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Office of the President

29 May 2026

Our ref: [KS:MC]

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE 3
24 Lonsdale Street
Braddon ACT 2612

By email: [redacted]

Dear Dr Popple

National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026

Thank you for the opportunity to provide feedback on the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 ('**the Bill**').

This response has been compiled with input from the QLS Health and Disability Law, Human Rights and Public Law and Elder Law Committees and from members with lived experience.

QLS acknowledges that expenditure under the National Disability Insurance Scheme (**NDIS**) has continued to rise and that ensuring the NDIS's long-term sustainability is a legitimate and important policy objective. We also support measures which effectively target fraudulent activity and mitigate risk of exploitation and harm to NDIS participants and their families.

Whilst we broadly support these above-stated policy objectives of the Bill, we have outlined below concerns with the consultation process and substantive aspects of the Bill.

Given the complexities and human rights impacts associated with the reform proposals, we strongly recommend further time be provided to enable feedback from lived experience participants, families and carers, support workers, medical and allied health professionals, advocacy organisations and the broader community.

From a policy and development of good law perspective, there are risks associated with coupling reforms aimed at ensuring NDIS financial sustainability with those seeking to mitigate fraud and indeed criminal activity which has arisen during the NDIS's operation. In addition, our members with expertise in this area suggest there are non-legislative measures which could achieve the Bill's objective of ensuring the long-term sustainability of the NDIS such as re-setting price guide limits and removing access lists.[1]

In the limited timeframe available to consider the Bill, our key concerns, and recommendations, as applicable, are set out below.

Summary of Key Recommendations:

1. The proposed reforms are wide ranging with impacts for current and prospective NDIS participants. The lack of public consultation on a draft Bill is in our view, a significant shortcoming of this process. We strongly recommend further time to enable feedback to be provided, considered and adequately responded to.
2. The Ministerial discretion to reduce funding be amended to:
   - clarify that the Ministerial determinations are disallowable legislative instruments to ensure there is adequate parliamentary scrutiny of the determinations made and clear public reporting mechanisms including via annual reporting to Parliament;
   - include:
     - additional statutory criteria to which the Minister must have regard including consideration of effects on an individual or individuals;
     - clear, timely and accessible mechanisms for review; and
   - require that where a person has been subject to a determination made by the Minister which was substantially informed by the operation of a computer program, that the individual be given notice of its use in making the determination and copies of all relevant material.
3. In relation to the change to the 'whole of person' approach to determine a participant's support needs, QLS again recommends further consultation with stakeholders including medical and allied health professionals to determine if the drafting in the Bill should be amended or removed.
4. QLS recommends the Government obtain further evidence, analysis and consultation before proceeding with any legislative change to the permanence test to ensure the reform does not result in unintended consequences, particularly to those in regional and remote parts of the State, and those whose financial circumstances may limit their access to treatment and reports.
5. QLS holds concerns in respect of the significant risks created by changes to the National Disability Insurance Agency (**NDIA**) timeframes under the Bill. We suggest amendments to include a statutory requirement to consider the safety of the participant and mechanisms for escalation of urgent matters in appropriate circumstances to avoid longer term impacts on individuals (receiving inappropriate or inadequate supports) and public health systems.
6. Lastly, QLS considers the power to suspend plans where there is no contact is extraordinarily punitive. We suggest consideration be given to requiring the NDIA to make reasonable enquiries with the participant's family/noted supports to ascertain if the participant requires referral to support or other services to enable the information/report requests to be responded to. Lived experience stakeholders and advocacy services would be best placed to provide perspectives on how such a mechanism might be safely and appropriately facilitated.

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[1] Which are not in the *National Disability Insurance Scheme Act 2013* (Cth) but were a NDIS operational guideline.

1. Short consultation period

> Key Recommendation:
>
> The proposed reforms are wide ranging with impacts for current and prospective NDIS participants, The lack of public consultation on a draft Bill is in our view, a significant shortcoming of this process. Given the complexities and human rights impacts associated with the reform proposals, we strongly recommend further time to enable feedback to be provided, considered and adequately responded to.

QLS is concerned by the truncated consultation and public scrutiny afforded to this Bill. The Bill was introduced and referred on 14 May 2026, with submissions due by 29 May 2026—providing stakeholders with just over two weeks to consider and respond to complex and far-reaching reforms.

The Explanatory Memorandum to the Bill (**EM to the Bill**) notes that many of the proposed amendments respond to, or have been informed by, recommendations of the NDIS Review.[2] While the limited time provided to respond to the Bill has not enabled a thorough review of the NDIS Review recommendations as against the reform under the Bill, we highlight that Recommendation 25 of the NDIS Review recommended consultation on amendments to relevant legislation to enact proposed reforms and in particular, "deep public consultation and engagement…to understand and address potential concerns or unintended consequences" (Action 25.2). [3]

The Law Council's Best Practice Legislative Development Checklist helpfully articulates critical legislation consultation parameters, including:

- If the proposed legislation makes significant changes to law/and or policy, was an Exposure Draft or equivalent sent to stakeholders for detailed feedback? and
- Have the drafters adequately accounted for input provided through consultation processes in the final form of the legislation as introduced?[4]

Neither of these parameters have been met. The proposed reforms are wide ranging with impacts for both current and prospective NDIS participants.

While the EM to the Bill sets out consultation mechanisms to date, the lack of public consultation on a draft Bill is in our view, a significant shortcoming of this process. Inadequate consultation risks both undermining meaningful stakeholder engagement and early identification of unintended consequences from those impacted by the changes.

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[2] Explanatory Memorandum page 5.
[3] Working together to deliver the NDIS. NDIS Review: Final Report
[4] 2025 06 25 - FD - Best Practice Legislative Development Checklist.pdf

2. Ministerial discretion to reduce funding for groups of supports

Key Recommendation:

We recommend, the provision be amended to:

- clarify that the Ministerial determinations are disallowable legislative instruments to ensure there is adequate parliamentary scrutiny of the determinations made and clear public reporting mechanisms including via annual reporting to Parliament;
- include:
  - additional statutory criteria to which the Minister must have regard including consideration of effects on an individual or individuals;
  - clear, timely and accessible mechanisms for review; and
- require that where a person has been subject to a determination made by the Minister which was substantially informed by the operation of a computer program, that the individual be given notice of its use in making the determination and copies of all relevant material.

Clause 34

34A Determination reducing funding for groups of supports

(1) For the purposes of ensuring the financial sustainability of the National Disability Insurance Scheme, the Minister may, by legislative instrument, determine:

> *(a) a percentage (lower than 100%) that is the percentage by which a funding component amount for a specified group of supports is reduced while the determination is in force; and*
>
> *(b) the old framework plans to which the determination applies (which must be plans that come into effect on or after the day the determination commences).*
>
> ...

Schedule 1 Part 4 of the Bill introduces 'Support determinations'. It proposes to amend the *National Disability Insurance Scheme Act* 2013 to include clause 34A, which permits the Minister, by legislative instrument, to determine a percentage reduction in funding for specified groups of supports to ensure the NDIS's financial sustainability. In making the determination, the Minister must have regard to the safety of participants. The drafting of the provision does not mandate regard to individual circumstances or the broader impacts on affected cohorts.

Clause 34(5) states that the determination has effect even if the result is that a participant's funding for reasonable and necessary supports is less than the total cost of the support. The Statement of Compatibility attached to the EM to the Bill seeks to highlight the human rights implications of the Bill. We note, reference to the Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16,19 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

The practical effect of Ministerial support determinations will be that individuals who do not have the financial capacity or perhaps social or other means to meet any gap, will not be able to access that support. This is regardless of the fact they have met the eligibility criteria to enter the NDIS, and their plan has previously identified such support as reasonable and necessary. QLS is particularly concerned about the inequity this will create for affected participants.

QLS holds serious reservations in relation to the breadth of Ministerial discretion, particularly in the context of limited parliamentary oversight of such determinations and the inability for such determinations to be subject to merits review. This is an artificial and arbitrary way to reduce funding for vulnerable persons. QLS acknowledges it may be appropriate to reduce the level of funded supports for some NDIS participants, but a Ministerial determination will also impact individuals who are currently just 'making do' with the funded supports in their plan or have insufficient supports [under their existing plan].

The proposed mechanism significantly risks undermining equitable access to essential supports, including those that facilitate community participation. These risks are acutely compounded by the potential use of computer programs and automation of administrative action, to inform these decisions. For example, a computer program may also be used to assist a decision-maker by performing calculations or recommending an outcome.[5]

3. Whole of person approach reversed – requires consultation with medical and allied health professionals to minimise risks

Key Recommendation: QLS is concerned the change will result in gaps in support to people with disability and their families. We strongly recommend consultation with stakeholders including medical and allied health professionals about the change to determine if it should be amended or removed.

Schedule 1 Part 3 of the Bill makes several amendments to the *National Disability Insurance Scheme Act 2013* (Cth) (**the Act**) which seek to introduce "a clear and strengthened link between a participant's support needs and impairments which have met the disability requirements or early intervention requirements".[6] For example:

Clause 31

Omit "arising from an impairment", insert "arising directly from an impairment or impairments".

QLS is concerned the changes undo carefully considered wording developed in consultation with the disability community during the 2024 amendments. For example, in response to the insertion of new paragraph 34(1)(aa), the Explanatory Memorandum to the 2024 Act stated:

[5] Microsoft Word - JC018272.docx at p 128.
[6] Microsoft Word - JC018272.docx at p 24.

> *... This amendment reflects the Agency's current operational guidelines and will provide clarity to participants and other service systems about what supports will be funded through the NDIS. It will not require participants to repeatedly prove their disability.*[7]

Our members with expertise in this area are particularly concerned the change will reverse the position of the Federal Court in *Eastham*[8] which confirmed a whole person approach to determining support provision.

Critically, it is often not possible to distinguish which impairment is the cause of a particular support need. Under the proposed reform, where an impairment is seen to potentially arise from a health condition, the support may be disallowed – this will have significant impacts for affected individuals and for medical and health professionals where differentiation of the support requirement is difficult, or impossible.

There are risks this change will lead to confusion for all stakeholders particularly where support requirements arise from interacting factors. In practice, members report that participants often do not know what impairments have been recognised by the NDIA as qualifying impairments (under sections 24 or 25 of the Act). Disabilities are often listed as 'primary' and 'secondary' disabilities in participant profiles when there is no legislative basis for doing so (the legislation only requires consideration of a person's impairments). Requiring a direct connection between unknown or unstated impairments and support needs is entirely impractical.

There is also the potential for increased impacts on court resources arising from appeals of decisions by the NDIA and costs to the health system - both through supporting people in hospital who have not been able to access supports due to their inability to navigate the 'arising directly' test and barriers to accessing medical reports which seek to respond to this requirement. We strongly recommend consultation with stakeholders including legal and advocacy organisations and medical and allied health professionals about the change to determine if it should be amended or removed.

4. Evidential basis for amendments to permanence test

Key Recommendation:

The evidentiary basis in respect of the proposed drafting in the Bill is unclear. QLS recommends the Government obtain further evidence, analysis and consultation before proceeding with any legislative change to the permanence test to ensure the reform does not result in unintended consequences.

The Bill is also seeking to tighten the threshold for permanence following the Federal Court decision in *Davis*.[9] We note:

Clause 89

Insert:

[7] 2004-2005-2006 [ie, the term of the Parliament – see bill] at pp 27-28
[8] NDIA v Eastham (2026).
[9] *National Disability Insurance Agency v Davis* [2022].

(5) For the purposes of paragraph (1)(b), an impairment or impairments are not permanent, or likely to be permanent, unless:

(a) the person has undertaken all appropriate treatment for the impairment or impairments (if any); and

(b) any other treatment is unlikely to materially improve, reverse, or alleviate the impact of, the impairment or impairments; and

(c) the impairment or impairments are likely to persist for the person's lifetime.

Note 1: For ***appropriate treatment*** *and when a person is taken to have undertaken all appropriate treatment for an impairment or impairments, see section 25A.*

….

Clause 92

25A meaning of appropriate treatment etc

…

(2) Treatment may be ***appropriate treatment*** *for a person's impairment or impairments regardless of whether the person's individual circumstances restrict the person from accessing the treatment.*

Note: A person's individual circumstances include the person's financial circumstances and geographical location.

QLS has significant concern the proposed change will cause harm by precluding access to the NDIS for people who, because of their financial circumstances or geographical location, cannot access treatment or reports about treatment to satisfy the permanency criterion. Our members with expertise in this area observe the NDIS is not meant to be means tested but inclusion of this provision will make it so.

As above, the approach taken by the Federal Court decision in *Davis*[10] was welcomed by those with lived experience of disability. This decision considered the meanings of the words 'remedy' and 'available'. The addition of new concepts in the Bill of 'materially improve' and 'appropriate treatment' will create confusion and lead to new appeals.

QLS is concerned there are risks the proposed amendment will have discriminatory effect in practice. Consistent with the Impact Analysis in the EM to the Bill, QLS considers that detailed analysis and understanding of the impacts of this proposed change and potential mitigations is needed.

[10] *National Disability Insurance Agency v Davis* [2022].

5. NDIA decision making timeframes

> Key Recommendation:
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> QLS echoes concerns of Queensland Advocacy Incorporated in respect of the significant risks created by these changes.
>
> We suggest amendments to include a statutory requirement to consider the safety of the participant and mechanisms for escalation of urgent matters in appropriate circumstances to avoid longer term impacts on individuals (receiving inappropriate or inadequate supports) and public health systems.

Lastly, under the Bill, the NDIA will have longer to make important decisions, such as 90 days instead of 21 days to respond to a plan reassessment request (often called a change of circumstances application), which is the only mechanism available to participants to request an urgent change to their funded supports. This is wholly unacceptable and will place participants at significant risk.

Members with expertise in this area emphasise this additional time relates to threshold (i.e. a Yes/No decision) of whether to conduct a plan reassessment, not the reassessment itself. We suggest there are workflow or resourcing issues which should be addressed separate to any legislative changes to timeframes under the Act.

6. Power to suspend supports

> Key Recommendation:
>
> QLS considers this provision is extraordinarily punitive. We suggest consideration be given to requiring the NDIS to make reasonable enquiries with the participant's family/noted supports to ascertain if the participant requires referral to support or other services to enable the information/report requests to be responded to.

Clause 83

40A Participants who are not contactable

This provision provides that the CEO may suspend a participant's plan if the participant is not contactable, subject to certain conditions.

QLS is concerned this provision will disproportionately effect cohorts of people (such as those with psychosocial impairments or persons to whom English may be a second language) who may not have access to or be able to respond (due to their circumstances) to telephone calls or respond to emails.

This is extraordinarily punitive with risks that vulnerable participants will unnecessarily have their plans revoked and then be forced to have the decision reviewed in order to have access reinvoked.

We suggest consideration be given to requiring the NDIA to make reasonable enquiries with the participant's family/noted supports to ascertain if the participant requires referral to support or other services to enable the information/report requests to be responded to.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully

[redacted]

Peter Jolly
President