

NDIS Access Changes

Submission to the Department of Health, Disability and Ageing

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Northern Territory Public Guardian and Trustee

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Introduction

The Northern Territory Public Guardian and Trustee welcomes the opportunity to provide feedback on the Australian Government's consultation on proposed access changes to the National Disability Insurance Scheme (NDIS).

The Public Guardian and Trustee provides guardianship, advocacy, information, education and financial management services to adults who may require support with decision-making to exercise their rights and participate in decisions about their personal lives and finances to the greatest possible extent. These functions are exercised under the *Guardianship of Adults Act 2016* (NT), *Advance Personal Planning Act 2013* (NT), *Health Care Decision Making Act 2023* (NT) and other relevant legislation.

The proposed NDIS access reforms are particularly relevant to the Public Guardian and Trustee because people represented by the Public Guardian primarily rely on NDIS-funded supports and often require assistance to understand, access and navigate the Scheme.

Consideration should also be given to a separate or supported access process where a current guardianship order is in place. The existence of a guardianship order reflects not only a legal finding of impaired decision-making capacity in relation to one or more matters, but that the person's individual circumstances, including their available supports, have necessitated formal guardianship. People subject to guardianship orders may therefore have limited, unavailable or conflicted informal supports and greater reliance on formal services to coordinate and navigate complex systems. These circumstances create additional complexity in the access and reassessment process and may require additional support or adjustments for the person to meaningfully participate. The process should identify this at the outset and ensure appropriate supported decision-making, communication assistance and involvement of the guardian, where relevant to the scope of their authority.

As of 30 June 2025, 95 per cent of eligible people represented by the Public Guardian had a NDIS plan in place, with the remaining five per cent comprising new orders progressing through the access process. The impact of these reforms on existing participants, particularly through reassessment of eligibility, is therefore extremely significant to the Public Guardian and Trustee and its clients.

The Australian Government is consulting on changes to the way people establish eligibility for the NDIS. The proposed reforms are intended to create a clearer and more consistent approach to access, with greater emphasis on the functional impact of a person's impairment.

Under the proposed approach, access decisions would include consideration of a person's functional capacity and whether their impairment is permanent or likely to be permanent. This includes consideration of available and appropriate treatment and whether treatment is likely to improve the functional impact of the impairment.

The reforms are also intended to establish a more consistent national approach to the evidence and assessment used to make access decisions.

The consultation seeks feedback on the guiding principles for the new access process, the design of fair and proportionate assessment and evidence requirements, how the process should work for people with different disabilities and circumstances, and the factors that should be considered when determining permanence and treatment.

From 1 January 2028, new access arrangements are expected to commence, with existing NDIS participants progressively reassessed against the new access criteria over a three-year period.

This means the reforms are relevant not only to people seeking access to the NDIS for the first time, but also to existing participants who will be required to demonstrate that they meet the new access requirements.

The Northern Territory Context

The Northern Territory presents unique challenges for access to disability, health and other essential services because of its vast geographic size, dispersed population and high proportion of people living in regional, remote and very remote locations. Workforce shortages, transport, telecommunications, infrastructure and thin service markets can substantially affect a person's ability to obtain assessment, evidence, treatment and support.

These challenges are particularly relevant for Aboriginal and Torres Strait Islander peoples with disability. Culture, language, family and kinship relationships, connection to Country and community, access to interpreters and the availability of culturally safe services must be recognised in the design of any new access process. People may also move between communities for cultural, family, health or other reasons and may not have a fixed address, reliable telephone or internet access, or ongoing relationships with the same health professionals.

Approaches developed around metropolitan service availability cannot simply be applied to the Northern Territory without considering whether assessment, treatment and alternative supports are genuinely available and accessible in practice. For the Northern Territory, equitable access may require different pathways, reasonable adjustments and proactive assistance to achieve fair outcomes.

NDIS Access Reforms

As described in the guiding principles, the Public Guardian and Trustee anticipates that the proposed reforms will be implemented consistently with Australia's obligations under the *United Nations Convention on the Rights of Persons with Disabilities*.

Across all aspects of the new access process, particular attention should be given to human rights, dignity, choice and control; supported decision-making and advocacy; accessible communication and cultural safety; procedural fairness and safeguards; equitable access; fair and proportionate evidence requirements; and assessment of functional capacity in the context of a person's real life and environment.

Consideration must also be given to whether treatment, assessment and alternative supports are genuinely available and accessible. It will be important to identify and address gaps between the NDIS, Foundational Supports and mainstream service systems, and to put measures in place to prevent people's needs from falling between these systems. It is an unacceptable outcome that people with a disability may be abandoned without suitable supports in our community.

The consultation proposes that the new access process be guided by the following principles:

- Alignment with the NDIS Act and human rights obligations.
- Recognition of lived experience.
- Evidence-based and consistent decision-making.
- Person-centered and strengths-based practice.
- Equity, inclusion and safety.
- Process that is transparent, proportionate and accessible.
- Continuous quality improvement built in.

Consultation Questions

1. Do the draft guiding principles provide the right foundation for a future NDIS access process?

The Public Guardian and Trustee generally supports the draft guiding principles. The emphasis on human rights, lived experience, evidence, person-centred practice, equity, inclusion, safety, transparency and accessibility is appropriate. However, the principles will only be effective if they translate into equitable access in practice. They may require further detail to ensure they operate equitably in the Northern Territory and for people who may require support with decision-making.

For the Northern Territory, the principles must be applied with sufficient flexibility to respond to remoteness, cultural and language diversity, thin service markets, workforce shortages and unequal access to assessment, evidence, treatment and services.

Equal access does not always mean treating everyone in the same way. Reasonable adjustments and different approaches may be necessary to ensure people have a fair opportunity to demonstrate that they meet the NDIS access requirements.

For example, applying the same assessment process to a person in a well-serviced metropolitan area such as Sydney's North Shore, a person in Darwin and a person in a very remote Northern Territory community may appear consistent, but it may not provide an equal opportunity to establish eligibility. A person living remotely may require outreach, interpreters, alternative forms of evidence, additional time and support from trusted family or community members.

The Public Guardian and Trustee therefore considers that the guiding principles should make clear that national consistency is about consistent standards, rights and fair outcomes, rather than identical processes. The access framework must allow reasonable adjustments and flexible pathways where these are necessary to overcome geographic, cultural, communication, service access or other barriers.

2. Should any principles be added, removed or changed?

The Public Guardian and Trustee does not consider that any of the draft principles need to be removed but recommends that they be strengthened to explicitly recognise:

- Supported decision-making and independent advocacy.
- Cultural safety, particularly for Aboriginal and Torres Strait Islander peoples with disability.
- Accessible communication, interpreters and reasonable adjustments.
- Safeguards, procedural fairness and timely decision-making.
- The impact of geography, remoteness and service availability.
- The importance of functional assessment reflecting a person's real-life environment and not placing inappropriate reliance on the availability of informal supports.

Supported decision-making should be expressly recognised in the guiding principles. Some people will require assistance throughout the entire access pathway, rather than only during the access assessment. Where appropriate decision-making support or advocacy is not available, a person should not be disadvantaged, delayed or prevented from accessing the NDIS as a result. This is particularly important for people represented by the Public Guardian.

A person may need assistance to understand that the NDIS exists, what support it may provide and whether it may be relevant to their circumstances. They may require assistance to decide whether to commence an application, gather evidence, understand information, communicate their circumstances and preferences, participate in an assessment and understand the outcome. A person's ability to independently navigate an administrative system should never determine their access to the NDIS.

Safeguards and procedural fairness should also include timely decision-making. For people leaving hospital, custody or unstable living arrangements, or people otherwise at risk, delays may have immediate consequences for housing, safety and continuity of support. The access process should therefore include a mechanism for identifying and appropriately providing priority consideration where delay creates or increases a significant risk to the person.

3. What do we need to consider when designing an access decision-making process that is fair, consistent, transparent, disability-informed and evidence-based?

The process must assess the whole person in the context of their real life rather than considering disability in isolation from the environment in which they live. In the Northern Territory, this means recognising geography, housing, climate, culture, language, communication, family and kinship, informal supports, access to health and allied health services, transport, telecommunications and the availability of disability services.

Functional capacity needs to be understood in the context of a person's broader circumstances and the environments in which they live and participate, and considered over time, particularly for people with degenerative, fluctuating, episodic, psychosocial, cognitive or complex disability.

Support throughout the access pathway

For some people who require support with decision-making, including people represented by the Public Guardian, assistance may be required before a formal access request is commenced, for example, in understanding whether an access request is needed. The access process should therefore be understood as a pathway rather than simply an assessment event.

Supported decision-making, accessible information, interpreters, advocacy and assistance from trusted supporters may be required from the earliest stage of considering whether to seek access, through gathering evidence and participating in assessment, to understanding and responding to the final decision.

A person's capacity to independently identify the NDIS as a potential source of support or navigate the access process should not determine whether their disability-related needs are identified. Accepting referrals from a wide range of community service providers will also help broaden the access pathway.

Cultural safety

The process must also be culturally safe and responsive for Aboriginal and Torres Strait Islander peoples with disability. Culture, language, communication, family and kinship relationships, connection to Country and community and trusted supporters should be recognised.

Effective access in remote communities requires more than making the existing NDIS access process available. It may require proactive engagement, trusted relationships and coordination between government, non-government and Aboriginal organisations. Regular and predictable visits by NDIS access workers who have established relationships with local communities, including Aboriginal staff where possible, could help build understanding of the NDIS and support people to navigate the access process before an assessment is undertaken.

Adequate notice, engagement with family and trusted supporters, Aboriginal interpreters and appropriate community-based approaches should be available.

4. **How could the access decision-making process, including referral pathways, be designed to reduce administrative burden and make it easier and more equitable for people with disability, their families and carers to understand what information is needed and how decisions are made?**

How could this support a proportionate approach to minimise the assessment burden on persons who are clearly eligible with very significant functional impairment?

The Public Guardian and Trustee considers that the NDIS access decision-making process should be as simple and proportionate as possible. Given that the proposed new framework planning process will undertake a comprehensive consideration of a person's support needs, the access process should focus on establishing the binary question of eligibility and avoid unnecessary assessments and administrative steps.

Existing evidence should be used wherever possible, with additional assessment required only where genuinely necessary to determine eligibility. Evidence requirements should be proportionate to the individual's circumstances and should accept information from a broad range of sources, including existing health and disability records, previous assessments, lived experience, families, kin, trusted supporters, community-based evidence, and culturally grounded and practice-based knowledge.

This is particularly important in the Northern Territory, where people may have a longstanding disability that is well known to local health services, family and community but have limited access to specialist assessment. People should not be disadvantaged because specialist evidence is unavailable locally, too expensive or requires substantial travel. The absence of specialist evidence should not be treated as evidence that disability or functional support need does not exist.

Referral pathways should also be broad and accessible, enabling referrals and supporting evidence to be provided by a range of professionals and community-based services that may already know the person, including GPs, remote clinic staff, Aboriginal Health Practitioners, social workers, Centrelink staff, allied health professionals, disability service providers and community organisations.

People should have access to supported decision-making, advocacy, interpreters, accessible communication and reasonable adjustments throughout the process. The NDIS should make effective use of existing information and avoid requiring people, families, guardians and supporters to repeatedly provide the same evidence. The same proportionate approach should apply to reassessments of existing participants.

For people whose disability and significant functional impairment are readily apparent, a streamlined access pathway should apply, relying on existing evidence and minimising the need for further assessments. Overall, evidence and assessment requirements should be necessary, proportionate and tailored to the individual's circumstances, with additional evidence sought only where it is genuinely required to make an access decision.

5. **What should be considered to ensure the access decision-making process, as well as referral pathways, works well for all disability cohorts including people with communication, cultural, cognitive, degenerative, fluctuating, episodic or complex support needs?**

The process must be flexible enough to respond to people with communication, cognitive, intellectual, psychosocial, degenerative, fluctuating, episodic and complex disability, as well as Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, LGBTIQ+ people, people living remotely, people who move between communities and people in custody or transitioning back to the community.

Face-to-face, outreach and community-based options must remain available. A fixed address,

reliable internet or telephone access, English literacy or ongoing access to the same health professionals cannot be assumed in the Northern Territory. Referral and assessment pathways should also be responsive to cultural, language, communication and other barriers that may affect a person's ability or willingness to engage with services.

People may also be temporarily unavailable because of hospitalisation, custody, sorry business, cultural obligations or movement between communities and homelands.

A failure of the contact method should not be treated as a failure by the person to engage with the NDIS.

6. What factors and evidence should be considered when determining whether an impairment is permanent or likely permanent, including whether appropriate treatment is likely to improve the functional impact of an impairment?

The existence of a possible treatment should not, by itself, determine that a person's impairment is not permanent or likely to be permanent. Evidence should consider the nature and history of the impairment, prognosis, functional impact over time, any previous treatment and rehabilitation, clinical evidence where available, the person's lived experience, and whether further treatment is reasonably likely to substantially alter the person's functional capacity.

Treatment must be clinically appropriate, age-appropriate, evidence-based, reasonable for the individual and genuinely available, affordable, and accessible. A treatment that exists in theory is not necessarily a realistic treatment option.

This is particularly important in the Northern Territory, where treatments may require substantial travel, extended time away from family, Country and community, long waiting periods, limited workforce availability or access to services interstate. Other barriers may include cost, unavailable providers, lack of interpreters, intermittent outreach and the absence of culturally safe services.

Other considerations

Reassessment of existing NDIS participants

The proposed reassessment of existing NDIS participants against the new access criteria from 1 January 2028 is of particular concern to the Public Guardian and Trustee. Many people represented by the Public Guardian are long-term NDIS participants who rely on funded supports to maintain stability, independence, community participation and quality of life.

A person who previously met the NDIS access requirements may not meet the new requirements when reassessed. While reassessment against revised access criteria is an intended feature of the reforms, particular care will be required to ensure that the process is fair, evidence-based and does not produce unintended outcomes for people whose circumstances have been shaped by long-term access to effective disability supports. A person's current level of functioning may, in some cases, reflect the success of those supports rather than an absence of disability-related need.

For some participants, particularly those with significant and enduring disability, loss of access could have profound consequences. NDIS supports often enable people to leave their home, participate in community life, maintain relationships, exercise choice and control, and sustain their independence. Removing established supports may itself reduce a person's functional capacity or stability, particularly where equivalent supports are not available elsewhere. Reassessment should therefore consider not only a person's functioning while supports are in place, but the likely impact if those supports are withdrawn.

Strong safeguards should apply to the reassessment of existing participants. Reassessment processes should rely on existing evidence wherever possible and take account of the person's disability history, established functional impacts, reliance on current supports and the likely consequences of support withdrawal. Participants should not be required to repeatedly establish

longstanding or well-documented disability and functional impacts where reliable evidence is already available. Where reassessment results in a finding that a person no longer meets the access requirements, the decision should clearly explain the reasons for that finding, the evidence relied upon and how the relevant access criteria have been applied. This information should be provided to the participant in an accessible form, together with appropriate support to understand and exercise review rights.

The Public Guardian and Trustee is particularly concerned about people with psychosocial disability and those with complex and intersecting disability, health, mental health, substance use, housing and social needs. For these individuals, functional capacity and support needs may fluctuate over time and may not be accurately reflected through a single assessment or narrow clinical measure. Positive outcomes often depend on coordinated supports across multiple service systems. A decision that a person is not eligible for the NDIS does not mean their disability-related needs have ceased to exist.

Before reliance is placed on an alternative service system, consideration should be given to whether support is genuinely accessible in practice, having regard to location, eligibility requirements, waiting times, workforce capacity, cost, transport, language and communication needs, and cultural safety. This is particularly important in the Northern Territory, where equivalent mainstream or foundational supports may not exist or may not be available in a person's community. No person should lose access to the NDIS on the assumption that another service exists "in theory" when it cannot reasonably be accessed in practice.

Where a person no longer meets the NDIS access requirements, and any available review processes have been appropriately supported, there must be a clear, supported and adequately resourced pathway to alternative assistance. This is especially important while Foundational Supports continue to develop and where mainstream services may have limited capacity, workforce shortages or no local presence. Referral should involve a supported handover to an identified and available service, rather than simply providing contact details or directing a person elsewhere.

Where appropriate alternative services are unavailable, service gaps should be visible to governments and inform future service development. The consequences of those gaps should not be transferred to people with disability, their families, communities or guardians. Nor should guardianship become a substitute for disability services, case management or service coordination. The Public Guardian's role is to make or support decisions within the scope of a guardianship appointment, not to coordinate services or compensate for gaps in the service system. Failure to provide appropriate pathways and support may also contribute to unnecessary guardianship applications where the underlying issue is unmet support needs rather than a need for substitute decision-making.

People who do not meet the NDIS access requirements

Particular consideration should be given to people with psychosocial disability and those with complex and intersecting disability, health, mental health, substance use, housing and social needs. For these individuals, functional capacity and support needs may fluctuate over time and may not be accurately captured through a single assessment or narrow clinical measure. Positive outcomes often depend on coordinated responses across multiple service systems.

A decision that a person does not meet the NDIS access requirements does not mean their disability-related needs cease to exist. Reducing or withdrawing disability supports without ensuring that other services have the capacity to respond may increase instability, disengagement from services, hospital presentations, homelessness, contact with the justice system and reliance on informal supports. For some people, a relatively small amount of disability support can make a significant difference to their ability to remain independent in the community. For example, a person with a permanent cognitive impairment may manage most aspects of daily life independently but require a small amount of regular support to understand correspondence, keep appointments and manage essential administrative tasks. Without that support, relatively minor

difficulties may escalate into missed health care, unpaid bills, housing instability or greater reliance on family and other services.

Access and reassessment decision-making should recognise the interaction between disability and a person's broader circumstances. Disability-related functional impacts should not be assessed in isolation from the supports, relationships and community connections that enable participation in everyday life.

Where a person does not meet the NDIS access requirements, there must be a clear and supported pathway to appropriate alternative assistance that meaningfully addresses their disability related functional disability. Referral should involve a supported handover to an identified and available service, particularly for people who require support with decision-making, people at risk and those with limited informal supports. Referral pathways should draw on the full range of available services, including disability, health, mental health, housing, justice, aged care and community-based supports.

Before reliance is placed on an alternative service, consideration should be given to whether that service is genuinely accessible in practice, taking into account location, eligibility requirements, waiting periods, workforce capacity, cost, transport, language and communication needs, and cultural safety. This is particularly important in the Northern Territory, where services may be limited or unavailable in remote and very remote communities.

No person should be refused NDIS access on the basis that another service exists in theory when that service cannot reasonably be accessed in practice. Where no appropriate alternative support is available, service gaps should be visible to governments and inform future service planning, rather than leaving individuals, families, communities or guardians to bear the consequences.

The Public Guardian and Trustee is also concerned that gaps in support, navigation and service coordination may contribute to unnecessary guardianship applications where the underlying issue is unmet support needs rather than a need for substitute decision-making. Guardianship should not become a mechanism for addressing failures in system gaps, service availability or coordination.

Conclusion

The Public Guardian and Trustee supports the objective of making NDIS access clearer, fairer and more consistent, provided the reforms maintain equitable access for people with permanent and significant disability and include appropriate safeguards for people who require support to understand, navigate and participate in the process.

National consistency should not require a uniform approach that overlooks local circumstances. The access and reassessment process must be capable of responding to remoteness, cultural and linguistic diversity, workforce shortages, thin service markets and limited access to treatment and specialist evidence. These factors should be recognised as core design considerations rather than treated as exceptions.

People who require support with decision-making, including people represented by the Public Guardian, should be able to access appropriate assistance throughout the process, from identifying potential eligibility and gathering evidence to understanding decisions, exercising review rights and, where necessary, transitioning to alternative supports.

The Public Guardian and Trustee is particularly concerned about the reassessment of existing NDIS participants against new access requirements. Reassessment processes should be proportionate, rely on existing evidence wherever possible, and include strong procedural safeguards, accessible review mechanisms and appropriate transition arrangements. Decisions should recognise the potentially significant impact that the loss of established supports may have on a person's independence, stability, community participation and wellbeing. Where a person does not meet, or no longer meets, the NDIS access requirements, disability-related need does not disappear. Any alternative pathway must involve a genuine and supported connection to available services that are

capable of meeting the person's needs. It is not sufficient to assume that support is available because it exists elsewhere in Australia or in policy. In the Northern Territory, availability must be assessed according to what a person can reasonably access in practice.

Ultimately, the success of these reforms should be measured by whether people with permanent and significant disability can access the supports they need without being disadvantaged by where they live, their ability to navigate complex systems, or gaps in service availability. Achieving this will require flexible and culturally safe pathways, proportionate evidence requirements, strong safeguards and effective coordination between the NDIS and other service systems.