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>
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, some improvements 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
- 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
- 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
- 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) adds 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
 - 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
 - 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
 - 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
 - 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
 - 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
 - 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
 - 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
 - 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
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
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
 - 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
 - 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).

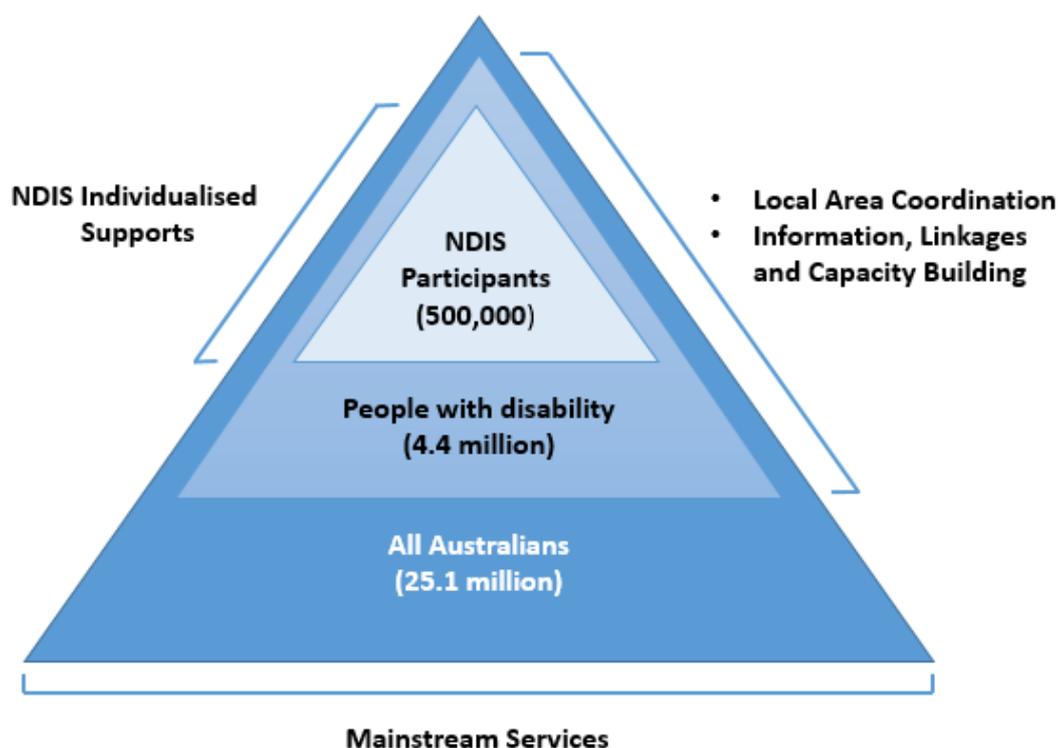


Figure 1: The NDIS and other service systems²

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
 - 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
 - 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
-

- 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 more than 400,000 participants estimated to transition 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
 - 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 wellbeing.

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 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)

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

- 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 estimates 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
 - 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
 - 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
 - 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
 - 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
 - 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 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
 - 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.

⁶ 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.

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.
- 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 NDIS 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
 - 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

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

- e. supporting the development of a robust marketplace of disability service providers that keeps pace with demand
- f. ensuring disability service providers are acting in the best interests of participants.

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?
 - 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. The issue of chronic health under the NDIS 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
- 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.
 - 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 NDIS.
- 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.

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

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.

“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).

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).

-
- 3.39. This is complicated by reasonable and necessary being, in large, a discretionary determination made on a case-by-case basis having regard to each participant's 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
- 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).

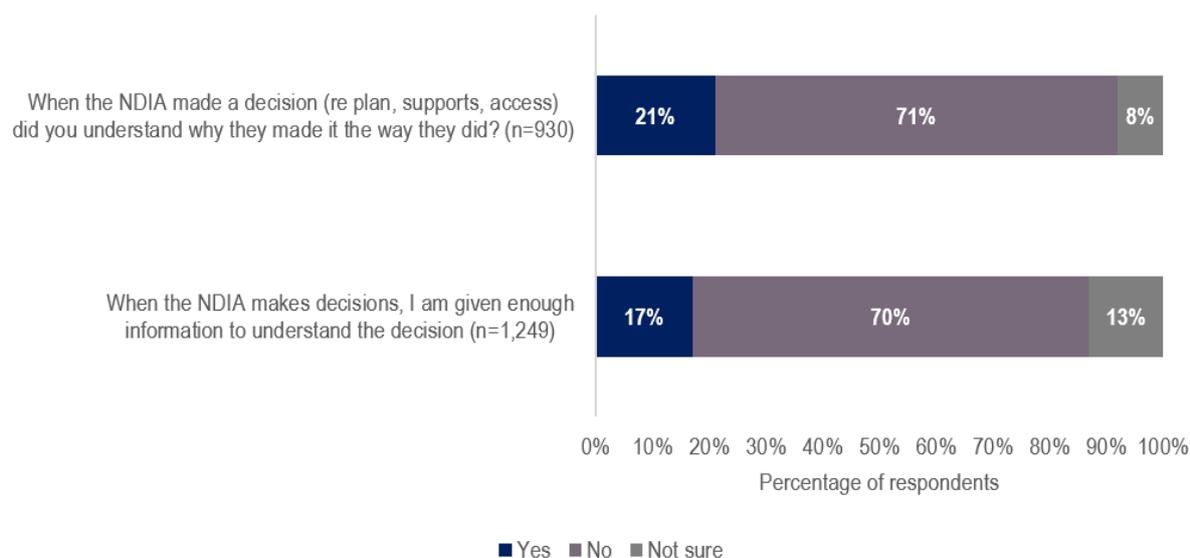


Figure 2: Explanation of NDIA decisions (long-form survey)

- 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 schedules 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.

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

- 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.
- 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
 - 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 NDIS
 - 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 participant intake schedules. 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 NDIA 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 Partners, 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
 - 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
- 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

- 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 due 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
 - 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
- 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.

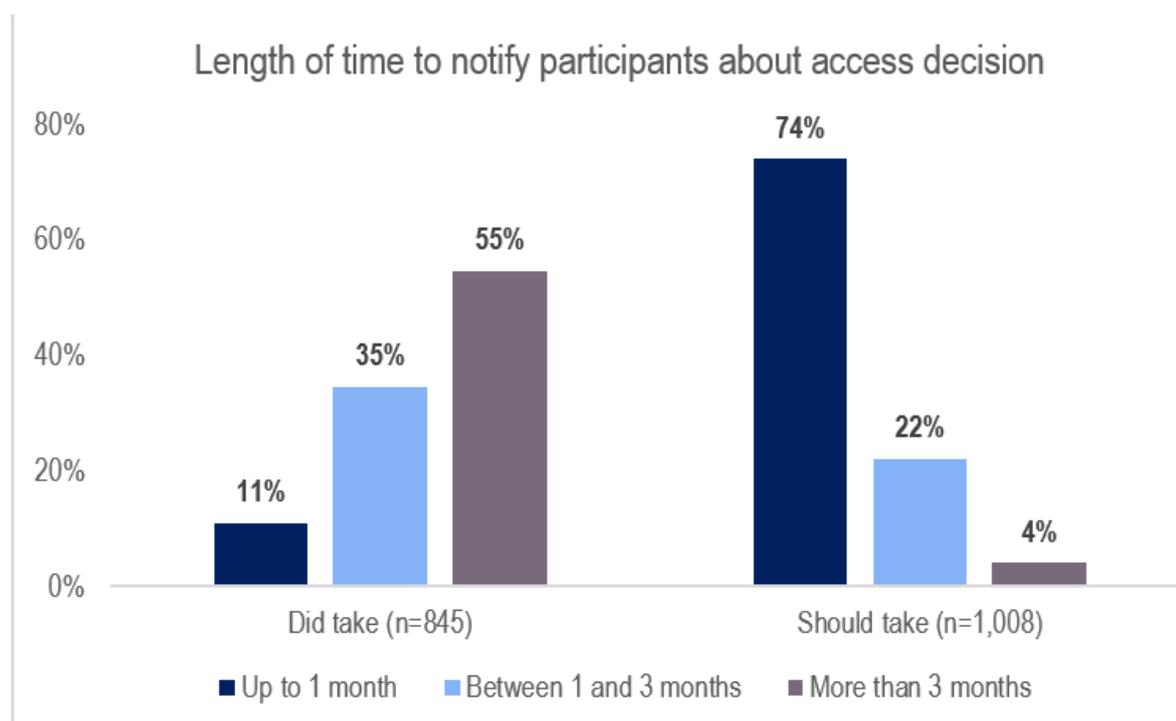


Figure 3: Timeframes for notification of access decisions (long-form survey)

- 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.

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

- 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).

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 request 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 be 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.

“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

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.

- 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.
- 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

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.

- 5.63. 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

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

- 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.
- 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 wellbeing.
- ✓ 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
 - 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
 - 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
 - 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
 - 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).

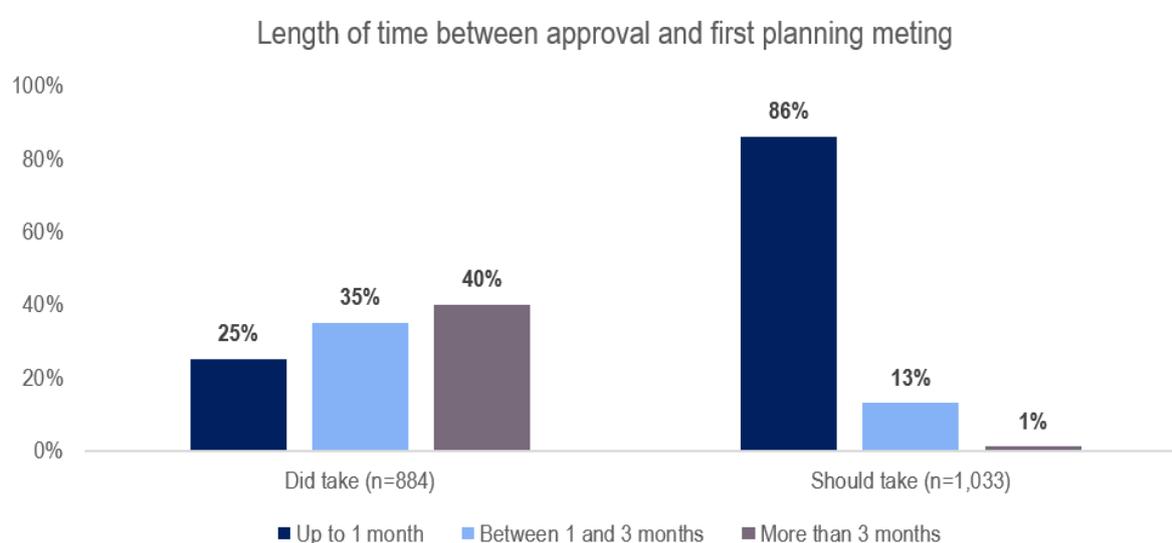


Figure 4: Timeframe for plan meeting (long-form survey)

- 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).

Time taken for NDIA to approve from first planning meeting
(n=994)

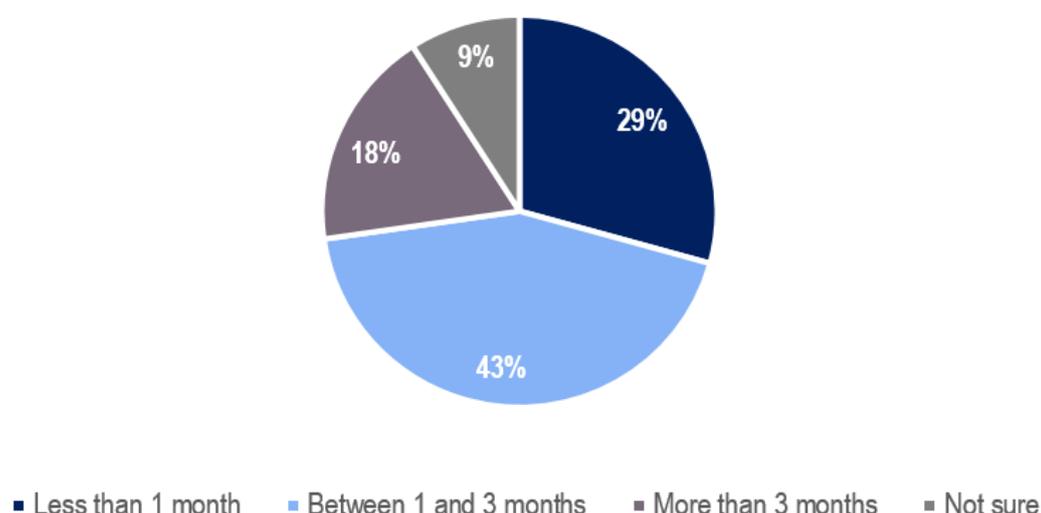


Figure 5: Timeframe for plan approval (long-form survey)

- 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.

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:

- a. 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
- b. medically prescribed care, treatment or surgery for an acute illness or injury including post-acute care, convalescent care and rehabilitation
- c. sub-acute care including palliative care, end of life care and geriatric care, as set out in the APTOS
- d. items and services covered by the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme
- e. 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.

Box 3: Summary of recent DRC decisions

- 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
 - 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

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

- 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
- 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

- 6.48. 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.

“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.

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*.

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*.

-
- 6.54. 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.
- 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.
- 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.

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

- 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.

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

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.

“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
 - 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).

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.

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

- 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:
- a. fully self-manage their supports increased from 13 to 17 per cent
 - b. partly self-manage increased from 10 to 12 per cent
 - c. use the support of a plan manager increased from 21 to 32 per cent
 - d. 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:
- 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 reach their long term goals
 - 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 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.
- 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 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.

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

Box 5: Current budget construction of participant plans

- 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
 - 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 estimates (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).

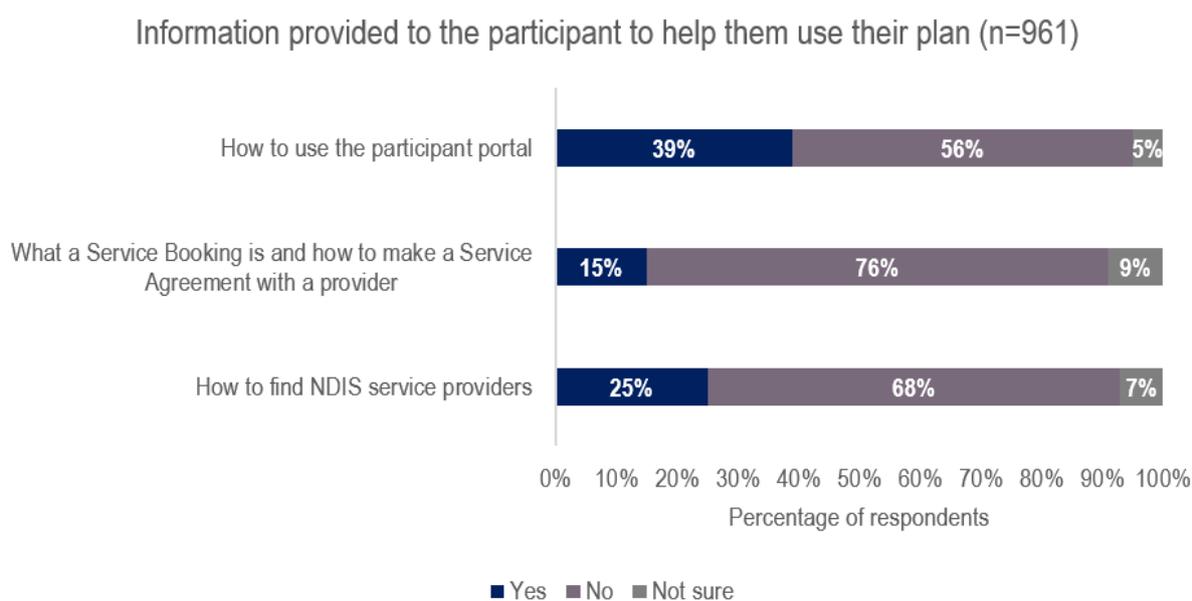


Figure 6: Access to plan implementation information (long-form survey)

- 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).

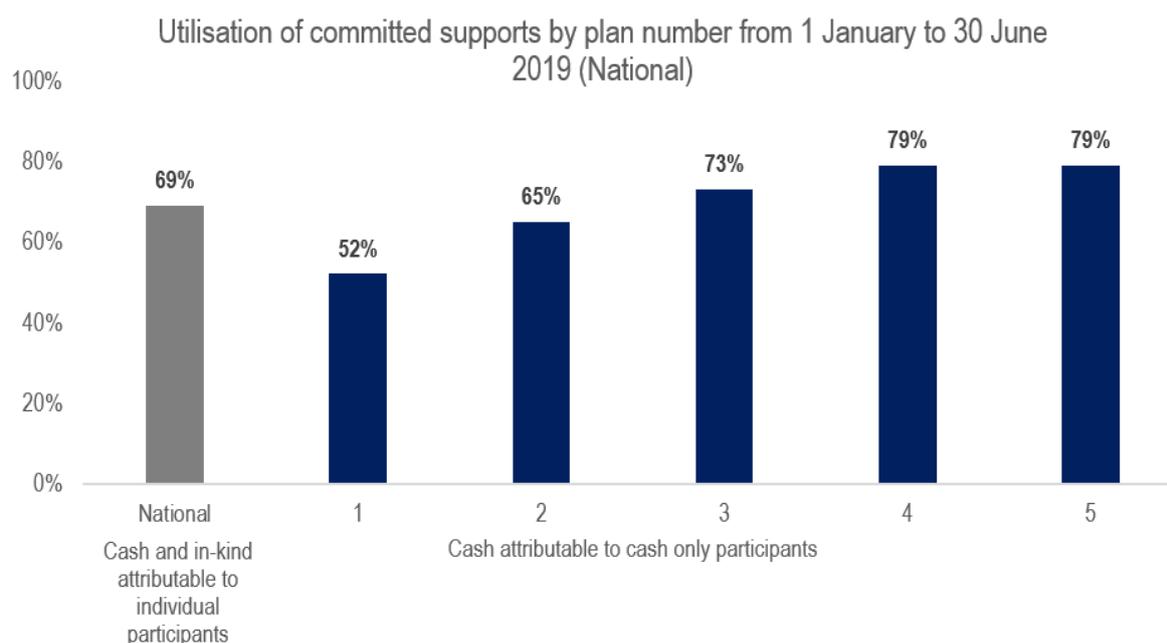


Figure 7: Utilisation of committed supports²⁸

- 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.

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

- 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. they are still looking for a provider in their area
 - 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
 - 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.”

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
 - 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
 - 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 NDIS.

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
- 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
 - 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 behaviour. 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 NDIS. 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 behaviours 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 digital market strategy 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
 - 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
 - c. the review process took too long, delaying access to much needed supports.
- 8.6. The NDIA has acknowledged the bilateral intake schedules 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 be within one month following a positive review decision (see Figure 8).

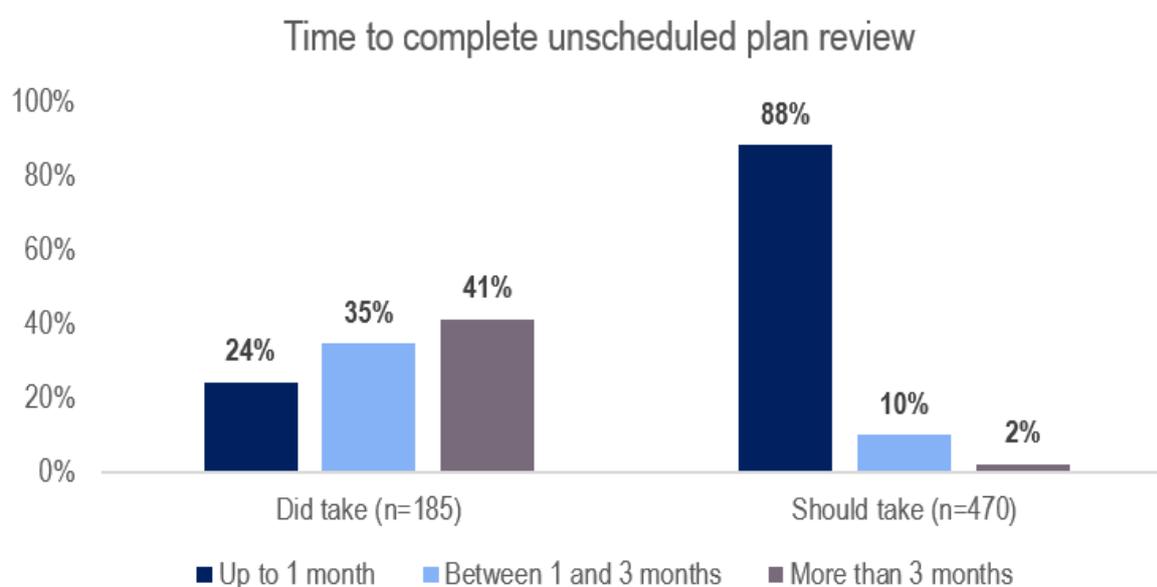


Figure 8: Timeframes for unscheduled reviews (long-form survey)

- 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
 - 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 be 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:
- 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
 - 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 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:
- 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 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
 - 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 systems.

- 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 centred 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 Courts

"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))
 - 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).

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

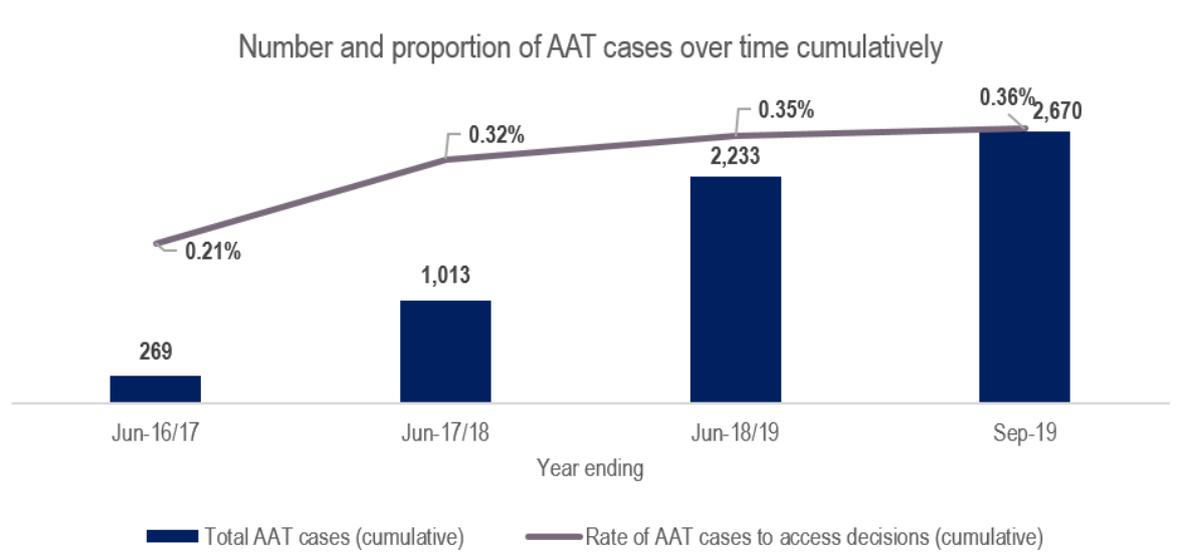


Figure 9: AAT decisions as a proportion of access requests

- 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.

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.

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].

CHAPTER 10 – THE 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
- 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
- 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
- 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 • 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.

Proposed engagement principle	Proposed service standard
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.
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

Proposed engagement principle	Proposed service standard
	<ul style="list-style-type: none"> • recognise participants' expertise about their disability and use the recommendations and evidence provided by qualified professionals to assess support needs • 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 • 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 • 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.

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-centred 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 • 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
- 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.

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.

³³ Subject to the availability of the participant

-
- 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
 - 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
 - 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
 - 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.

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

- 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.

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
- 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
 - 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:
- a. removing moderating language
 - b. including amendments to reflect the centrality of people with disability and their inclusion in a co-design capacity
 - c. amending the principles of the NDIS Act to acknowledge the unique experiences of women and LGBTQIA+ people with disability.
- 11.12. 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

- 11.13. 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
 - 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.

- 11.14. 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.

11.15. 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

Name of Rule	Description
	<ul style="list-style-type: none"> ○ 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
- c. reflect current best practice drafting standards, and other amendments as proposed in this review.

The National Disability Strategy 2010–2020

11.16. 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.

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

11.18. 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.

11.19. 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.

11.20. 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.

11.21. 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.

11.22. 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.

11.23. 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.

REFERENCES

1. Arefadib, N. and Moore, T.G. (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 Research Institute.
2. Commonwealth Ombudsman. (2018). *Administration of reviews under the National Disability Insurance Scheme Act 2013: Report on the National Disability Insurance Agency's Handling of Reviews*.

Available from:
https://www.ombudsman.gov.au/_data/assets/pdf_file/0029/83981/NDIS-NDIA-Final-report-on-administration-of-reviews-under-the-Act.pdf
3. Council of Australian Governments (2016). *COAG response to the independent Review of the National Disability Insurance Scheme Act 2013*.

Available from: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/national-disability-insurance-scheme/coag-response-to-the-independent-review-of-the-national-disability-insurance-scheme-act-2013>
4. 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*.

Available from:
<https://www.ecia.org.au/LinkClick.aspx?fileticket=umViYjG0xJc%3d&portalid=4>
5. Ernst & Young (2015). *Independent Review of the NDIS Act*. Commissioned by the COAG Disability Reform Council.

Available from: <https://www.dss.gov.au/disability-and-carers/programmes-services/for-people-with-disability/national-disability-insurance-scheme/independent-review-of-the-ndis-act>
6. Minister for the NDIS, the Hon Stuart Robert MP (14 November 2019). *Address to the National Press Club*.

Available from: <https://ministers.dss.gov.au/speeches/5266>

7. Moore, T. (2010). *Early Childhood Intervention Reform Project: Revised literature review*. Prepared for the Victorian Department of Education and Early Childhood Development. East Melbourne, Victoria: Centre for Community Child Health, Murdoch Children's Research Institute.

Available from: <https://www.education.vic.gov.au/Documents/childhood/providers/needs/ecislitreviewrevised.pdf>
8. National Institute of Labour Studies. (2018). *Evaluation of the NDIS: Final Report*.

Available from: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/national-disability-insurance-scheme/ndis-evaluation-consolidated-report>
9. NDIA Quarterly Reports to the COAG Disability Reform Council.

Available from: <https://www.ndis.gov.au/about-us/publications/quarterly-reports>
10. NDIA. (2018). *Improving the NDIS Participant and Provider Experience*.

Available from: <https://www.ndis.gov.au/about-us/ndis-pathway-reform>
11. Productivity Commission, (2019). *Review of the National Disability Agreement*.

Available from: <https://www.pc.gov.au/inquiries/completed/disability-agreement/report>
12. Productivity Commission. (2011). *Disability Care and Support: Inquiry Report*.

Available from: <https://www.pc.gov.au/inquiries/completed/disability-support/report>
13. Productivity Commission. (2011). *Disability Care and Support: Inquiry Report – Overview and Recommendations*.

Available from: <https://www.pc.gov.au/inquiries/completed/disability-support/report>
14. Productivity Commission. (2017). *Inquiry into NDIS Costs*.

Available from: <https://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs.pdf>
15. 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.
16. Whelan, J., Acton, P. and Harmer, J. (2014). *A Review of the Capabilities of the National Disability Insurance Agency*.

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
- 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
- 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

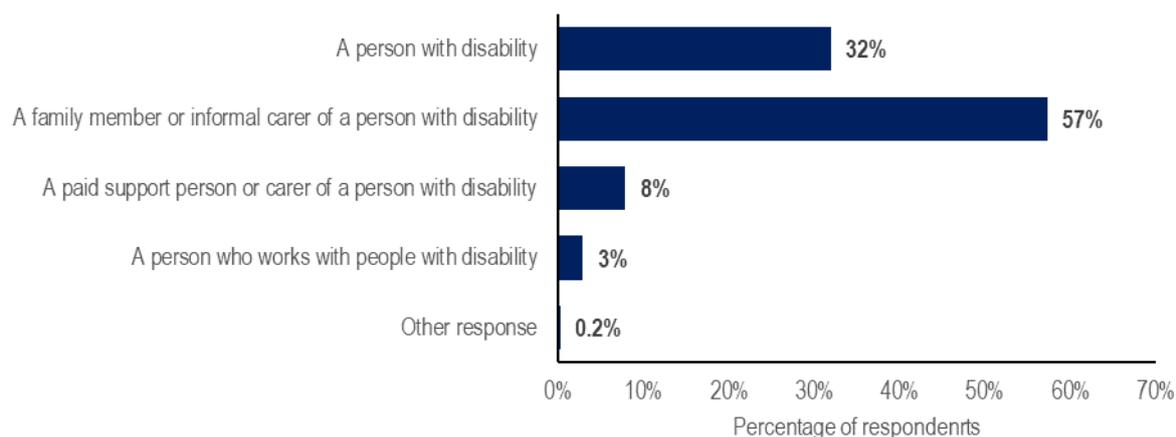


Figure 10: Respondents' main role of interest in the NDIS (n=1,740)

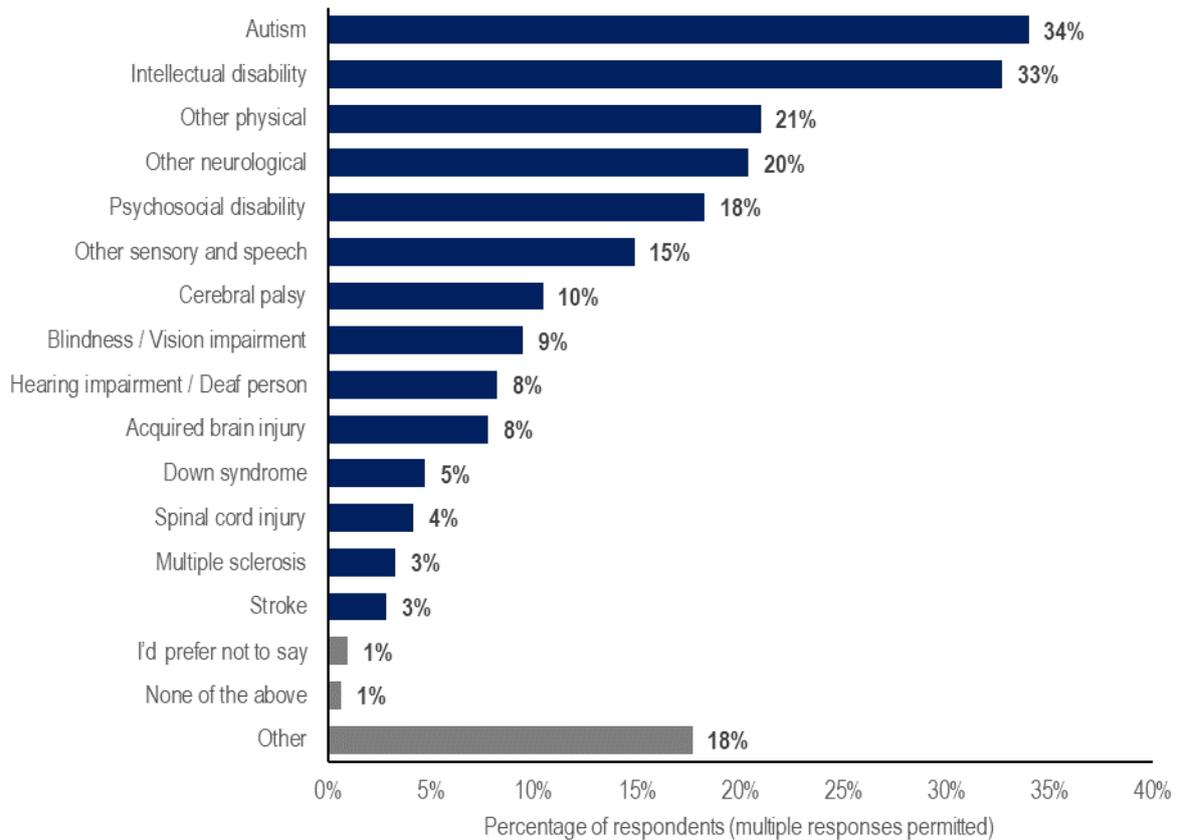


Figure 11: Disability type of respondent or of the person they care for (n=1,740)

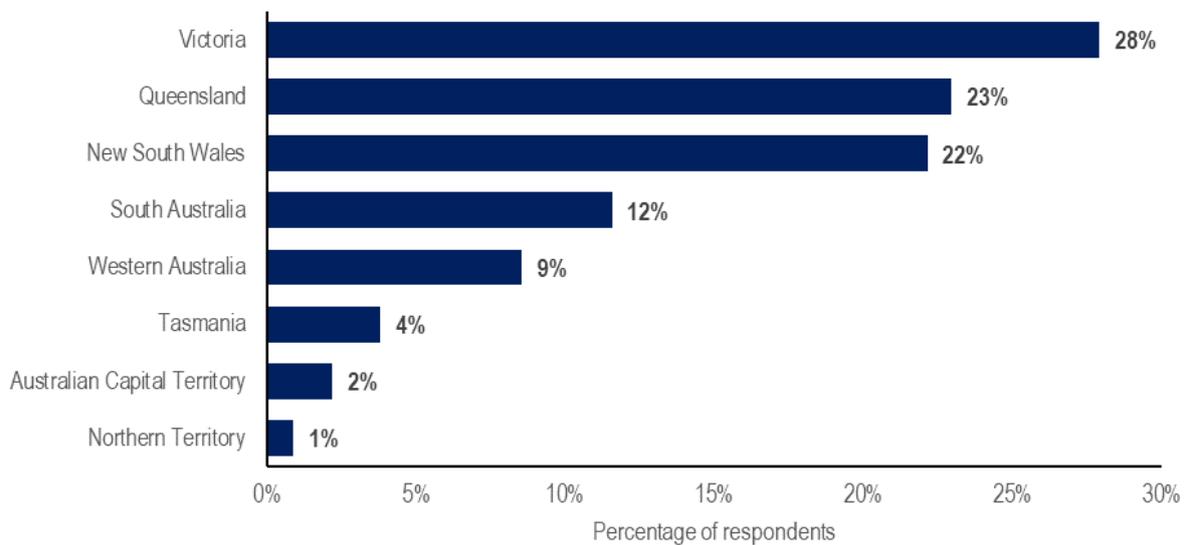


Figure 12: Respondents' state or territory of residence (n=1,734)

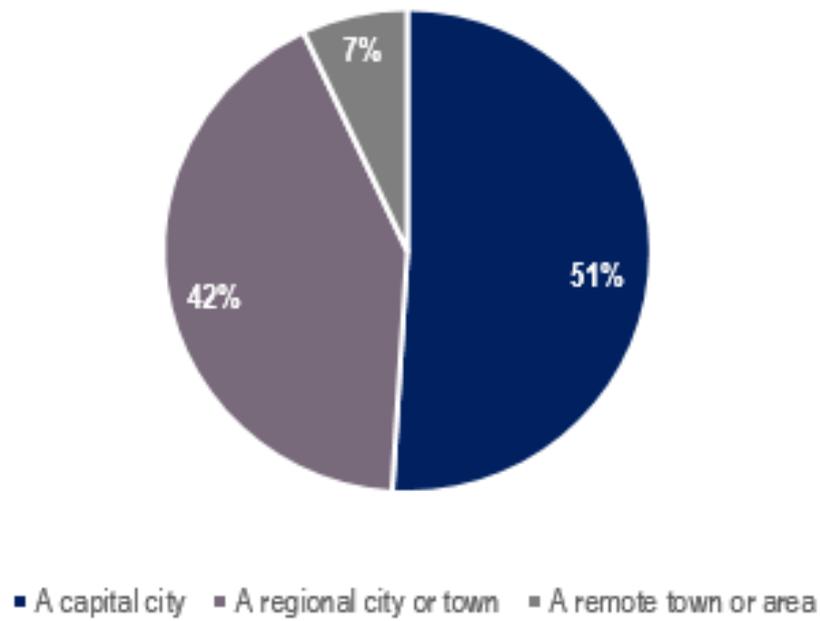


Figure 13: Respondents' geographic remoteness (n=1,731)

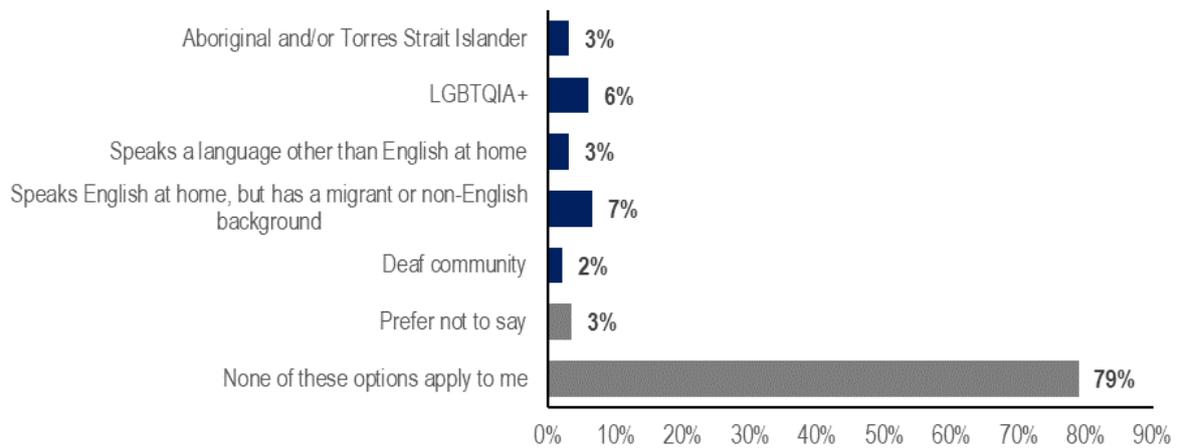


Figure 14: Specific population groups for respondents (n=1,729)

Participants' perceptions of the NDIS

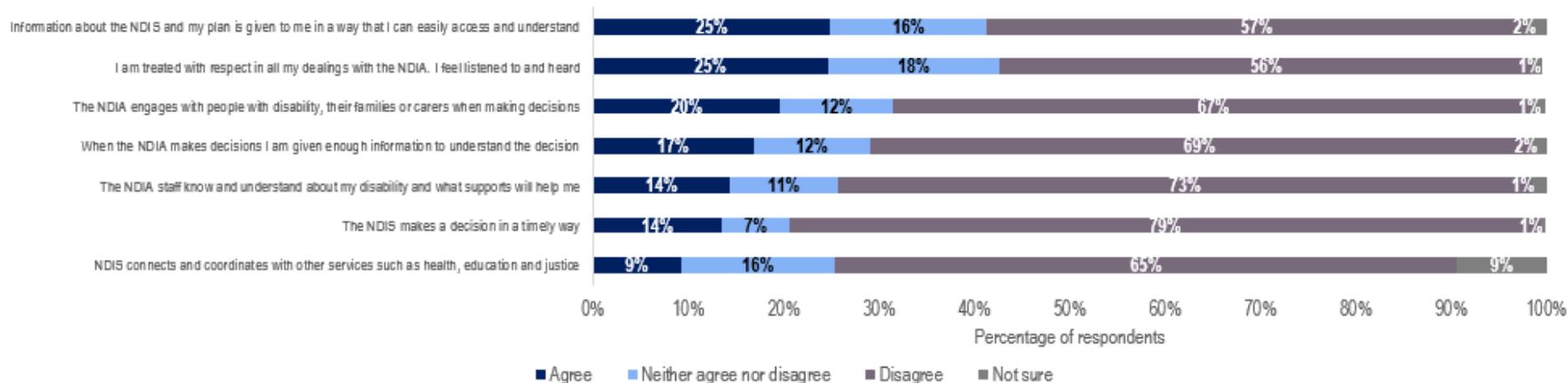


Figure 15: Perceptions of the NDIS (n=1,273) (long-form survey)

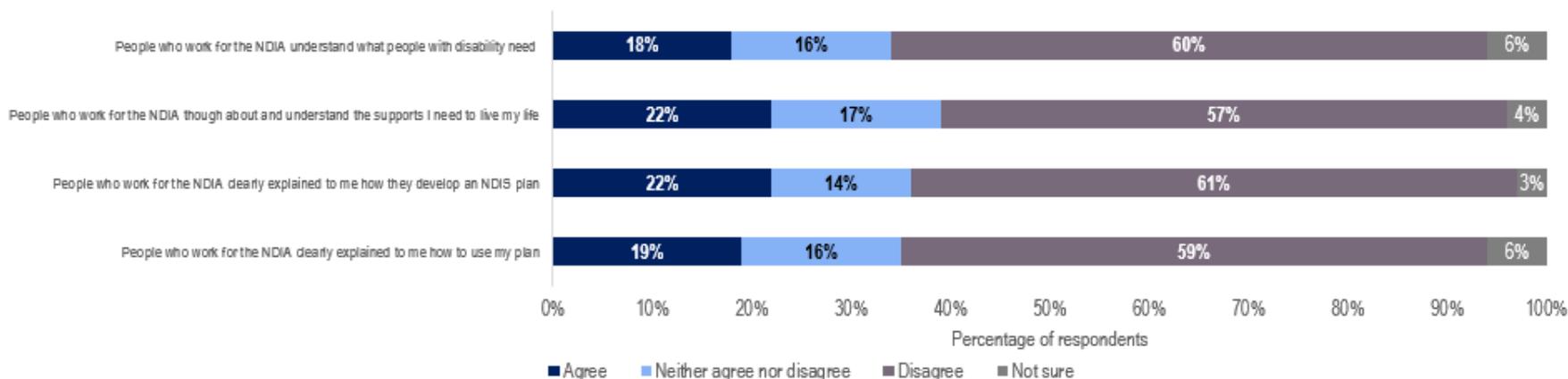


Figure 16: Perceptions of the experience of people who work for the NDIA (n=383) (short-form survey)

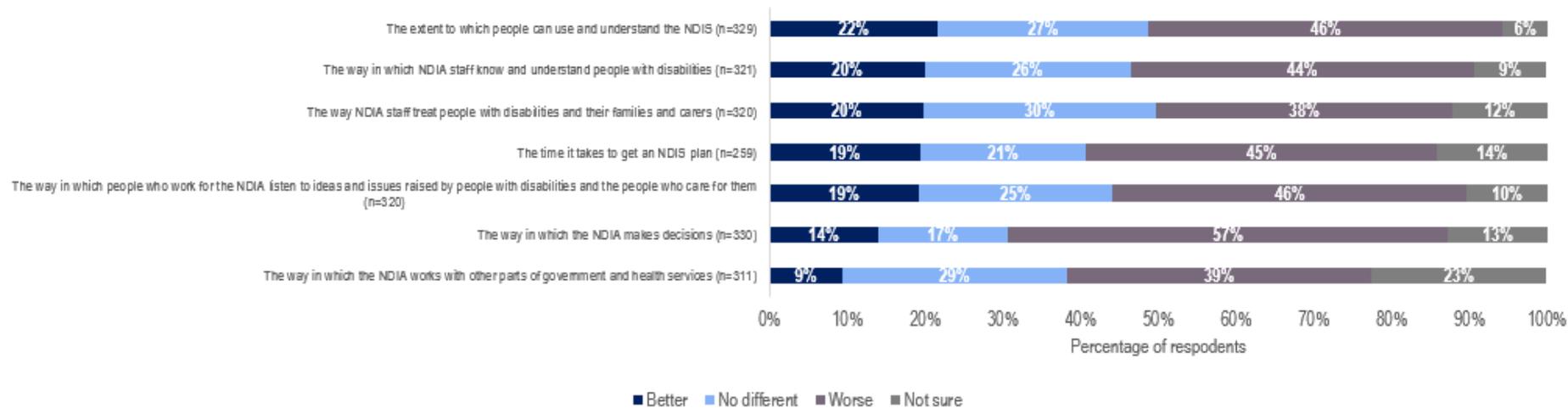


Figure 17: Perceptions of the NDIS over time (short-form survey)

Applying to the NDIS

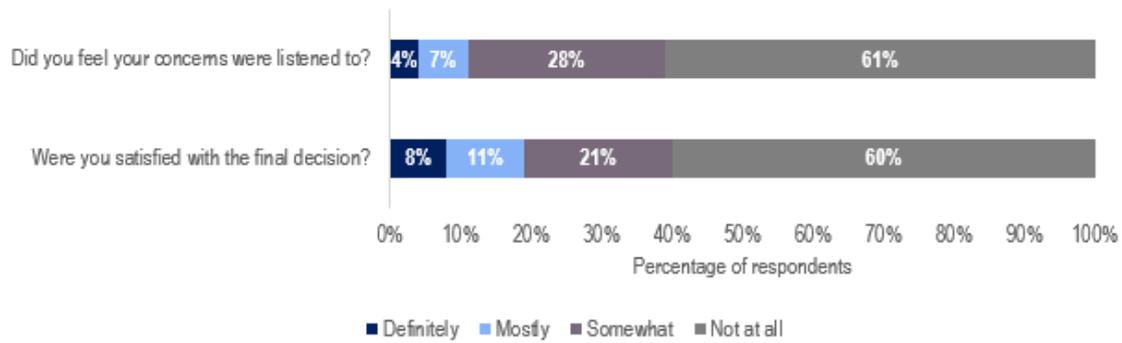


Figure 18: Respondents who required help to make an application (long-form survey)

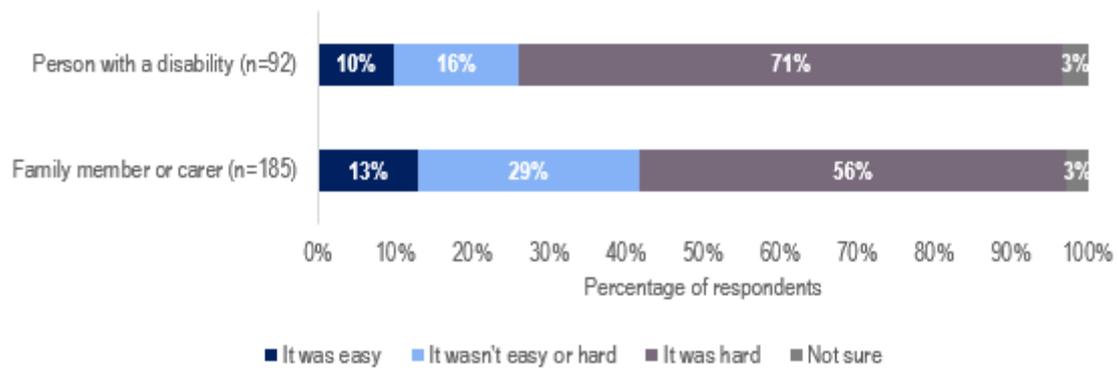


Figure 19: How easy or hard was it to apply for the NDIS, by respondent role (short-form survey)

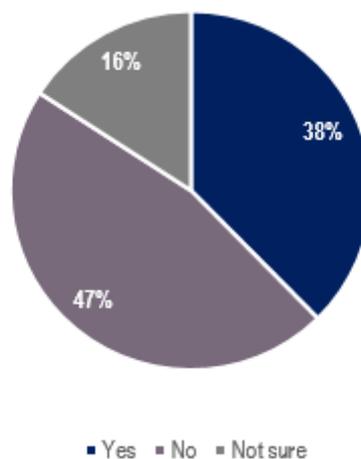


Figure 20: Did you find the process of filling out the Access Request form or making a Verbal Access Request easy to understand? (n=1,075) (Long-form survey)

Preparing for planning meetings

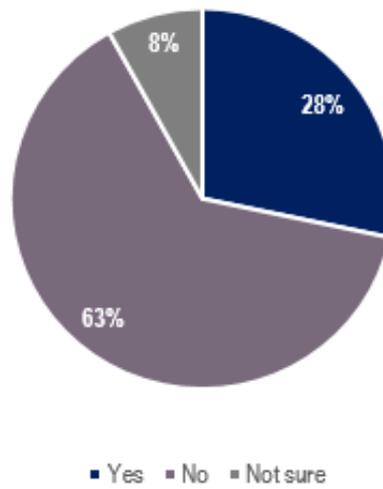


Figure 21: Once you were told you had been approved to access the NDIS, was there enough information provided to you about what would happen next? (n=1,056) (long-form survey)

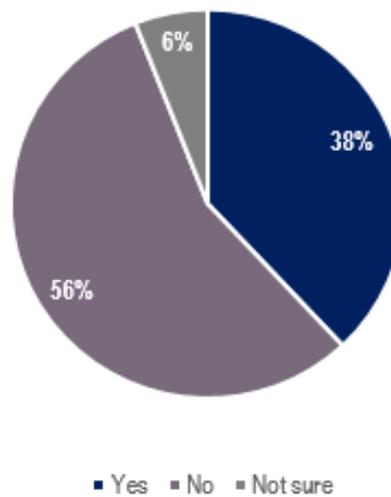


Figure 22: Did you know where to find information to help you start preparing for your planning meeting? (n=1,056) (long-form survey)

Planning meetings

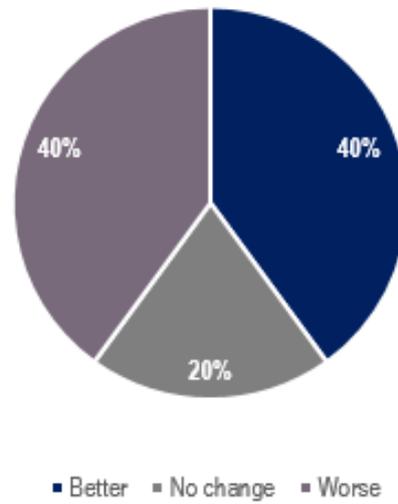


Figure 23: Changes in respondents' experience of the planning process since their first plan (n=705) (long-form survey)

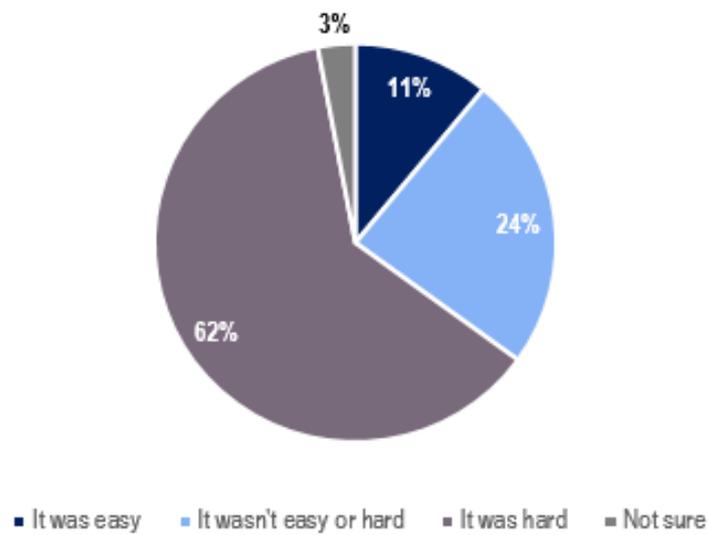


Figure 24: How easy or hard was it to set up your first plan? (n=214) (short-form survey)

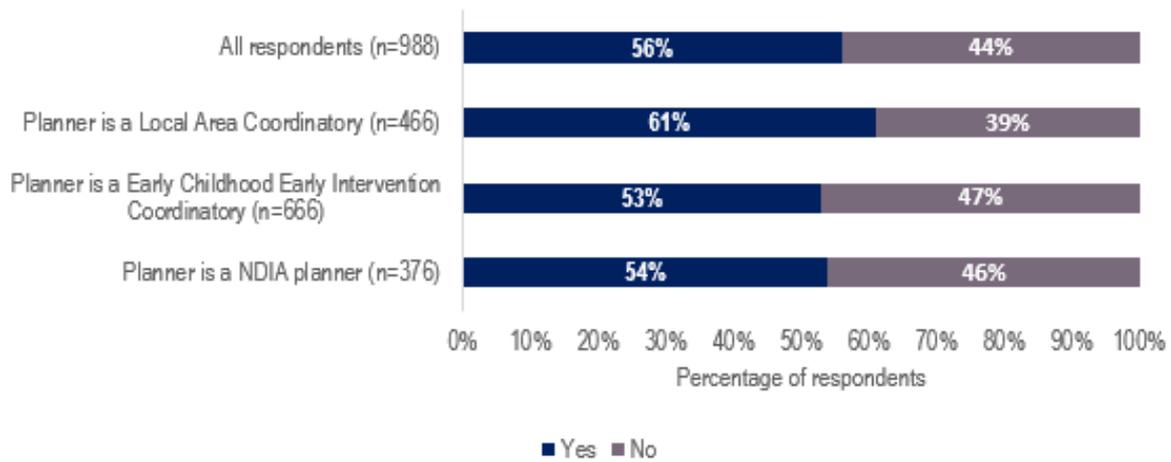


Figure 25: Do you think your planner listened to you? (by type of planner) (long-form survey)

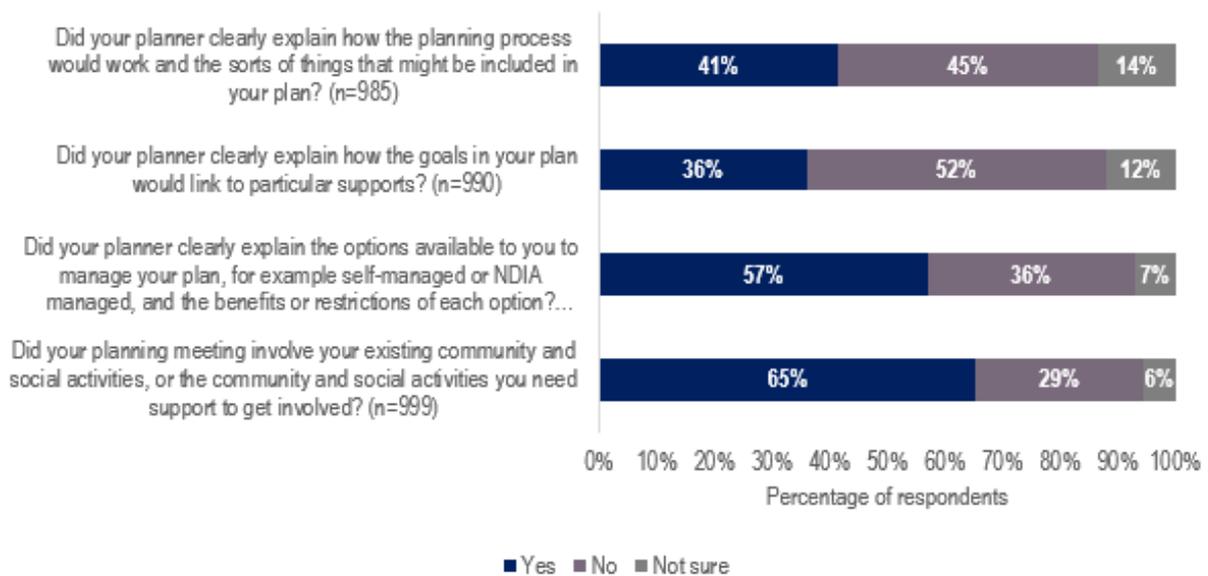


Figure 26: Information covered in planning meeting (long-form survey)

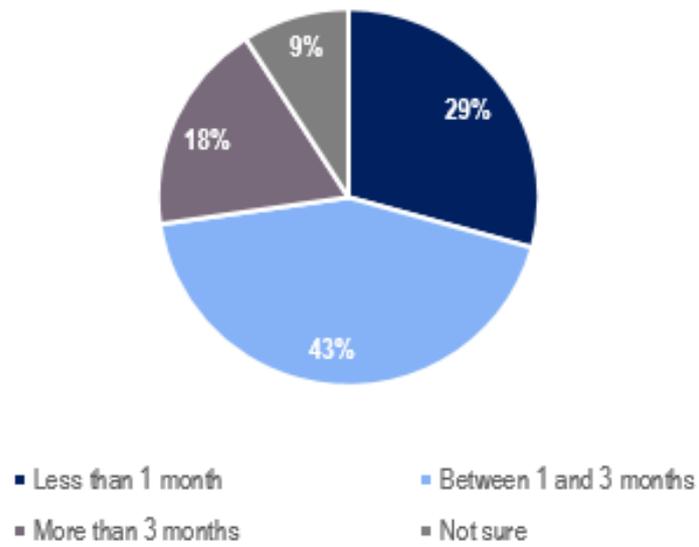


Figure 27: Time taken for NDIA to approve plan from first planning meeting (n=994) (long-form survey)

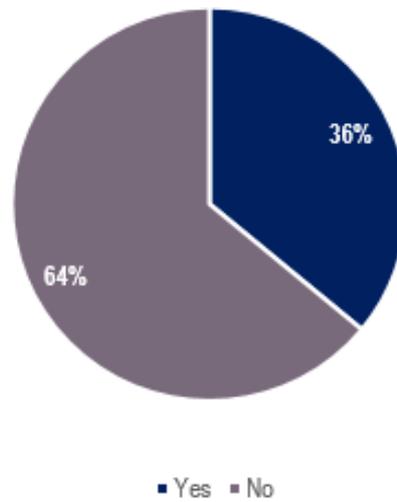


Figure 28: Did you receive the level of support you expected in your plan? (n=965) (long-form survey)

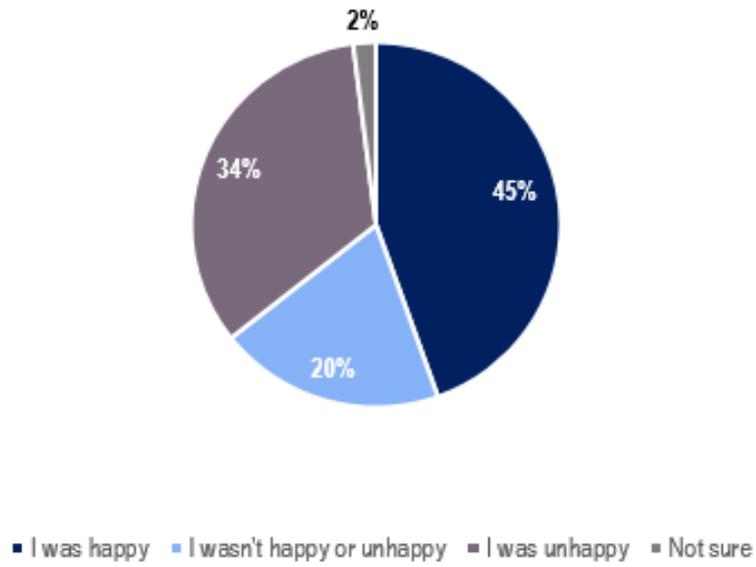


Figure 29: Were you satisfied with the level of support in your plan? (n=208) (short-form survey)

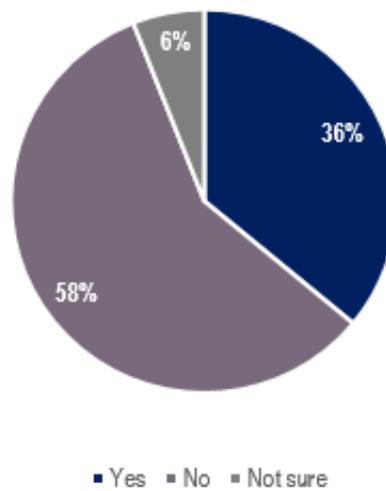


Figure 30: Did you understand everything in your plan? (n=963) (long-form survey)

Using your NDIS plan

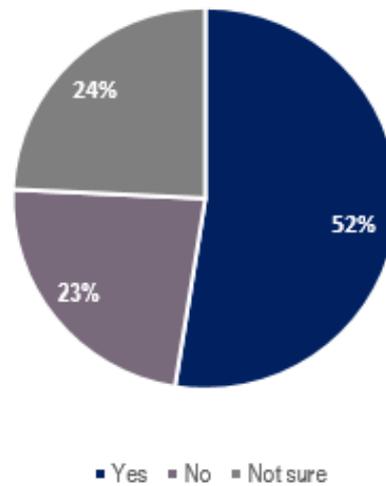
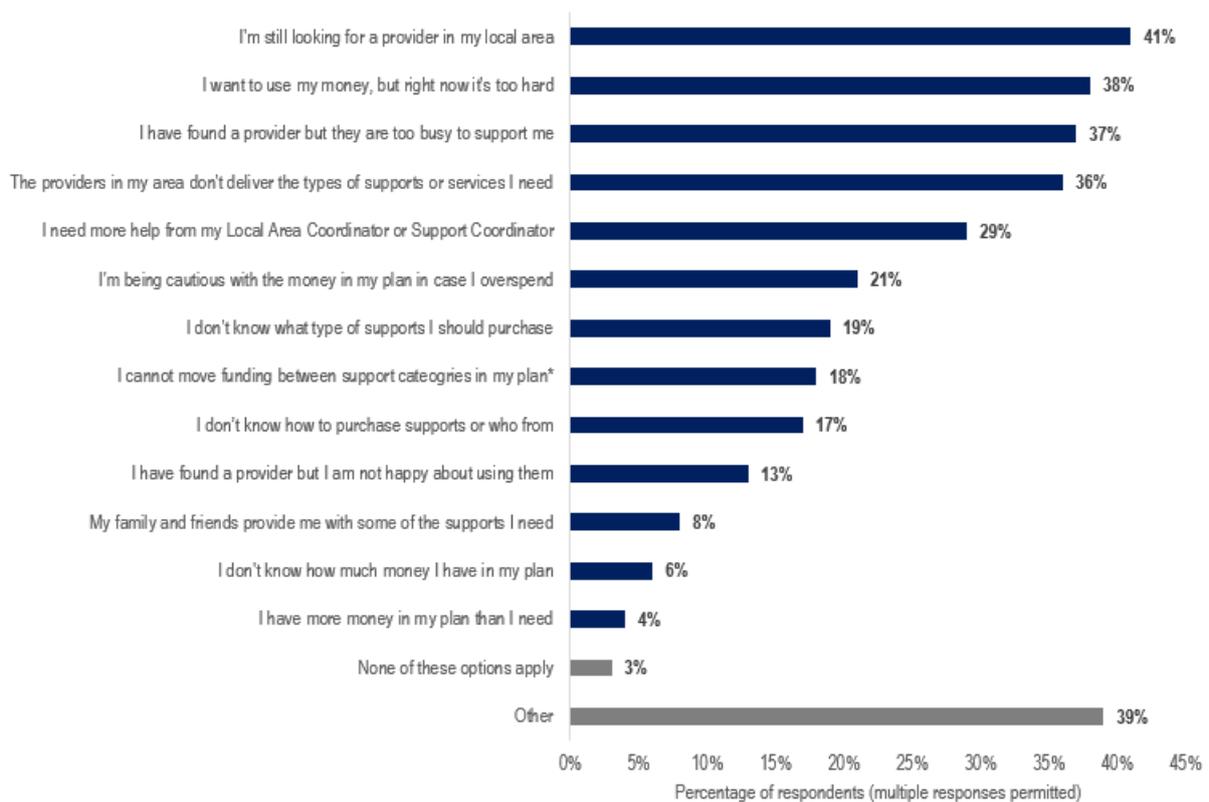


Figure 31: Are you likely to spend all your money in your plan? (n=961) (long-form survey)



*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)

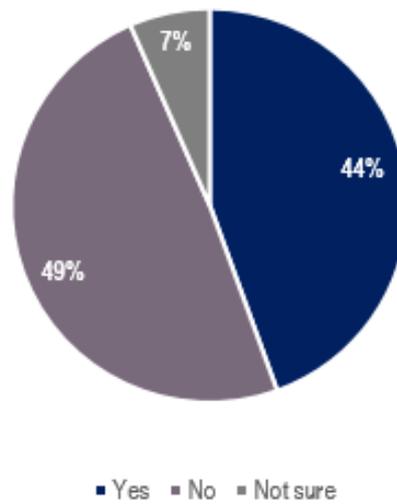


Figure 33: Did you get help to use the supports in your plan? (n=960) (long-form survey)

Changing or reviewing NDIS plans

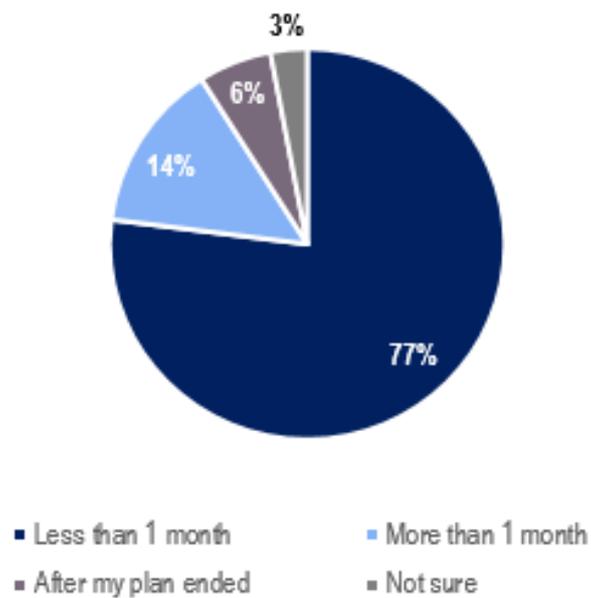


Figure 34: How long before your plan was due to end did someone contact you to make an appointment for your plan review? (n=472) (long-form survey)

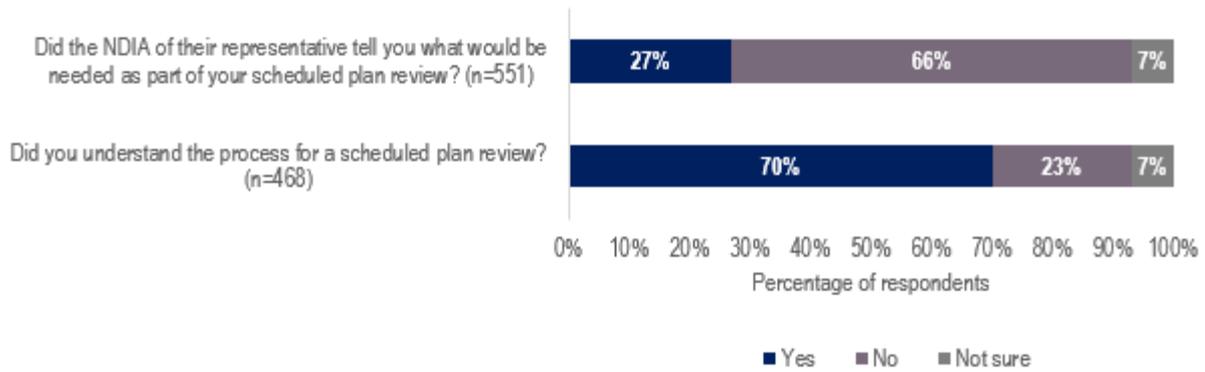


Figure 35: Respondents' understanding of the scheduled plan review process (long-form survey)

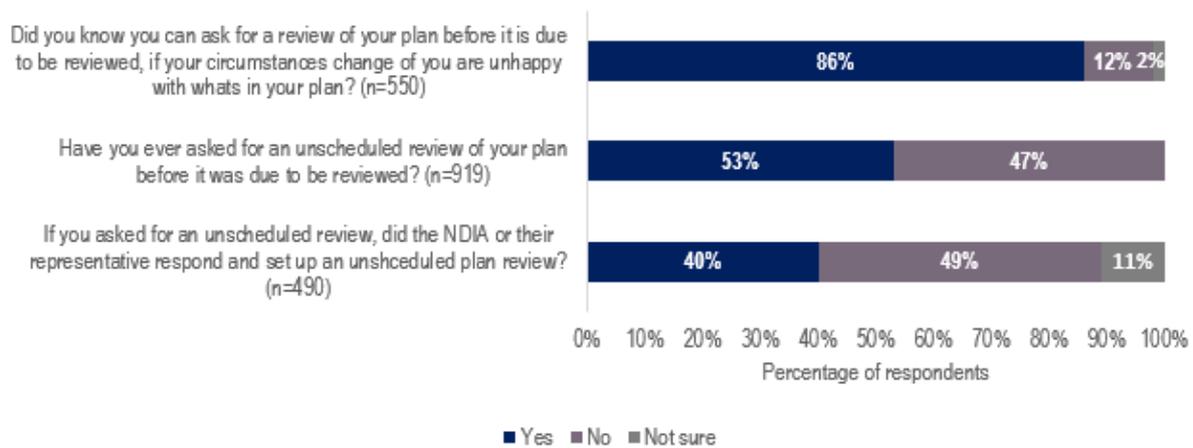


Figure 36: Respondents' understanding and experience of the unscheduled plan review process (long-form survey)

NDIA decision-making

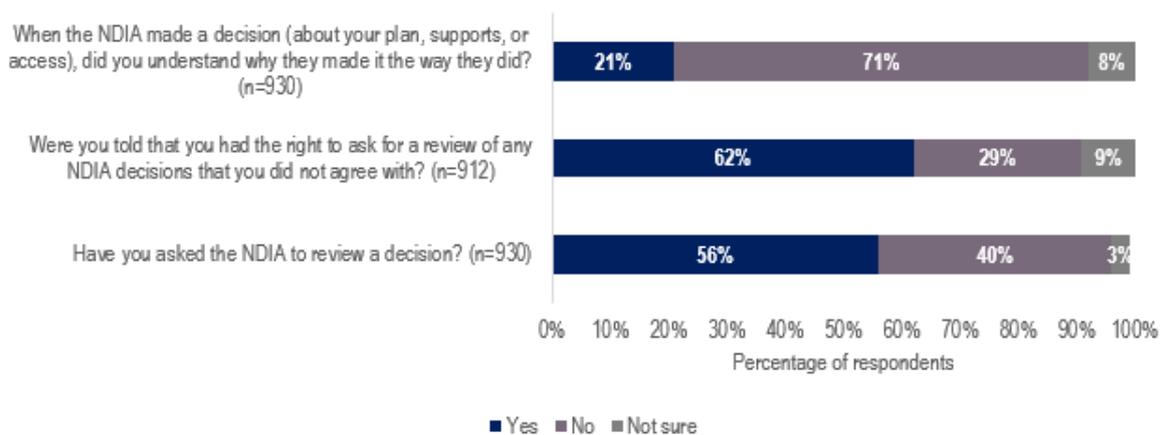


Figure 37: Respondents understanding of NDIA decision-making and internal review process (long-form survey)

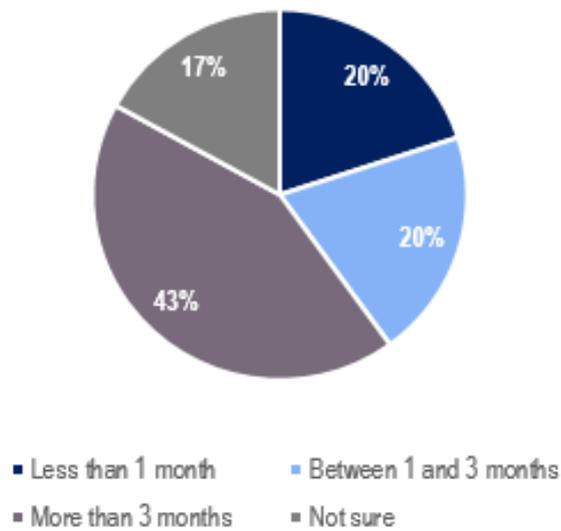


Figure 38: Time taken for the NDIA to tell respondents if they would review their decision (n=460) (long-form survey)

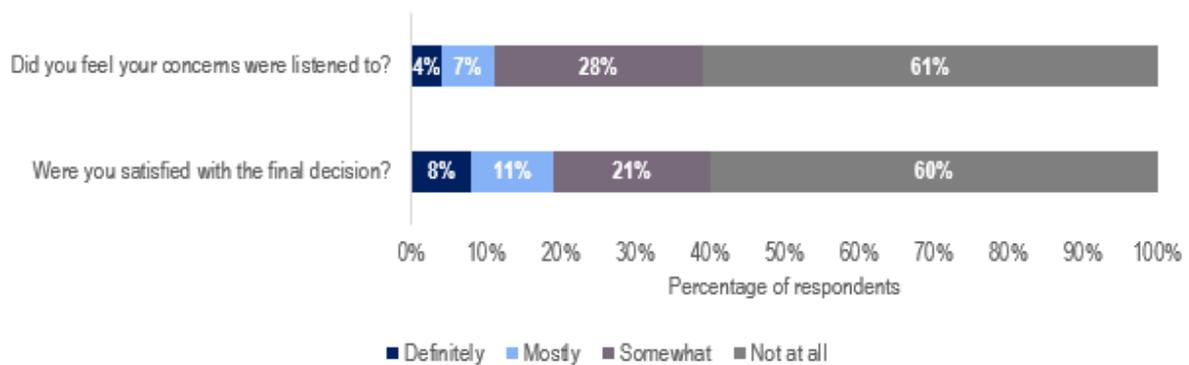


Figure 39: Satisfaction with review decision (n=515) (long-form survey)

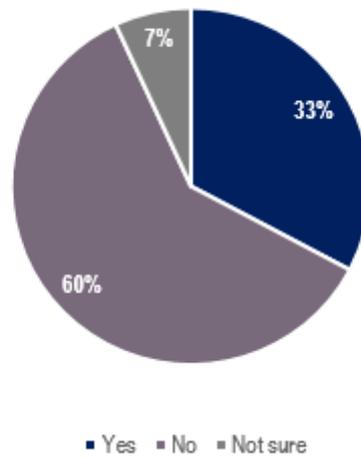


Figure 40: If you were still unhappy after the NDIA reviewed the decision, did you make an appeal to the Administrative Appeals Tribunal? (n=232) (long-form survey)

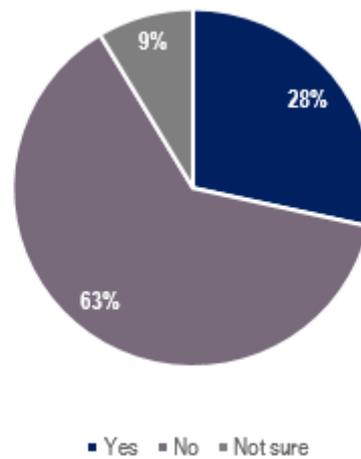


Figure 41: Is the review and appeals process for the NDIS clear to you? (n=232) (Long-form survey)

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:
 - 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.

Persons and organisations the Review Secretariat met on Mr Tune's behalf

- 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
 - 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
 - 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
 - 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)
 - 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)
 - 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
 - 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
 - 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+
 - 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
 - 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
- 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)	<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: 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.	Strike point a.
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'.

Section	Currently states	Description
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: 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: 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	registered plan management provider means: 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	Registered provider of supports means a person or entity approved under section 70 as a registered provider of supports.	Strike definition.

Section	Currently states	Description
10	<p>Definition of <i>host jurisdiction</i> 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. <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.
10A	<p>Definition of <i>participating jurisdiction</i> 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></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 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. 	Strike 1(c) and all of point 3.
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.

Section	Currently states	Description
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.
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.

Section	Currently states	Description
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 j. whether a registered provider of supports continues to meet the criteria for approval k. the functions of the Agency. 	Replace ‘registered provider of supports’ in points i and j with “registered NDIS provider’.
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).

Section	Currently states	Description
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 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 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 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....

Section	Currently states	Description
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>
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>

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
6.	Provide greater definition on ILC in the legislative framework.	Agreed	Supported	<p>Remove existing subsection 14(a), and replace it with:</p> <p><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></p> <p><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></p> <p><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></p> <p><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></p>
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:</p> <p><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:</p> <p><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>

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
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 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	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.

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	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 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.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
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> <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> <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> <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>
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.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
24	Amend section 104(3)(f) to reference carers.	Agreed	Supported	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>
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.
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.

Ref	Recommendation	COAG's position in 2016	Recommended by this review	Description
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.