

15 November 2022

Joint Standing Committee on the National Disability Insurance Scheme

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Parliament House

Canberra ACT 2600

Email: ndis.joint@aph.gov.au

Dear Chair and Committee Members,

Capability and Culture of the NDIA Inquiry

Thank you for the opportunity to provide input in relation to the above recently announced inquiry which is part of the Committee's ongoing focus in relation to the NDIS.

We note the terms of reference for the current inquiry are to:

"...inquire into and report on the implementation, performance, governance, administration and expenditure of the National Disability Insurance Scheme (NDIS), with particular reference to:

- a. the capability and culture of the National Disability Insurance Agency (NDIA), with reference to operational processes and procedures, and nature of staff employment
- b. the impacts of NDIA capability and culture on the experiences of people with disability and NDIS participants trying to access information, support and services from the Agency; and
- c. any other relevant matters."¹

The overarching message of our submission is that **NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT.**

As NDIS implementation and performance are critical issues in the Northern Territory (NT) we encourage the Committee to give special attention to ways of overcoming implementation problems in the NT.

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https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Terms_of_Reference

NDIS participants in the NT, and people seeking access, have been severely impacted by dramatically inadequate aspects of NDIA capability and culture. NDIA decision making, reasoning and NDIA systems are pivotal ways the NDIA's capability and culture are experienced in the NT and all three have been highly problematic. The NDIA's capabilities have been highly insufficient in the NT and the culture has become increasingly oppositional, inflexible, and uncommunicative.

Plan reductions in the NT, have been the highest nationally and have been accompanied by highly substandard decision making. Mistreatment of NDIA participants, and people seeking access, has inflicted harm, ballooned NDIS appeals and increased strain on service providers. It has dramatically increased need for NDIS appeals advocacy support and legal representation in the NT, without needs based resources.

Although there has been sustained engagement with the NDIA and the Government by the people with disability, the disability sector, and many others- raising these kinds of issues the situation deteriorated over the last two years. The NDIA's capabilities and culture have come into question as a result of many lacks.

The NDIA has been operating reactively, carelessly, and defensively – ranging through workflows, staffing issues, insufficient local presence to failing to reason and provide reasons to an acceptable standard at plan reviews through to using legal deluge techniques at external review. The latter includes the NDIA engaging top tier firms, to make highly technical, legalistic arguments in response to people seeking access to the NDIA or seeking a review of NDIS planning decisions.

As outlined later, even so - figures from the Administrative Appeals Tribunal (AAT) indicate a much higher rate of NDIA decision variation on appeal compared to other areas of AAT jurisdiction.

The chronic issues with the NDIA's capabilities, have been compounded by the apparent inability of NDIA culture to correct this.

Half of all NDIS plans reviewed in the NT had funding slashed over last six months

Disability services are warning of a 'general trend of substantial cuts to funding' in the NT with some facing cuts of more than 50%

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About this content

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📷 NDIS participants across the country – but particularly in the Northern Territory – are increasingly complaining that their funding packages are going down, not up. Photograph: Maskot/Getty Images

At the Darwin Community Legal Centre, the staff are concerned about what's to come for some of the most vulnerable people in the Territory. Jessica Brugmans, the senior advocate at the centre's Seniors and **Disability** Rights Service, says that over the past 12 months there has been a "general trend of substantial cuts to funding" in National Disability Insurance Scheme (NDIS) plans.

Often, those cuts have come in "ways that aren't easily linked to an event or change in available evidence". It has forced people to move out of their accommodation and seen them become increasingly isolated due to reduced staff to participant ratios.

In Alice Springs, the chief executive of the Disability Advocacy Service, Adrian Scholtes, says the service is also receiving increased reports of reductions to plans. "This started for DAS around October and ... continues at this stage," he says.

Figure 1: Top section of the report in *The Guardian* on 26 March 2022.²

² Online at: <https://www.theguardian.com/australia-news/2022/mar/26/half-of-all-ndis-plans-reviewed-in-the-nt-had-funding-slashed-over-last-six-months>

Submission outline

The submission outlines what NDIS capabilities and culture have looked like in the NT, especially over the last two years. That is, how the NDIS has operated in relation to participants, and people seeking access, and in relation to carers, service providers and other stakeholders.

The submission outlines major issues ranging from the NDIS appeals crisis in the NT, to NDIA staffing and how the NDIA's approach has failed to protect, respect, and fulfil its legislated brief.

We outline four key themes relating to the NT being:

- Chronic workforce problems
- Communication failure
- Poor decision making
- Failure of the appeals process.

We welcome changes being made by the new Minister and the revised management and structural arrangements for the NDIA.

We are also very concerned about legacy issues, which include the backlog of about 4,000 appeals before the AAT, the need to rework systems and workflows and rebuild relationships and trust.

In our submission substantial additional resources need to be allocated urgently for local advocacy support services in the NT, including needs-based funding for access to legal representation and services of choice.

Recommendations

1. NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT.
2. The NDIA needs to make itself a more attractive workplace, which includes truly valuing lived experience, responsiveness and effectiveness and resolving cultural and capability issues causing poor performance. [see 3.1.1]
3. The NDIA should ensure sufficient staff in the NT in client and community facing roles, including planner, who should have appropriate backgrounds and experience. [see 3.1.1]
4. Delegation of decision-making powers should be increased so relevant NDIA planning staff, can make decisions up to a higher amount. [see 3.1.1]
5. The regional/remote contact centres should be re-established. Additionally, to help cement reform it is important to unpack why a decision to use the National Call Centre for the NT was made, including identifying and critiquing the thought processes, and/or culture, involved. [see 3.1.2]
6. Investment into creating a better work environment, better training, and support for NDIA staff.
7. The NDIA should ensure appropriate staff in the NT to engage with Aboriginal people and clients from culturally and linguistically diverse backgrounds. This should ensure sensitivity of staff, planners, and LACs, for what is often experienced as a deeply personal and intrusive process. [see 3.1.4]
8. Written information and communications by the NDIA should be properly customised, be respectful, clear, accurate, reasoned and fit-for-purpose. [see 3.2.1]
9. NDIA workflows should be reviewed to correct processes which result in conflicting information to participants via separate channels. [see 3.2.2]
10. The NDIA processes should be revised to reduce the requirements to re-justify repeatedly and needlessly. [See 3.2.3]
11. The application processes for Home and Living support services, such as Supported Independent Living and Supported Disability Accommodation and regular NDIS planning processes should be streamlined and harmonised to avoid duplication. [See 3.2.3]
12. The National Contact Centre ('NCC') needs to be overhauled to address the multiple, wide-ranging issues and negative impacts. As noted previously [at Recommendation 5] the regional and remote contact centres should be re-established. [see 3.2.4]
13. The NDIA should provide a direct line via the NCC or separately, for advocates and lawyers to be able to make inquiries and receive information. [see 3.2.4]
14. NDIA communications and systems for invoice payments need to be substantially improved to provide clear, accurate and timely information. There should be increased

flexibility to enable providers to call and talk about invoices before and after decisions. [see 3.2.5]

15. A standard is required to ensure that planning meetings are undertaken face to face, with NDIA physically present, to promote clear and effective communication. [see 3.3.1]

16. Planning in the NT should be undertaken by NDIA itself and NDIA staff planners. [see 3.3.1]

17. All client interactions should start with a stated intention and purpose of the call and providing option to defer to a call back. [see 3.3.2]

18. Additionally, standards should ensure that a participant is entitled to:

- Defer a meeting which hasn't been set up properly in advance without any adverse consequences.
- Have sufficient notice to exercise their choice to have informal and/or formal support for the meeting, such as a friend, family member or advocate.
- Be told the relevance of questions they are asked, what the information is for and how it may be used

19. The NDIA should undertake further consultations with disability sectors about the circumstances in which first-person participant statements are effective, the pre-conditions for this and areas for improvement. [see 3.3.2]

20. NDIS workflow should include providing a draft plan to participants after a planning discussion and allowing for conversation to make necessary changes or provide more evidence if needed. [see 3.3.3]

21. The NDIA should upgrade contact arrangements for more continuity in contact points, especially for and in relation to participants and should implement continuous casework approaches as much as possible. [see 3.3.3]

22. The standard of NDIA decision making must be addressed to overcome the causes and prevalence of arbitrary and incorrect decisions. [see 3.3.4]

23. A non-technical approach should be applied to planning which treats the participant's needs as paramount. This includes where a LAC does not ask for everything needed by the participant in a planning meeting – that issues were not raised at this point should not limit review or appeal options. [see 3.3.5]

24. The NDIA's capabilities must include being able to fully absorb, appreciate and properly consider material relating to people's disabilities and support needs and cease the pattern of bringing insufficient care, knowledge, and skill. [see 3.3.5]

25. A Guidance should be urgently developed and implemented for NDIA decision making to avoid the NDIA unnecessarily and inappropriately requesting that the client to obtain further substantiation for requested supports when these are already substantiated by material provided. [see 3.3.5]

26. The NDIA must apply standards which require staff to refer to the specific material/evidence they rely on when writing and communicating their decisions. [see 3.3.6]

27. Internal review must be reformed to be fit for purpose where the purposes are responsiveness and good process to the rights of people with a disability under the NDIA Act. [See 3.4.1]

28. New purpose specific NDIA model litigant guidelines should be developed. [See 3.4.2]

29. The potential benefits and mechanisms for the NDIA and/or lawyers acting for the NDIA to be subject to penalties for breaching the model litigant guidelines should be undertaken. [See 3.4.2]

30. That this Committee and/or the Minister undertake a review of legislative options to ensure interim and emergency supports where required while an appeal is underway. [see 3.4.3]

31. An NT NDIS appeals advocacy and legal support plan is urgently needed for the NT. The plan should include:

- An immediate injection of funds for direct local access to specialist advocacy and legal support to for people appealing NDIS access, supports or related decisions.
- A funding model which reflects the rights and needs of participants in the NT which the 'blitz' of matters currently before the AAT is being worked on.
- A commitment for longer term planning, to develop model for NDIS advocacy and appeals support which reflects needs and the availability of multiple non-profits, including Aboriginal Legal Services and the Women's Legal Services in the NT to be incorporated ongoing. [see 3.4.4]

1. About DCLS

Darwin Community Legal Service ('DCLS') is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness, and wellbeing in the Northern Territory.

DCLS is the only generalist community legal service in the NT and is the only non-profit legal service which specifically aims to assist older people and people with a disability.

The main services within DCLS are the General Legal Service (GLS), the Seniors and Disability Rights Service (SDRS) and the Tenants' Advice Service (TAS). Some programs are NT-wide, and others are geographically specific, but the programs work together enabling integrated socio-legal client support.

Additional DCLS initiatives include:

- NT Older Person's Safety from Abuse initiative including the NT Older Person's Abuse Information Line
- Aged Care Financial Advocacy
- NDIS appeals advocacy
- Homeless Legal Outreach, and
- NT Veterans' Legal Service.

DCLS provides legal and advocacy assistance in relation to social security legal issues, credit and debt, consumer, employment, discrimination, tenancy, adult guardianship, and related matters. Staff include advocates with expertise in aged care, health specialisations, disability, community services and staff who are legally trained.

Staff involved in assisting in relation to the NDIS are involved in multiple matters, they participate in communities of practice and are involved in NDIS information dissemination and NGO disability networks, including local, NT wide and national. DCLS is a member of the Disability Advocacy Network of Australia ('DANA').

1.1 NDIS related acronyms in this submission

AAT	Administrative Appeals Tribunal
APM	APM is the Partner in the Community for the NDIA in Darwin and Palmerston. APM Communities delivers Local Area Coordinator (LAC) services in these locations to people with disability aged 7 and above.
CoS	Coordinator of Supports
ECA	Early Childhood Approach
LAC	Local Area Coordinator
NCC	National Contact Centre
RoRD	Review of Reviewable Decision
SIL	Supported Independent Living
TSP	Typical Support Package

1.2 Snapshot of the NDIS in the NT

The Seniors and Disability Rights Service (SDRS) services the Top End of the NT for most of its funding streams. Our clients are based both in the metropolitan environment of Darwin, as well as rural and remote across the NT. While based in Darwin, advocates travel regularly across Arnhem Land and down to Katherine. SDRS undertook the Remote Communities Field Survey 2021 about the Disability Support Pension in Ramingining, a remote community in East Arnhem in the NT, which was included in the DCLS submission to the Senate Committee inquiry on the Disability Support Pension (DSP).³ An excerpt is below. The observations made in relation to the DSP also affect (prospective) NDIS participants.

Background

Ramingining is a remote community in the East Arnhem region of the NT. In 2016, the population of Ramingining was estimated to be 872, with 811 identified as Aboriginal or Torres Strait Islander. The community is accessible by four-wheel drive for a period during the dry season every year, however, is most commonly accessed by plane, with some goods arriving by barge. If a resident of Ramingining speaks English, it is at least their second language, if not 3rd, 4th or 5th. There is no dedicated disability service provider in Ramingining, however stakeholders such as the medical clinic, aged care centre, regional council, and school tend to take a no-wrong-door approach to supporting people with disabilities.

Figure 2: Background to the Remote Communities Field Survey 2021.⁴

The following are some of the most recent figures relating to the NDIA in the NT.

NDIS participation is increasing

NDIS participation has continued to increase in the NT in the Early Intervention, Permanent Disability and Early Childhood Approach (ECA) groups.⁵ The NDIA reports 5,079 people in the NT are accessing the scheme in June 2022, increased from 4,356 in June 2021. Of those 5079 participants made access under the ECA, 3,487 under the permanent disability requirements, and 1,476 under the early intervention requirements.⁶

Access requests

NDIS access requests and outcomes are key areas for monitoring in the NT due to the potential for systemic factors to affect access to the NDIS.

The most recent figures indicate that while access has been met in the NT by 5,568 people, about 800 requests were declined.⁷

³ Darwin Community Legal Service submission to the Senate Standing Committee on Community Affairs Inquiry into the purpose, intent and adequacy of the Disability Support Pension, dated 17 September 2021 (submission no 127), <https://www.dcls.org.au/wp-content/uploads/2021/11/DCLS-Submission-Disability-Support-Pension-2021.pdf>

⁴ Ibid, pp. 24-27

⁵ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, Table M.5, p. 720.

⁶ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, Table M.5, p. 720.

⁷ Ibid, Table M8, p. 722 shown below regarding 5,568 people plus calculation.

The extent to which access to specialist advocacy assistance, to help prepare and advance applications and the ability to achieve medical and therapeutic assessments are available affect the success rate of NDIS access requests.

Additionally, there are concerning patterns in the outcome of access requests by disability. That is, there was a substantially lower rate of positive decisions in the first three quarters of 2021/22 for:

- Other sensory/speech (only 45% accepted),
- Other disabilities (only 56% accepted), and
- Other physical disabilities (only 61% accepted)

With 'Other physical disabilities' declining further in the fourth quarter (only 48% accepted) and the other two declining to less than 11 access requests met resulting in no acceptance rate being reported.⁸

Table M.8 Assessment of access by disability – Northern Territory ⁷²⁵

Disability	Prior Quarters		2021-22 Q4		Total	
	Number of access met	% of access decisions eligible	Number of access met	% of access decisions eligible	Number of access met	% of access decisions eligible
Acquired brain injury	335	94%	<11		336	94%
Autism	1,110	98%	28	97%	1,138	98%
Cerebral palsy	201	97%	<11		202	97%
Developmental delay	654	97%	70	95%	724	97%
Global developmental delay	129	98%	<11		138	98%
Hearing impairment	226	86%	<11		231	86%
Intellectual disability	1,018	94%	38	100%	1,056	95%
Multiple sclerosis	24	92%	<11		26	93%
Psychosocial disability	542	75%	18	64%	560	74%
Spinal cord injury	95	98%	<11		99	98%
Stroke	188	87%	15	94%	203	88%
Visual impairment	76	80%	<11		78	80%
Other neurological	254	78%	<11		259	77%
Other physical	284	61%	11	48%	295	61%
Other sensory/speech	34	45%	<11		35	45%
Other	150	56%	<11		156	53%
Missing	32	97%	<11		32	97%
Total	5,352	87%	216	79%	5,568	87%

*Figure 3: Table M.8 Assessment of access by disability - Northern Territory.*⁹

Service providers are aware of the chronic shortage of allied health therapists and a range of other professional services required by people with a disability in the NT. This among other things, results in long waiting times for assessments related to NDIS applications and planning processes.

More detailed monitoring, research and analysis is needed regarding the number and percentage of NDIS access not met decisions in the NT.

⁸ Ibid, Table M8, p. 722 shown below

⁹ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, Table M.8, p. 722.

First Nations participants

In June 2022, the proportion of Aboriginal and Torres Strait Islander NDIS participants reached 50.4% in the NT¹⁰ which compared with Aboriginal and Torres Strait Islander people making up 26.3% of the NT population.¹¹



Figure 4: The Maningrida community contacted SDRS for advocacy about rights and inclusion of people with a disability. The community is trying to achieve a wheelchair lift at the airport. Photo Credit: Maningrida community members and SDRS advocate Ramnik Walia. August 2022

Participants in remote and very remote communities

The high proportion of participants located in remote and very remote communities is a feature of the NDIS in the NT, with 41.9% of NT participants located in these communities.¹²

Additionally, although 56.9% of participants in the NT were in a community with a population of over 50,000, Darwin is the only community in that category.¹³

¹⁰ Ibid, p. 723

¹¹ Australian Bureau of Statistics (1 July 2022), [Northern Territory: Aboriginal and Torres Strait Islander population summary](#), ABS Website. 26.3% represented 61,000 people.

¹² Ibid, Table M.13, p. 725

¹³ Ibid. Table M.13, p. The population of the Alice Springs Local Government Area was recorded as 25,912 people in the 2021 Census. ABS, Quick Statistics, All Persons Alice Springs 2021, <https://abs.gov.au/census/find-census-data/quickstats/2021/LGA70200>

Table M.13 Participant profile per quarter by remoteness – Northern Territory ^{734 735}

Participant profile	Prior Quarters		2021-22 Q4		Total	
	N	%	N	%	N	%
Major cities	<11		<11		<11	
Population > 50,000	2,693	56.9%	127	55.9%	2,820	56.9%
Population between 15,000 and 50,000	<11		<11		<11	
Population between 5,000 and 15,000	<11		<11		<11	
Population less than 5,000	53	1.1%	<11		61	1.2%
Remote	944	19.9%	69	30.4%	1,013	20.4%
Very Remote	1,043	22.0%	23	10.1%	1,066	21.5%
Missing	<11		<11		<11	
Total	4,736	100.0%	227	100.0%	4,963	100.0%

Figure M.4 Number and proportion of remote/very remote participants over time incrementally (left) and cumulatively (right) – Northern Territory ^{736 737}

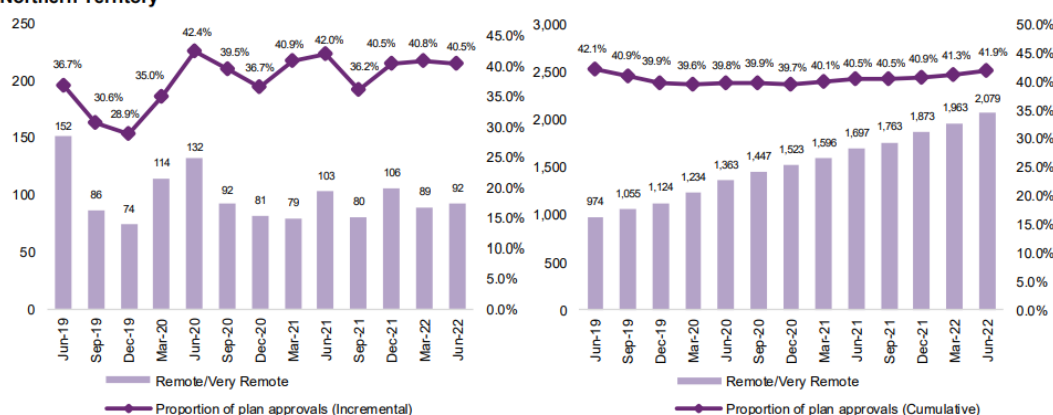


Figure 5: Tables M.13 participant profile per quarter by remoteness – Northern Territory and M.4 Number and proportion of remote/very remote participants over time.¹⁴

NDIS support commitments

NDIS support commitments are substantially higher in the NT than other jurisdictions, for example the average amount of \$90,200 in the NT compares with an average of \$49,400 in Victoria (figures from Table O.2).¹⁵ As described above the remoteness of much of the NT means that plans are often funded under Remote or Very Remote rates, which culminates in larger than average plans.

State/Territory	Average funding in NDIS plans
Australian Capital Territory	\$49,600
New South Wales	\$56,900
Northern Territory	\$90,200
Queensland	\$58,300
South Australia	\$53,800
Tasmania	\$65,500
Victoria	\$49,400
Western Australia	\$53,000

Figure 6: Average NDIS payments in NDIS plans per state or territory¹⁶

¹⁴ NDIS Quarterly Report to disability ministers 30 June 2022, Appendix M, Northern Territory, *ibid.* Table M.13 and Figure M.4 at p. 725.

¹⁵ *Ibid* Appendix O, Table O2, p. 813-5

¹⁶ *Ibid* Appendix O, Table O2, p. 813-5

Additionally, in Central Australia, Darwin Urban and Katherine the level of NDIS support commitments is substantially above the NT average.¹⁷ Whereas one might expect that with the Remote nature of the other regions the larger plans should be in the Very Remote regions, there is a significant lack of services in these regions. This includes both a thin market for providers being able to provide NDIS services, as well as a lack of access to advocacy and legal supports to assist participants with achieving plans that suit their needs. These are some of the systemic factors that influence plan funding.

Table O.2 Average annualised committed supports, median annualised committed supports, average payments, median payments and active participants by service district as at 30 June 2022 ^{859 859 860}

Service district	Average annualised committed supports	Median annualised committed supports	Average payments	Median payments	Total active participants
	\$	\$	\$	\$	
NT	111,000	38,800	90,200	22,700	4,963
Barkly	91,900	37,800	70,900	17,900	146
Central Australia	179,300	69,500	151,300	33,100	828
Darwin Remote	66,400	45,700	39,800	21,700	438
Darwin Urban	98,600	26,100	84,000	20,700	2,895
East Arnhem	91,700	53,700	47,200	24,900	206
Katherine	151,300	61,800	125,900	34,800	238
NT - Other	91,000	49,000	62,300	21,100	212

Figure 7: Section of Table O.2 Average annualised committed supports¹⁸

Utilisation in the NT

In 2021-2 the NDIS committed supports for participants in the NT totalled \$540.3 million with 73% paid out during the year, giving a % utilisation of 73%.¹⁹

Utilisation is unpacked nationally by region in Table Q.1 (figure 8 below).²⁰ On this table the orange figures refer to utilisation which is 10% or more lower than the national utilisation rate for the respective Supported Independent Living (SIL) status and plan grouping.²¹

Nationally, plan underutilisation compared to national average utilisation is more prevalent in remote areas. However, the pattern is extreme in the NT with underutilisation in the NT lower than the national average across most regions, namely in the Barkly, East Arnhem, Katherine, Darwin Remote and Northern Territory - Other.²²

Plan utilisation is impacted by many factors. As outlined in this submission, this includes the NDIA's capabilities and culture regarding NDIS implementation in the NT.

¹⁷ Ibid, p. 815

¹⁸ Ibid. p 815

¹⁹ Ibid, Table M.72, p. 777

²⁰ Ibid. Appendix Q, Table Q.1

²¹ Ibid. P. 849

²² Ibid.

Service District	Phasing date began	Participants in SIL			Participants not in SIL			Total (SIL and non-SIL)		
		First plan	Subsequent plan	Total	First plan	Subsequent plan	Total	First plan	Subsequent plan	Total
Northern Territory										
Barkly	Jul-16				44%	50%	49%	44%	72%	70%
Central Australia	Jul-17		91%	91%	48%	62%	58%	55%	81%	78%
Darwin Remote	Jul-17				35%	52%	47%	35%	52%	48%
Darwin Urban	Jan-17		89%	89%	56%	70%	67%	57%	80%	78%
East Arnhem	Jan-17				38%	46%	45%	40%	46%	45%
Katherine	Jul-17		89%	89%	51%	56%	55%	51%	79%	76%
Northern Territory - Other					41%	71%	60%	41%	79%	69%
Northern Territory total		99%	90%	90%	49%	63%	60%	52%	78%	74%

Figure 8: Table Q.1 Utilisation breakdown by service district and participants SIL status – 1 October 2021 to 31 March 2022.²³

Participant Service Guarantee Timeframes

The NDIA has not met the Participant Service Guarantee Timeframes ('PSGT') in the NT across multiple categories.²⁴ 18 of the 20 PSGTs were applicable in the NT, of these seven (35%) were not met in the 2021-2022 financial year. In each of the latter, the figures were the lowest performing nationally (highlighted by the arrows on the relevant sections of Table N.85, figure 9 below).

²³ Ibid. Appendix Q, Table Q.1

²⁴ Appendix N, Table N.85, p. 808-9

Table N.85 Participant Service Guarantee Timeframes (% guarantees met) for the quarter ending 30 June 2022 ^{844 845 846 847 848 849}

PSG	Service Guarantee	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	NAT	
5	Commence facilitating the preparation of a plan, after an access decision has been made	21 days	96%	96%	96%	97%	95%	95%	100%	83%	96%
6	Approve a participant's plan, after an access decision has been made	56 days	92%	87%	91%	92%	92%	91%	92%	63%	90%
7	Approve a plan for ECEI participants, after an access decision has been made	90 days	99%	97%	91%	92%	99%	97%	100%	81%	96%
9	If the participant accepts the offer, hold a plan implementation meeting	28 days	100%	100%	100%	100%	100%	100%	100%	99%	100%
11	Commence facilitating a scheduled plan review, prior to the scheduled review date	56 days	66%	57%	55%	39%	37%	59%	49%	27%	56%
12	Decide whether to undertake a Participant Requested Plan Review, after the request is received	21 days	100%	100%	100%	100%	100%	100%	100%	100%	100%
13	Complete a Participant Requested Review, after the decision to accept the request was made	28 days	57%	72%	52%	56%	67%	64%	50%	30%	60%
14	Vary a plan, after the receipt of information that triggers the plan amendment process	28 days	89%	94%	93%	92%	91%	94%	87%	80%	92%
15	Vary a plan, after receipt of information relating to a complex quote that triggers a plan amendment process	50 days	100%	80%	100%	100%	100%	n/a	n/a	n/a	96%
17	Complete an internal Review of a Reviewable Decision, after a request is received	60 days	96%	97%	97%	96%	97%	96%	95%	99%	96%
18	Implement an AAT decision to vary a plan, after receiving notification of the AAT decision	28 days	96%	96%	95%	96%	96%	94%	95%	100%	96%
19	Cancel participant requested nominee	14 days	100%	100%	100%	96%	100%	100%	100%	100%	99%

Figure 9: Table N.85: Participant Service Guarantee Timeframes.²⁵

NT participant complaints

Figures also indicate that the number and proportion of NDIS participant complaints has increased:

²⁵ Appendix N, Table N.85, p. 808-9

Figure M.11 Number and proportion of participant complaints over time incrementally (left) and cumulatively (right) – Northern Territory

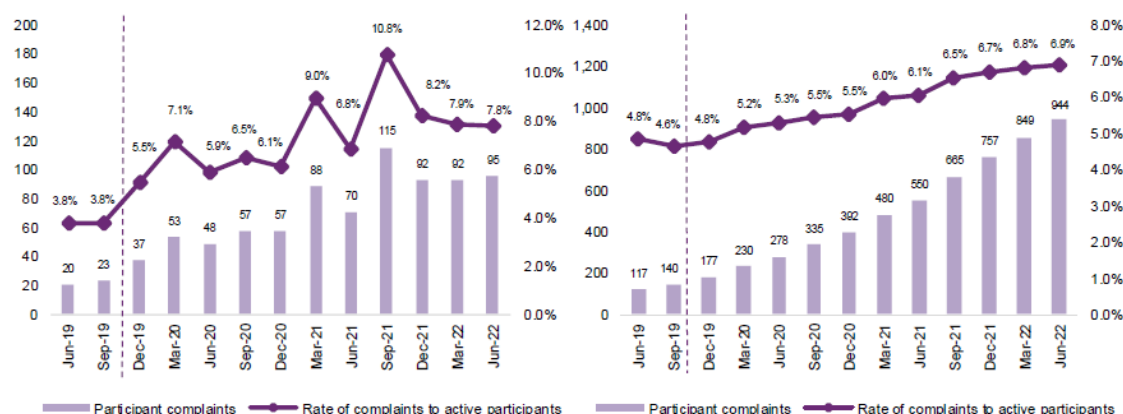


Figure 10: Figure M.11 Number and proportion of participant complaints over time.²⁶

The two most frequently occurring areas of complaint are NDIS plan (37% of complaints in the 4th quarter) and NDIA timelines (32% of complaints in the 4th quarter) both being substantially higher than the average for the previous 3 quarters.²⁷

In the 4th quarter of 2021-22, NT participant complaints were substantially above the national average, and were the highest rate of complaint among the jurisdictions:

Table N.29 Number and rates of participant complaints⁸²³

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	National
Participant complaints in 2021-22 Q4	2,319	2,309	1,903	871	888	194	162	95	9,195
% of the number of active participants	5.8%	6.6%	6.9%	7.6%	7.7%	6.5%	7.0%	7.8%	7.0%
All participant complaints	39,717	31,565	20,453	8,623	15,020	2,407	2,833	944	131,087
% of the number of active participants	6.8%	7.3%	6.9%	7.1%	9.4%	6.2%	6.8%	6.9%	7.8%

Figure 11: Table N29 Number and rates of participant complaints.²⁸

NDIS plan reductions in the NT

In the 6-month period to 31 December 2021, the NT had the highest rate of NDIS plan reductions in Australia. Compared to other jurisdictions, the NT had:

- the lowest proportion (27%) of reviews within 5% of the plan budget,
- the highest proportion of reviews (51%) with more than a 5% reduction, and
- the lowest proportion of reviews (32%) with more than a 5% increase:²⁹

²⁶ Ibid, p. 752

²⁷ Ibid, Table M 55, p. 752-3

²⁸ Ibid, Appendix N, Table N.29 p. 790

²⁹ Joint Standing Committee on the NDIS, Current Scheme Implementation and Forecasting for the NDIS, [Additional Documents](#), National Disability Insurance Agency, [answers to questions on notice, 1 February 2022 \(received 16 March 2022\)](#) Question Reference number NDIA IQ22-000006

Table 1. Plan budget change distribution (%), all states/territories, 1 July 2021 – 31 December 2021

	% of reviews within 5%	% of reviews with more than 5% reduction	% of reviews with more than 5% increase
ACT	27%	36%	37%
NSW	27%	35%	38%
NT	17%	51%	32%
QLD	33%	34%	33%
SA	24%	38%	38%
TAS	28%	33%	40%
VIC	29%	34%	37%
WA	29%	31%	41%
Total	28%	34%	37%

Figure 12: Table 1 Plan budget change distribution (%), all states/territories, 1 July 2021-31 December 2021³⁰

This followed on the 2020-21 financial year when there was a similar pattern, followed by the July-December 2021 escalation.

That is, for the 2020-21 financial year, compared to other jurisdictions, the NT had:

- the lowest proportion of reviews (20%) within 5%,
- the highest proportion of reviews (38%) with more than a 5% reduction, and
- the lowest proportion (with South Australia) of reviews with more than a 5% increase (42%).³¹

The most recent published figures from the AAT, which are for 1 July 21 to 31 May 2022, indicate 4,288 NDIS matters on hand, with decisions changed during that period in 57% of NDIS cases.³²

The figure of 57% is the highest rate of change among the AAT Division/Caseload counts which compares, for example with 29% variation for Veterans' Appeals, and 31% variation for Migration and Refugee Appeals.³³

2. NDIS capability and culture

The terms of reference refer to the 'capability and culture' of the NDIS. We submit this should include consideration of:

³⁰ Joint Standing Committee on the NDIS, Current Scheme Implementation and Forecasting for the NDIS, [Additional Documents](#), National Disability Insurance Agency, [answers to questions on notice, 1 February 2022 \(received 16 March 2022\)](#), Question Reference number NDIA IQ22-000006.

³¹ Ibid.

³² AAT Whole of Tribunal Statistics 2021-22, < <https://www.aat.gov.au/about-the-aat/corporate-information/statistics>>

³³ Ibid, footnotes on the Table have not been included in the screen shot.

- The disciplinary domains, frameworks, and knowledge systems in use in the ideas of ‘capability and culture’.
- The metrics used to identify and articulate ‘capability’ and ‘culture’ and the basis for, and assumptions in, the metrics.
- Whether and how each of these reflect and are accountable to lived experience perspectives of people with disability and the extent to which they problematically subordinate, paternalise and relegate these perspectives.

2.1 Fit for purpose

We think the focus on ‘capability and culture’ can be effective and powerful providing it is not co-opted. For example, by:

- The problems with the NDIA as an organisation consuming resources and effort which are designated to support the rights and needs of people with a disability.
- The use of frameworks (including ways of reasoning and rules of thumb) working against the rights of people with a disability.
- Approaches which commodify disability or which otherwise depart from principled, inclusive, caring, rights-based approaches.
- Approaches which apply negative stereotypes to people with disability and/or their carers.

NDIS capabilities as an organisation need to ensure:

- It is fit for purpose and always works with and for people with a disability and in their interests, and
- The interface between the NDIS and people with a disability and all stakeholders, works effectively and is a credit to the NDIS, the government, and the community.

The culture of the NDIS should primarily be identified by how it is experienced by people with disability and other stakeholders working in the interests of people with disability.

The sustainability of the NDIS should be assured through full implementation of the positive vision and intentions of the NDIS, and this should be protected by protecting the rights and wellbeing of people with disability by:

- Refusing and repudiating frameworks which work against this approach to sustainability. Examples are:
 - *Paternalistic narratives* – which are abusive of the rights, autonomy, and wellbeing of people with disability.
 - *Cost-saving narratives* – which reflect ideological positions which deprioritise and disentitle people with disability. Cost saving narratives are often based on false logics, such as:
 - *Short term savings* - such as perversely and wrongly reducing reasonable and necessary supports in plan, which will result in increased needs and higher costs over the longer term.

- *Penalising for market failure* - reducing plans for participants in remote areas due to thin markets and inability at a point in time to access required supports – rather than additional measures to address market failure.
- *Value for money claims* - by the NDIA which are often simply wrong. NDIA assertions about ‘value for money’ are often not reasoned or reasonable.
- *Reasonableness narratives* – which instead of being reasonable - deny the lived experience, circumstances, and realities of the individual or which refuse to consider or accept expert assessments provided by the person without having sought or obtained any alternative expert assessment.
- *Metro-normative narratives* – which deny the rights of people with a disability living outside metro-areas, by discriminatory attitudes towards location. Participants living in remote and very remote communities are often effectively treated as problematic and unreasonable.

Example – treatment of travel costs

Participants are often challenged to ‘justify’ travel costs to access therapies and put through elaborate and lengthy costing exercises due to lack of locational knowledge with the NDIA. That the NDIA frequently responds to participants in remote and very remote areas with suspicion and disbelief is a deficient characteristic of NDIA capability and culture.

Example – local knowledge

The NDIA often lack the local knowledge and logistical know-how to achieve economies when therapists travel to remote and very remote communities to work with multiple participants in one visit.

- *Culturally essentialist narratives* – which are not culturally informed or culturally inclusive for NT demographics, especially for many Aboriginal people in the NT.
- Effective monitoring and evaluation - using frameworks which ensure accountability to all people with a disability including First Nations and people living in non-metropolitan areas.
 - Using metrics about positive impacts for and with people with a disability as the primary measure and indicator of the ‘capability and culture’ of the NDIS.

<i>Recommendation 1</i>

- | |
|---|
| 1. NDIA capability and culture need to fully adapt to the NT context to overcome implementation issues and ensure the NDIA is fit-for-purpose for the NT. |
|---|

2.2 Major issues with NDIS implementation in the NT

Current problems regarding implementation of the NDIS in the NT reflect on NDIS capability and culture and what needs to change. These problems relate to the insufficient adaptation of the NDIS scheme to the NT context, and include:

- Insufficient focus on addressing thin markets in the NT for access to disability support and service providers, including availability of workers to deliver supports.
- Repeated failure to believe and respond to the realities of people's support needs including logistics, travel, and costs in the NT. The NDIA typically refuses to acknowledge that knowledge lays with participants and their team – and this needs to change.
- Insufficient connections with Aboriginal peak organisations, and Aboriginal representative structures and organisations in customising the NDIS to the NT and achieving accountability of the NDIS to all people with disability in the NT.
- Insufficient linking of NDIS implementation in the NT to critical policies relating to the NT and from the NT including Aboriginal Peak Organisation NT Partnership Principles (which align with principles in Closing the Gap). An upcoming opportunity relates to the APONT Fair Work and Strong Communities initiative,³⁴ and how this can help support NDIS implementation in the NT.

3. Four key themes

The following section addresses issues with the NDIS in the NT under the following headings:

1. Chronic workforce problems
2. Communication failure
3. Poor decision making
4. Failure of the appeals process.

The submissions relating to each of these continue to reflect the systemic experiences in the context of DCLS working with people with a disability engaging with the NDIS in the Northern Territory. This includes work in and relating to clients in remote and very remote communities, especially in some remote Aboriginal Top End communities, collaboration with a wide range of stakeholders involved in client matters and networks.

³⁴ Aboriginal Peak Organisation NT, [Fair Work and Strong Communities: Proposal for Remote Development and Employment Scheme](#), 2nd Edition, November 2018.

Djayak stretches out on single bed next to Rex and points out a spot in front of him where years ago, his late wife watched a crocodile take their puppy, Munbi, from the shoreline.



■ Rex Munungurr, who has cerebral palsy, in his manual wheelchair. Photograph: Tamara Howie

“She screamed out to me and when I came, the croc was swimming back and forth just along here with the dead dog on its snout,” Djayak says.

This part of north Australia is like that. Beautiful but harsh. The kind of place where if you stick your arm down a goanna hole, you need to hold still in case a king brown comes out.

You need a deep understanding of the land and its people for things to work here.

Months earlier, about 4,000km away in Geelong, Rex’s application for a sunshade for his mobility scooter landed on a desk at the National **Disability** Insurance Agency (NDIA) headquarters. The NDIA oversees the national disability insurance scheme (NDIS), which provides Rex, who has cerebral palsy, with the scooter. His care plan also includes funding for occupational therapy and physiotherapy.

The application for the \$200 sunshade was denied.

“They told us, ‘no, you cannot have it, we will not fund it. This is something that can be funded by him or the community can buy it for him’,” says Darwin Community Legal Service’s NDIS appeals advocate, David McGinlay, who represented Rex.

“It was causing social isolation for him – he wasn’t going out of the house because of the dangers of sun exposure and heat.”

Over the course of the wet season and its build-up, McGinlay received two more rejections before finally negotiating to get Rex his sunshade. The process left a bad taste in McGinlay’s mouth.

“How could a government have so much bureaucracy for a \$200 sunshade?” he says. “It would have cost them thousands to argue with me.”

How could people in Geelong make a decision about a guy in East Arnhem Land?
David McGinlay

McGinlay says the problem is that the scheme doesn’t acknowledge that **Indigenous Australians** in remote communities have particular needs due to their culture, environment and isolation.

“How could people in Geelong make a decision about a guy in East Arnhem Land when they have no idea what the community even looks like?” McGinlay says.

An NDIA spokesperson says NDIS plans for those living in the **Northern Territory** are written and approved by NDIA service delivery teams in the NT, who visit remote communities to meet with participants.

McGinlay counters this is not always the case. He says when the scheme was first introduced all decision-making powers rested interstate, usually at head office in Geelong. Though this has since changed and access decisions are made locally, appeals and reviews, like those dealing with Rex’s request for a sunshade, are still typically assessed interstate.

Figure 13: ‘The land the NDIS Forgot’, *The Guardian*, November 2019, regarding the NDIS in remote Indigenous communities in the NT. ³⁵

3.1 Chronic workforce problems

The following issues relate to NDIA staff and workflows in the NT.

3.1.1 NDIS staff profile and capabilities

All NDIA client service and decision-making staff including all delegates of the CEO and technical positions, should have a background in disability support and/or (allied) health to help ensure that the NDIA's capabilities and culture are positively aligned to its purposes and functions. For the same reasons, the NDIA should lift its performance as an employer of people with lived experience.

In relation to the NT, the staff composition must be responsive to the rights, circumstances, needs of participants and should ensure staff have experience relevant to participant demographics. The NDIA needs to make itself a more attractive workplace, which includes truly valuing lived experience, responsiveness and effectiveness and resolving cultural and capability issues causing poor performance.

There are insufficient NDIA staff compared to needs in the NT, including staff of the NDIS Quality and Safeguards Commission. The NDIA should also move away from subcontracting and outsourcing its participant facing roles and employ more people at the Agency itself.

The NDIA will also have to reset the way KPIs and other performance of its staff is measured. Planners should be free of any KPIs relating to plan budgets. Planners should also be given higher delegation levels on more expensive supports, to combat a culture where planners are constantly forced to argue with line managers with higher delegation levels for supports.

It is very important that there be local staff in the NT, to properly customise the NDIA to the NT and to increase the quality, timeliness, and effectiveness of NDIA processes for people with a disability in the NT. The NDIA should ensure sufficient staff in the NT in client and community facing roles, including planners.

In the NT, the NDIA should be an employer of choice for Aboriginal people and there should be an objective that the proportion of Aboriginal staff will at least match the proportion of Aboriginal to other participants in the NT.

Recommendation 2, 3 and 4

2. The NDIA needs to make itself a more attractive workplace, which includes truly valuing lived experience, responsiveness and effectiveness and resolving cultural and capability issues causing poor performance. [see 3.1.1]

3. The NDIA should ensure sufficient staff in the NT in client and community facing roles, including planner, who should have appropriate backgrounds and experience. [see 3.1.1]

4. Delegation of decision-making powers should be increased so relevant NDIA planning staff, can make decisions up to a higher amount. [see 3.1.1]

³⁵ Kylie Stevenson and Tamara Howie, [The land the NDIS Forgot: the remote Indigenous communities losing the postcode lottery](#), The Guardian, 5 November 2019

3.1.2 (Re)-establish regional and remote offices and contact centres

The lack of NDIA regional or remote contact centres has a dramatic effect on the implementation and operation of the NDIS in the NT due to the knowledge gap and lack of practicality, contractability and responsiveness.

An example is the town of Nhulunbuy about 1,000km by road from Darwin and 1¼ hours by air. Nhulunbuy is a regional hub for the remote East Arnhem Region. Until recently, the NDIA had a permanent staff member in an office in Nhulunbuy, who when possible was the planner for people in the region. This person is no longer at Nhulunbuy, and there is no physical presence of the NDIA in Nhulunbuy. Local participants report that this has impacted their relationship with the NDIA, as they can no longer speak to a person that is in their location and has lived experience of their location.

The NDIA has also shifted away from its local office in Darwin being a point of contact beyond pure administrative tasks. Instead, people with disability and representatives are urged to contact the National Contact Centre. The National Call Centre is inadequate (see 3.2.4 below) and is failing people with a disability and relevant sectors in the NT. Points of contact and staff need to be decentralised.

Recommendation 5

5. The regional/remote contact centres should be re-established. Additionally, to help cement reform it is important to unpack why a decision to use the National Call Centre for the NT was made, including identifying and critiquing the thought processes, and/or culture, involved. [see 3.1.2]

3.1.3 Suitability, training, and systems for staff

As an organisation representing people with disability, we frequently encounter NDIA staff who:

- Are not sufficiently aware of the NDIA's own processes and give incorrect information or are unable to provide client specific responsive information which is available to them and could be provided.
- Are not familiar with the nature and effects of the people's disabilities, the diagnostic and therapeutic contexts, how treatments and therapies may relate, and the attributes (including the logistics and practicalities) of assistive equipment.
- Do not have an appreciation of the support needs substantiated in material provided to the NDIA. NDIA staff often overlook key material, reject material without grounds, or seek further details or more current material when neither is warranted.
- Fail to act on a recognition of where the knowledge lies – for example as all NDIA staff cannot be across all disabilities or all issues relevant to each person with a disability, their situation and location – decision making needs to consider the reliability of information from informal sources. This includes the reliability of information from the participant themselves.

- Do not have sufficient interpersonal skills to engage effectively with people with a disability, advocates, service providers and other stakeholders.
- Have not received sufficient training, supervision, and support to support quality work, including quality decision making.

The key performance indicators for staff appear to be problematic as they are not addressing the above issues, which must be addressed in relation to the NDIA's operations for the NT

Recommendation 6

6. Investment into creating a better work environment, better training, and support for NDIA staff.

3.1.4 Culturally appropriate

We note the Committee's previous recommendation in December 2019, as follows:

"Recommendation 9 3.118

The committee recommends that the National Disability Insurance Agency (NDIA) ensure that additional training and skills development is provided to all persons involved in the planning process (particularly NDIA officers and LACs), to ensure that all such persons:

- are familiar with a range of disabilities experienced by participants, and develop specialisation in particular disability areas;
- are familiar with allied health expertise;
- understand the specific needs of Aboriginal and Torres Strait Islander participants, and participants from culturally and linguistically diverse backgrounds, to ensure that they are able to deliver culturally appropriate services; and
- receive training in domestic violence awareness."³⁶

However, more work needs to be done to ensure that staff, planners, and LACs are culturally appropriate in their interactions.

Recommendation 7

7. The NDIA should ensure appropriate staff in the NT to engage with Aboriginal people and clients from culturally and linguistically diverse backgrounds. This should ensure sensitivity of staff, planners, and LACs, for what is often experienced as a deeply personal and intrusive process. [see 3.1.4]

3.2 Communication failure

Communicating with the NDIA is frequently highly unsatisfactory for participants, providers, or other stakeholders due to:

- Poor attention to and ability to cater for the communication and information needs of people engaging with the NDIS in their various roles.

36 Joint Standing Committee on the NDIS, [NDIS Planning Interim Report](#), December 2019, p. 52.

- Lack of continuity in NDIS case management and contact points – due to NDIS workflows and staff changes.
- Generalised information when specific information is sought and needed amounting to chronic lack of responsiveness.
- Lack of proactive care and customisation in communications including lack of face-to-face interactions even when the person's disability requires it.
- Generalised explanations of adverse decisions to the point of being highly generic and often meaningless in the context of issues in the case. Principles of adequate communication are not met by this type of communication, and neither are principles of administrative law, including natural justice.

Communication failures can impact adversely, sometimes in extreme ways, especially when failures are repeated and systemic. People often feel relegated and disempowered, which can undermine autonomy and the ability to problem solve. It sometimes creates breaking points due to lack of certainty. There can be a loss of continuity in supports, increased risks, and other effects.

Seven issues relating to poor communication are:

1. Style and illogicality of communications
2. Conflicting information
3. Numerous problems with planning
4. Needless repetition and pedantic approaches
5. National Call Centre
6. Need for a direct line for advocates and lawyers
7. Communications and systems about invoice payments

3.2.1 Style and illogicality of communications

Written information and communications by the NDIA continue to use styles and contents which fail to meet the communication needs of individual participants or their nominated contacts. This occurs on all levels of written communication, including information products as well as decision letters provided to participants after requests for reviews of a reviewable decision.

- Language is mainly referable to the NDIA rather than participants and stakeholders. NDIS resources consist of two variations: the first is read easy resources and the second is NDIA speak (acronym heavy, NDIA jargon), and nothing in between. There is a lack of plain English resources.
- Genre, language and register in written communications often reinforce power imbalances, with the recipient treated as a subordinate.
- Correspondence is often poorly written and consists of poorly customised proformas, with template information included whether pertinent or not.
- Correspondence about decision making often includes copied content that may have names or pronouns that do not apply to the recipient of the correspondence.
- Correspondence includes inconsistent use of terms and jargon and misuse of health and medical terms and information.

- Reasoning is often highly disjointed and lacks coherence. Reasoning often asserts positions without giving the basis in a sufficiently communicative and transparent way.
- Correspondence which refers to the legislation often does not apply the legislation to the facts and consequently references to legislation are confusing and do not communicate.
- The NDIA is not providing a breakdown of the plan as a matter of routine, and the NDIA often does not provide this until there is follow up with an express request.

Written information and communications by the NDIA should be properly customised, be respectful, clear, accurate, reasoned and fit-for-purpose.

<i>Recommendation 8</i>

8. Written information and communications by the NDIA should be properly customised, be respectful, clear, accurate, reasoned and fit-for-purpose. [see 3.2.1]
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3.2.2 Conflicting information

There are instances where the NDIA gives conflicting information to participants via separate channels. This happens when branches of the agency are not liaising internally.

For example, when a participant receives a call from a planner about a scheduled review even though they are amid an AAT review. NDIA workflows should be reviewed to correct processes which result in conflicting information to participants via separate channels.

<i>Recommendation 9</i>

9. NDIA workflows should be reviewed to correct processes which result in conflicting information to participants via separate channels. [see 3.2.2]
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3.2.3 Needless repetition and pedantic approaches

NDIA communication processes often result in participants being required to repeat their story at access, planning, and reviews. This is the case even for information that remains consistent in a person's life.

People with disability are continually forced to prove their disability in all aspects of the life. The NDIA, as it's based in social and strengths-based models of disability should take the lead in breaking this pattern.

Through their NDIS experience a person will be asked time and time again to explain their needs. The NDIA needs to commit to its principle that a person with disability is the expert of their own life. It is degrading and harmful to force a person to explain and evidence the functional impact of their impairment(s) over and over again.

An example of the disjointed and repetitive nature are the different application processes for Home and Living support services such as Supported Independent Living and Supported Disability Accommodation and regular NDIS planning. All these processes are all mammoth

exercises. They are separate and sit with separate technical advisory teams. This forces the participant to spend time, substantial effort and often money, on proving similar issues.

Case study

Where a participant chooses not to include some parts of their story to preserve their mental health, out of shame or on the assumption that the details would be understood, especially because they are covered in submitted reports.

For example, a participant using the phrase ‘difficulty with toileting’, instead of giving minute details of their hours-long toileting routine.

This situation can result in underfunding of personal care or consumables.

<i>Recommendations 10 and 11</i>

10. The NDIA processes should be revised to reduce the requirements to re-justify repeatedly and needlessly. [See 3.2.3]
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11. The application processes for Home and Living support services, such as Supported Independent Living and Supported Disability Accommodation and regular NDIS planning processes should be streamlined and harmonised to avoid duplication. [See 3.2.3]
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3.2.4 National Contact Centre

The National Contact Centre (‘NCC’) is not effective in providing information and support for participants.

- The NCC phone system also presents many issues for participants and advocates. Often, an NCC worker will place a call on hold, which will then drop out.
- Sending emails to the NDIS enquiries inbox often results in long wait times for responses, especially if they move through several business areas within the NCC.
- There are often delays with emails being uploaded to participant files on the NDIA system. Where a person follows up on an email with a call to discuss the information they submitted, the email is regularly not available yet to the worker opening the file. Only some NCC staff have ‘email training’ and can assist when this is the case. This leads to further delays.
- NCC workers often lack training and knowledge. We have experienced NCC workers giving incorrect information over the phone and have heard stories from our clients who have received incorrect information over the phone.

Consequently, the operation of the NCC:

- causes delay and frustration,
- increases risks for people with a disability, and
- causes major inefficiencies for the NDIA, participants, support providers and the whole system.

The NDIA currently does not provide a direct line via the NCC or separately, for advocates and lawyers to be able to make inquiries and receive information. This results in delay, and it limits the effectiveness of advocates and lawyers.

Recommendations 12 and 13

12. The National Contact Centre ('NCC') needs to be overhauled to address the multiple, wide-ranging issues and negative impacts. As noted previously [at Recommendation 5] the regional and remote contact centres should be re-established. [see 3.2.4]

13. The NDIA should provide a direct line via the NCC or separately, for advocates and lawyers to be able to make inquiries and receive information. [see 3.2.4]

3.2.5 Communications and systems about invoice payments

The NDIA communication and systems for invoice payments is vague. Issues with the provider invoice payment portal include:

- Lack of information about where invoices are up to.
- Lack of information about invoice decisions.
- That there has been less willingness over time to have a chat, increased formality, and reduced flexibility.
- Lack of a workflow to be able to go back to the decision maker to discuss a decision declining an invoice, the only option is to submit a new request.

Recommendation 14

14. NDIA communications and systems for invoice payments need to be substantially improved to provide clear, accurate and timely information. There should be increased flexibility to enable providers to call and talk about invoices before and after decisions. [see 3.2.5]

3.3 Poor decision making

This section focuses on the planning or reassessment process, being an area where poor decision making is prevalent, and widely impacting on participants.

3.3.1 Make face-to-face meetings the standard

A standard is required to ensure that planning meetings are undertaken face to face, with NDIA physically present, to promote clear and effective communication. This was occurring in a high proportion of cases in the NT, but this then ceased to be the norm. The standard should be re-established, and the NDIA should attend all planning meetings in person, including when the participant is:

- in a rural, remote, or very remote location,
- in prison or a place of confinement, or
- otherwise, hard to reach.

The NDIA contract for a section of planning to be undertaken the Partner in the Community (which is APM for Darwin and Palmerston) has not been effective. When accessing Local Area

Coordinators ('LACs') through APM, NDIS participants often have workers allocated who are based in Queensland or Western Australia. This contributes to communication issues because the workers are typically unfamiliar with the participant's service and geographic context. Especially in the case of LACs, who are supposed to connect participants with local mainstream supports and services, it is unrealistic to expect someone from a different jurisdiction to be familiar enough to make productive suggestions.

We are pleased to see that there is a shift occurring in the Partner in the Community contracts. Planning should be undertaken by NDIA itself and NDIA staff planners. Removing the planning aspect from the Partner in the Community organisations also means that they can revert to the core task of connecting people to mainstream and NDIS services.

Recommendations 15 and 16

15. A standard is required to ensure that planning meetings are undertaken face to face, with NDIA physically present, to promote clear and effective communication. [see 3.3.1]

16. Planning in the NT should be undertaken by NDIA itself and NDIA staff planners. [see 3.3.1]

3.3.2 Transparency and clarity

The purposes of meetings should be expressly stated in advance of the meeting happening and at the very least at the start of the conversation. Participants report receiving calls from the NDIA but not knowing why they are being called or the purpose of questions. These calls may be used to inform a plan reassessment or roll-over without the participant having been heard about their issues and things they want brought into account.

Further, participants are often treated as if too fragile to handle transparency with internal processes, however it is difficult for participants to give sufficient information if they don't know how information is being used in decision making.

Case study

Participants are asked casual questions about how they're doing, and this gets applied to a severity tool that generates a typical support package ('TSP') on which the final plan is based.

Recommendations 17 and 18

17. All client interactions should start with a stated intention and purpose of the call and providing option to defer to a call back. [see 3.3.2]

18. Additionally, standards should ensure that a participant is entitled to:

- Defer a meeting which hasn't been set up properly in advance without any adverse consequences.
- Have sufficient notice to exercise their choice to have informal and/or formal support for the meeting, such as a friend, family member or advocate.
- Be told the relevance of questions they are asked, what the information is for and how it may be used.

Problems with participant's statement of goals and aspirations

A personal statement by the participant, expressed in the first-person, is included at the start of each NDIS plan. This is referred to as the 'participant's statement of goals and aspirations'.

This aims to speak from the participant themselves. There are cases where this is authentic and effective, however, in our experience, this is not achieved in a high proportion of plans.

In many cases:

- The participant's statement of goals and aspirations is not the first-person statement of the participant themselves and it comes across as confected. In purporting to reflect the agency of the participant, confected statements are likely to undermine agency and validate paternalism.
- The inclusion of the participant's statement of goals and aspirations at the start of the plan – followed by a plan which does not meet the participants needs - causes further dissonance.

In summary, while the intention that the plan will reflect a full, agreed and aligned response to the participant's goals is excellent – when this is not achieved the personal statement often exemplifies how the participant is being objectified and relegated by the process.

Recommendation 19

19. The NDIA should undertake further consultations with disability sectors about the circumstances in which first-person participant statements are effective, the pre-conditions for this and areas for improvement. [see 3.3.2]
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3.3.3 Feedback and conversations

The NDIS workflow should require that the NDIA:

- Provide a draft plan to the participant after the planning discussion, and
- Allow for discussion to make necessary changes or provide more evidence if needed.

Written communications which communicate decisions often provide no pathways to continue a conversation after a decision is made.

- This leaves two options, which are firstly, appeal or secondly, nothing - which consequently increases the number of appeals.
- It also increases stress, delay, and uncertainty for the participant, or person seeking access to the NDIS, which can complicate and compounds the person's situation.
- In some cases, appeals could be avoided if there is constructive follow-up by the decision maker after communicating a decision. Examples are where a minor change needs to be made, a support has been forgotten, or a decision maker has not reviewed all evidence.

This 'appeal or nothing' attitude ties into the staffing issues described in section 3.1. If the participant reaches out to the NDIA staff member that handled their plan reassessment after the plan has been finalised, they are often informed by the staff member that this is the end point of their involvement and that further questions should be directed to the NCC.

High turnover of NDIA workers also contributes to NDIS participants in the NT rarely getting to speak to the person listed on their plan as 'Your NDIS contact' more than once. It is grating that 'Your NDIS contact' is included so centrally on a NDIS plan, as in practice this is often not of any use to a participant.

Recommendations 20 and 21

20. NDIS workflow should include providing a draft plan to participants after a planning discussion and allowing for conversation to make necessary changes or provide more evidence if needed. [see 3.3.3]

21. The NDIA should upgrade contact arrangements for more continuity in contact points, especially for and in relation to participants and should implement continuous casework approaches as much as possible. [see 3.3.3]

3.3.4 Arbitrary and incorrect decisions

NDIA staff and NDIA decision makers often lack sufficient understanding of

- support needs
- how supports work
- how supports are implemented in practice, and
- the cost of accessing supports.

Examples are:

- Contending that it was reasonable to regularly fold and transport equipment, despite this being highly impractical/impossible, and contrary to the supplier's advice warning that damage would result in cost and delays in repair.
- Strenuously contesting manifestly reasonable support needs causing enormous frustration for doctors and allied health professionals, stress and desperation for the participant, increased risk including increased risk of carer burnout.
- Asserting, without evidence, that therapy was available for a participant in a particular remote region in the NT despite contrary evidence on behalf of the participant.
- Requiring evidence of the 24x7 hour schedule at 10-minute increments for a week to understand the participants needs for 2:1 support (2 workers to one participant), despite the need for 2:1 supports being expressed in professional reports and assessments, with examples.
- Trying to avoid fully funding reasonable supports such as by arguing for a reduced number of therapy sessions to that recommended in professional reports.
- Not including provision for travel relating to participants in remote communities despite evidence and costings for travel required to access supports.
- Arguing that travel could be undertaken more economically without providing any evidence in support.

The effect is that many NDIA decisions are unreasoned and unreasonable. Decisions ignore evidence or assert (without grounds) that evidence provided by the person with a disability is insufficient or incorrect.

The nature of arbitrary and incorrect decisions by the NDIA creates a downwards spiral where the NDIA's capabilities and culture are blocking factors and the client, and often their systems of assistance and support, are relegated and humiliated.

<i>Recommendation 22</i>

22. The standard of NDIA decision making must be addressed to overcome the causes and prevalence of arbitrary and incorrect decisions. [see 3.3.4]
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3.3.5 Dysfunctional approach to 'substantiation' ('proof')

A non-technical approach which treats the participant's needs as paramount should be applied in planning. This includes where a LAC does not ask for everything needed by the participant in a planning meeting – that issues were not raised at this point should not limit review or appeal options.

Accessing and using the NDIS places an enormous administrative burden on participants. This begins when a person is expected to prove their disability and functional capacity impairment to make access to the scheme and, when successful, to substantiate supports for the first plan. The plan reassessment cycles and appeals process again burden participants, as they are forced to use their resources to confirm that their impairments continue to impact their lives.

Especially when appealing a plan, and NDIS funding is already unlikely to cover a participant's therapeutic needs, participants are forced to use their funding to have allied health professionals respond to often misguided questions from the NDIA.

Despite the usual effects of disabilities being known, the NDIA often responds as if this is not the case requiring participants to provide further assessments about their already established condition/s and largely self-evident support needs.

Although material provided by treating professionals contains information, NDIA staff repeatedly ask the participant to justify supports as if the material from the professionals hasn't been considered and/or understood. Participants may be subjected to this multiple times a year.

This also continues into internal and external reviews – where the NDIA is simply not giving enough attention and weight to professional material provided. The NDIA needs to accept expert evidence if it has been provided by qualified experts. The second-guessing of evidence that is provided further puts an undue burden on the NDIS funding available to participants, as well as the time and workload of the experts, as participants are being forced to obtain unnecessary 'clarifications' from therapists.

This often creates a sense of an oppositional process, with the NDIA constructing 'rules' about substantiation requirements which are defensive, unreasonable, and contrary to legislated principles and objectives.

The NDIA's approach often denies the lived experience of participants, and participant's expertise in relation to the impacts of their disabilities and their support needs and is resulting in the voices of people with a disability being repeatedly discounted and marginalised.

The NDIA's unreasonable requests for evidence often continue in AAT appeals. It is not uncommon for an AAT case conference to end with a long list of repetitive questions from the NDIA. While the NDIA typically communicates that answering these questions is not mandatory and is a matter for the participant – the NDIA then reasons for itself that negotiation of supports should not occur without the extra 'evidence' listed.

NDIA questions which are irrelevant, unreasonable, and unwarranted have largely broken the review and appeals systems, resulting in both being dysfunctional. The NDIA's propagation of its substitute and dissonant approach to substantiation, reflects a culture which has sought to legitimise, moralise, and defend its own ineptitude.

A guidance should urgently be developed and implemented for the NDIA to cease the practice of *substantiation abuse*, by requiring the NDIA to address its own shortcomings about how it engages with the client's material in support.

The NDIA's capabilities must include being able to fully absorb, appreciate and properly consider material relating to people's disabilities and support needs and cease the pattern of bringing insufficient care, knowledge, and skill for these tasks.

<p><i>Recommendations 23, 24, 25</i></p> <p>23. A non-technical approach should be applied to planning which treats the participant's needs as paramount. This includes where a LAC does not ask for everything needed by the participant in a planning meeting – that issues were not raised at this point should not limit review or appeal options. [see 3.3.5]</p> <p>24. The NDIA's capabilities must include being able to fully absorb, appreciate and properly consider material relating to people's disabilities and support needs and cease the pattern of bringing insufficient care, knowledge, and skill. [see 3.3.5]</p> <p>25. A Guidance should be urgently developed and implemented for NDIA decision making to avoid the NDIA unnecessarily and inappropriately requesting that the client to obtain further substantiation for requested supports when these are already substantiated by material provided. [see 3.3.5]</p>

3.3.6 Reasons for decisions

The NDIA must apply standards which require staff to refer to the specific material / evidence they rely on when writing and communicating their decisions. This compares to the current practice of making statements instead of reasoned and substantiated decisions.

For example, in relation to s.34(1) matters, including those which are amplified by Part 3 of the National Disability Insurance Scheme (Supports for Participants) Rules 2013:

- The specific reasoning and basis (such as cheaper and equally beneficial options) - if referring to *value for money* (s34(1)(c)),
- The therapeutic guides and authoritative literature - if referring to *current good practice* (s34(1)(d)),
- The referral pathways and eligibility requirements - if referring to *more appropriate channel* (s34(1)(f)), and
- The specific evidence and reasoning in the circumstances of the case - if referring to *what it is reasonable to expect families, carers, informal networks and the community to provide* (s.34(1)(e)).

<i>Recommendation 26</i>
26. The NDIA must apply standards which require staff to refer to the specific material/evidence they rely on when writing and communicating their decisions. [see 3.3.6]

3.4 Failure of the appeals process

Decisions by the NDIA about eligibility for the NDIA, plan supports and funding, and variation or reassessment of plans are reviewable decisions subject to internal review (ss. 99-100 NDIA Act), and external review to the AAT (s.103). However, NDIA decision making often falls short of standards in administrative law.

As noted in the Australian Administrative Law Policy Guide:

“The administrative law system is based on the fundamental values of fairness, lawfulness, rationality, openness and efficiency. How government interacts with the public in individual cases influences public trust and confidence in government administration more broadly. By showing a commitment to delivering justice through administrative decision making, review mechanisms and other accountability mechanisms, the Federal Government can play an active role in improving the quality of access to justice for individuals.”³⁷

As noted at 1.2 in the 6-month period to 31 December 2021, the NT had the highest rate of NDIS plan reductions in Australia and the highest proportion of reviews (51%) with more than a 5% reduction and the lowest proportion (32%) with more than a 5% increase.³⁸ Additionally, appeals against NDIA decisions to the AAT have the highest rate of varied outcomes compared to the rate of change among the lowest proportion (with South Australia) of reviews with more than a 5% increase (42%).³⁹

³⁷ Government of Australia, [Australian Administrative Law Policy Guide](#), Attorney-General's Department, Canberra, 2011.

³⁸ Joint Standing Committee on the NDIS, Current Scheme Implementation and Forecasting for the NDIS, [Additional Documents](#), National Disability Insurance Agency, [answers to questions on notice, 1 February 2022 \(received 16 March 2022\)](#).

³⁹ Ibid.

The most recent published figures from the AAT, which are for 1 July 21 to 31 May 2022, indicate 4,288 NDIS matters on hand, with decisions changed during that period in 57% of NDIS cases.⁴⁰



Figure 14: Screen shot of the signatory page of the *Unreasonable Harms* submission.

3.4.1 Internal review is ineffective

Nationally, as indicated in the table below, in a high proportion of cases the NDIA internal review (Review of Reviewable Decisions, 'RoRD') affirms the original NDIA decision, with substantial increase in 2021-2 in the number and percentage of decisions affirmed.⁴⁴

The figure of 57% is the highest rate of change among the AAT Division/Caseload counts which compares, for example with 29% variation for Veterans' Appeals, and 31% variation for Migration and Refugee Appeals.⁴¹

The failure of the NDIA internal and external appeals process nationally, has been particularly harmful in the NT due to compounding factors regarding the implementation of the NDIS in the NT, dealt with throughout this submission. These issues have been raised extensively by numerous stakeholders in previous submissions, and with the NDIA directly and the previous Minister.

DCLS endorses the August 2021 joint submission by over 20 organisations to the Joint Standing Committee on the NDIS titled 'Unreasonable and unnecessary harms: Joint submission regarding the major issues with the NDIS internal review and external'^{42.43}.

⁴⁰ AAT Whole of Tribunal Statistics 2021-22, < <https://www.aat.gov.au/about-the-aat/corporate-information/statistics>>.

⁴¹ Ibid.

⁴³ Unreasonable and unnecessary harms: Joint submission regarding the NDIS internal review and external appeals processes, Joint Submission from 20 Disability Advocacy Organisations, Submission No 83 to Joint Standing Committee on the NDIS, Parliament of Australia, *General issues around the implementation and performance of the NDIS* (August 2021).

⁴⁴ NDIA Quarterly Report to Disability Ministers 2021-2, Q4, p. 84, <https://www.ndis.gov.au/media/4615/download?attachment>.

Figure 49: Closed RoRDs by outcome – quarterly trend

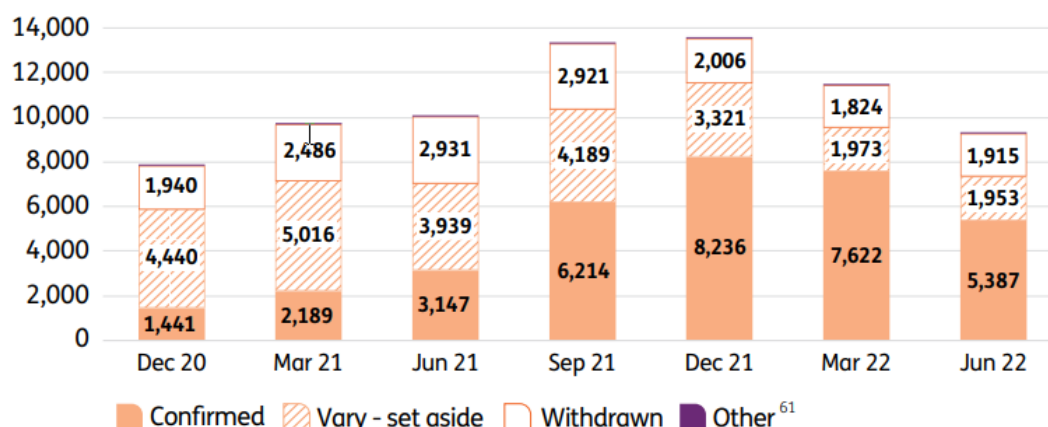


Figure 15: Figure 49 Closed RoRDs by outcome – quarterly trend⁴⁵

In percentage terms:

- NDIA decisions confirmed on review has increased from less than 20% in the December 2020 quarter to a quarterly average of over 57% in 2021/22, and
- NDIA decisions which were varied/ set aside on review has reduced from about 57% in the December 2020 quarter to a quarterly average of 25% in 2021/22.

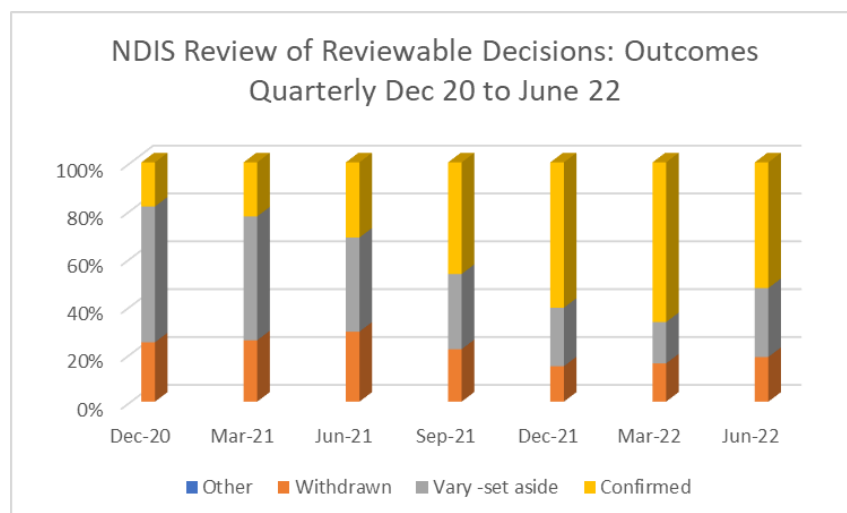


Figure 16: Table NDIS RoRDs prepared from figures above.

The increasing trend of NDIA internal review affirming NDIA primary decisions, has been raised with great concern by advocacy organisations around Australia,⁴⁶ because this reflects reduced performance in addressing incorrect primary decisions.

⁴⁵ Ibid.

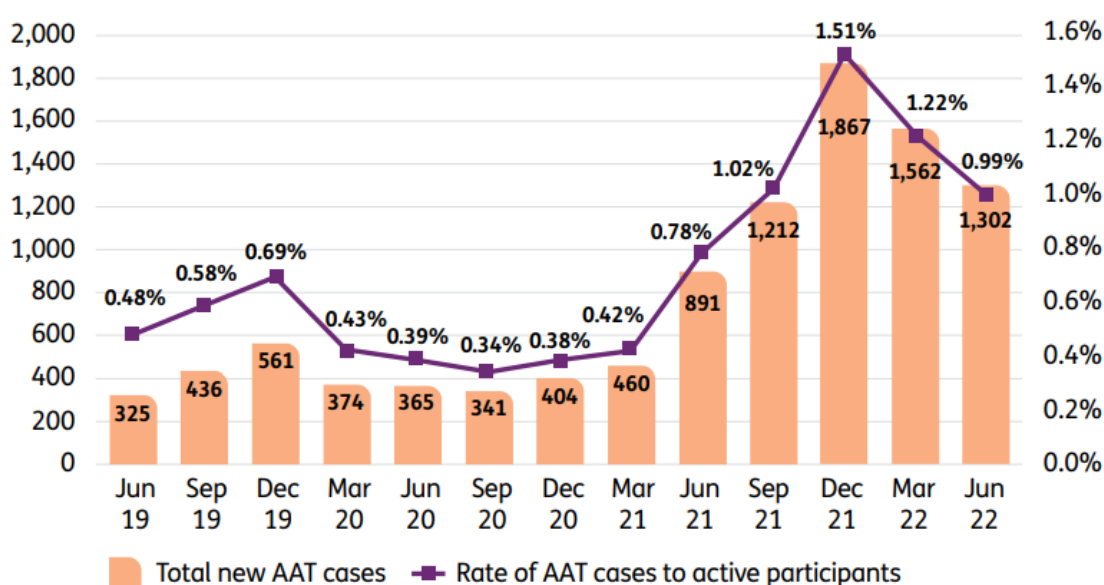
⁴⁶ Disability Advocacy NSW, Your Say Advocacy Tasmania, Villamanta Legal Service, National Disability Insurance Scheme appeals at the Administrative Appeals Tribunal, 3 June 2022, p. 2, at: <https://villamanta.org.au/wp-content/uploads/2022/07/Model-litigant-obligations-and-NDIS-Appeals.pdf>

While the NDIA appears to present a reduction in the number and proportion of new AAT cases in the March and June quarters of 2022 as a positive trend (table below),⁴⁷ from our experience it is more likely to have resulted from:

- increasing alienation of NDIA clients from the NDIA approach to appeals and the appeals system, and
- lack of client access to appeals advocacy assistance and legal representation.

As outlined at 3.4.4 below there is and continues to be a NDIS appeals crisis in the NT whereby there is chronically insufficient access to support and assistance for people with a disability to appeal NDIS decisions.

Figure 50: Number and proportion of new AAT cases over time



*Figure 17: Number and proportion of new AAT cases over time*⁴⁸

This was exemplified between February and September 2022 when the NT Legal Aid Commission ceased making any new grants of aid for NDIS appeals, due to dramatically insufficient funding under the Department of Social Services' Disability and Carers Support funding stream.⁴⁹

The funding issues for appeals assistance in the NT are outlined at 3.4.4.

⁴⁷ NDIA Quarterly Report to Disability Ministers 2021-2, Q4, p.85, <https://www.ndis.gov.au/media/4615/download?attachment>

⁴⁸ NDIA Quarterly Report to Disability Ministers 2021-2, Q4, p.85, <https://www.ndis.gov.au/media/4615/download?attachment>

⁴⁹ For a description, see: <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-appeals>

<i>Recommendation 27</i>
27. Internal review must be reformed to be fit for purpose where the purposes are responsiveness and good process to the rights of people with a disability under the NDIA Act. [See 3.4.1]

3.4.2 NDIA instructed lawyers and model litigant obligations

Although we refer to this in other aspects below, NDIA instructions to lawyers for NDIS appeals have often been highly inappropriate, problematic, and harmful.

Put differently, the NDIA has not demonstrated capabilities to implement constructive and appropriate approaches as to how it wishes to conduct itself.

Lawyers instructed by the NDIA in the AAT appeals often lack:

- sufficient knowledge and expertise in the subject matter to deal with appeal cases adequately and effectively, and
- complete instructions from the NDIA, delaying the process.⁵⁰

NDIA legal representatives often unnecessarily prolong and complicate matters. This includes:

- Seeking further evidence and details from the appellant when the issues have already been covered.
- Seeking independent assessments to obtain a second opinion when there is no indication of a need for this within the existing evidence.
 - For example, seeking a functional assessment from an Occupational Therapist briefed by NDIA within months of participant having a functional assessment through their own service provider.

At the same time clients struggle to obtain access to appeals advocacy support and to legal representation.

The model litigant obligations apply to the NDIA in AAT and other litigation,⁵¹ and we endorse concerns also raised by many advocacy organisations and in the media about frequent lack of compliance by the NDIA with these obligations.⁵²

⁵⁰ Being a systemic issue identified nationally e.g. Unreasonable and unnecessary harms: Joint submission regarding the NDIS internal review and external appeals processes, Joint Submission from 20 Disability Advocacy Organisations, [Submission No 83](#) to Joint Standing Committee on the NDIS, Parliament of Australia, *General issues around the implementation and performance of the NDIS* (August 2021)

⁵¹ Attorney-General's Legal Services Directions 2017, online at: <https://www.ag.gov.au/legal-system/office-legal-services-coordination/legal-services-directions-and-guidance-notes>

⁵² Including the recent paper by Disability Advocacy NSW, Your Say Advocacy Tasmania, Villamanta Legal Service, National Disability Insurance Scheme appeals at the Administrative Appeals Tribunal, 3 June 2022, <https://villamanta.org.au/wp-content/uploads/2022/07/Model-litigant-obligations-and-NDIS-Appeals.pdf>

NDIS participants, families and lawyers allege breaches of NDIA's model litigant obligations

ABC Mid North Coast / By Alexandra Jones

Posted Sat 15 Oct 2022 at 9:04am, updated Sat 15 Oct 2022 at 9:08am



Richard Bradley is among thousands of National Disability Insurance Scheme (NDIS) participants locked in legal proceedings at the Administrative Appeals Tribunal (AAT).

The 31-year-old from Nambucca Heads on the NSW Mid North Coast lives with Klinefelter's Syndrome and dysphagia and is appealing decisions made regarding his plan and requested supports.

He is one of many who have sounded the alarm over their treatment by the National Disability Insurance Agency (NDIA) and its legal representatives during AAT proceedings and is among a growing chorus claiming the NDIA is flouting its obligation to act as a model litigant.

"They've breached the model litigant

Key points:

- The NDIA has been accused of failing to uphold its duty to act as a model litigant in administrative appeal tribunal proceedings
- Richard Bradley is appealing the NDIA's decision not to fund supports for his conditions
- A lawyer says many of her clients have dropped cases after being "traumatised" by the process

Figure 18: Screenshot of part of an ABC news report, 15 October 2022⁵³

We have provided advocacy support and/or legal representation in numerous cases where the model litigant obligations have arisen. Issues typically include the NDIA unnecessarily extended proceedings by requesting the applicant obtain further information contained in reports already provided, or causing delays in filing evidence late, or missing deadlines.

The former (requesting additional reports and material) is often accompanied by the lawyer using the words in the model litigant guidelines to frame their proposal as one which 'may assist the Tribunal'.

The NDIA's request of further evidence and reports also unfairly disadvantage the applicant/participant where the funding in the package is exhausted, and the individual must fund these reports using their own finances. For some applicant/participants who do not have

⁵³ Online at: <https://www.abc.net.au/news/2022-10-15/ndis-model-litigant-obligation-breaches/101501670>

the resources to do so, this inability to fund further evidence can deter them from continuing their action or result in a pressured settlement.

As noted earlier, the NDIA often treats the need it claims for additional substantiation as a reason for not negotiating, however this is a circular and it is substantially impacting on the model litigant obligation for the NDIA to negotiate in good faith.

The situation also highlights that the model litigant guidelines are not sufficient to address the issues which are occurring. New purpose specific guidelines are needed and sufficient incentives for compliance.

<i>Recommendations 28 and 29</i>
28. New purpose specific NDIA model litigant guidelines should be developed. [See 3.4.2]
29. The potential benefits and mechanisms for the NDIA and/or lawyers acting for the NDIA to be subject to penalties for breaching the model litigant guidelines should be undertaken. [See 3.4.2]

3.4.3 Unfair and inadequate operation of the remittal process

Another situation involving breach of model litigant obligations by the NDIA relates to interim arrangements in cases of urgency, where the NDIA is often unresponsive, giving the appearance of a strategy to weaken already vulnerable applicants.

Applicants are unfairly disadvantaged by the remittal process, and lack of interim arrangements in place for applicants where necessary supports are no longer funded.

In many cases the NDIA is unwilling to compromise or offer meaningful interim solutions for participants to access required supports while appeals are taking place. The remittal process envisages reasonableness which is frequently not present. This leaves participants in a highly vulnerable position and subject to pressure tactics.

The current legislative scheme is not addressing the need for the AAT to be able to ensure interim and emergency supports in cases where this is required while an appeal is underway. Whereas we are hopeful that the changes to the NDIS Act in July 2022 will alleviate some of these issues by allowing for plan variations to occur while a matter is at the AAT, which can be used for emergency funding without impacting the appeal, this is not yet enough. In our recent experience, this has created further delays as the NDIA case manager and lawyer seem unclear on the correct process for organising emergency funding.

There are numerous cases where participants are placed at risk because the NDIA refuses and the AAT is hamstrung due to the lacuna in the legislation.

Situations include family members facing carer burnout to the point of considering relinquishing care. Due to insufficient supports while an appeal is underway, carers may face gruelling choices such as whether to cease employment. Participants might have no other 'option' than hospitalisation if their SIL supports are deeply insufficient and the appeal is ongoing.

There are cases where NDIS service providers in the NT are carrying tens of thousands of dollars in costs to continue recommended supports while the appeal (involving the NDIA disputing these supports) is underway. For some service providers, this repeats with multiple participants, resulting in them trying to carry hundreds of thousands of dollars in NDIA disputed supports.

While the AAT sometimes attempts to apply its own pressure techniques to the NDIA - for participants this largely reinforces the sense of the NDIA's power in the equation, and the deficiencies and chronic unsuitability of the appeals system.

<i>Recommendation 30</i>

30. That this Committee and/or the Minister undertake a review of legislative options to ensure interim and emergency supports where required while an appeal is underway. [see 3.4.3]
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3.4.4 NDIS appeals crisis in the NT

We note that the NDIS is undergoing rapid change resulting from new directions established by the new federal Government, and that this aims to address numerous deficiencies and reset the relationship with people seeking access and NDIS participants.

We particularly note the announced intention to implement rapid resolution options for the 4,000 NDIA appeals before the AAT. While these are very welcome developments there is still a crisis in the NT in access to advocacy support and legal representation for appeals.

This is a pre-existing, and a continuing problem.

This crisis involves grossly insufficient provision of funding to provide NDIS appeals advocacy. Funding is not reflective of:

- levels of need in the NT,
- the need for in person service provision as far as possible, and
- travel distances and travel costs in the NT.

The crisis also involves insufficient access to legal help and legal representation for appeals.

The small allocation of funding for NDIS appeals to the NT Legal Aid Commission and to DCLS and three other organisations for appeals advocacy support (as distinct from legal representation) is insufficient.

The funding for this assistance was insufficient to begin with and it failed to increase as the number of appeals increased.⁵⁴ This also contrasted with the NDIA's extensive use of external law firms.⁵⁵

⁵⁴ This is also the picture nationally, see Unreasonable and unnecessary harms: Joint submission regarding the NDIS internal review and external appeals processes, Joint Submission from 20 Disability Advocacy Organisations, [Submission No 83](#) to Joint Standing Committee on the NDIS, Parliament of Australia, *General issues around the implementation and performance of the NDIS* (August 2021)

⁵⁵ Ibid.

DCLS has direct experience in numerous matters of multiple lawyers from top tier law firms acting for the NDIA on AAT appeals. We have also observed the NDIA's briefing practices, which includes funds to brief Senior Counsel instructed by top tier firms.

The funding model for legal representation for NDIS appeals is also inadequate because it makes no provision for legal help and legal representation in the NT from:

- Darwin Community Legal Service which also provides the Seniors and Disability Rights Service,
- Aboriginal Legal Services being the North Australian Aboriginal Legal Service, the North Australian Aboriginal Family Legal Service, and the Central Australian Aboriginal Family Legal Unit, or
- Women's Legal Services being the Central Australian Women's Legal Service, the Katherine Women's Legal and Information Service and the Top End Women's Legal Service.

This is despite the locational accessibility, their service models, catchment areas and expertise.

Although DCLS has not received funding to provide NDIS appeals legal representation, DCLS has done so because of the nature and effects of the unmet legal needs. In doing so we have developed a co-advocacy model involving the appeals advocate and community lawyer working together in client matters. We regard this as an essential model for this work.

We are concerned that this period of rapid reform may see new issues which are treated as rationales for not providing adequate funding for appeals advocacy support and legal representation, via appropriate models. For example:

- Deferring the issue e.g., asking people to be patient while changes are made, for things to be better in the future.
- De-prioritising e.g., placing higher priority on changing the appeals system rather than on meeting advocacy and legal representation support needs which carries the high risk of perpetuating current power imbalances.
- Homogenizing needs e.g., applying a centralised phone help model for advocacy support and appeals legal help which is not suited to the needs of people with a disability in the NT, where direct access to local in-person advocacy assistance and legal representation for appeals is needed.

Attached is a copy of a joint letter dated 16 March 2022 by NT NDIS appeals advocacy organisations raising these matters.

Recommendation 31

31. An NT NDIS appeals advocacy and legal support plan is urgently needed for the NT. The plan should include:

- An immediate injection of funds for direct local access to specialist advocacy and legal support to for people appealing NDIS access, supports or related decisions.

- A funding model which reflects the rights and needs of participants in the NT which the 'blitz' of matters currently before the AAT is being worked on.
- A commitment for longer term planning, to develop model for NDIS advocacy and appeals support which reflects needs and the availability of multiple non-profits, including Aboriginal Legal Services and the Women's Legal Services in the NT to be incorporated ongoing. [see 3.4.4]

Conclusion

In conclusion, these major issues relating to capability and culture of the NDIA have impeded successful implementation of the NDIS in the Northern Territory.

That this has occurred requires reflection as well as remediation. Reflection and critique can help address factors that can take the NDIA off course, and that need to be guarded against. This includes framing 'financial sustainability' as the needs of people with disability being too expensive.

In the Northern Territory people with lived experience of disability regularly see their claims about what is reasonable distorted by uninformed and incorrect assumptions about their lives and circumstances.

In this submission we have highlighted that there is a long way to go for NDIA capability and culture to become effective in playing the full intended role in supporting the wellbeing and rights of people with disability in the NT.



Rachael Bower
Chief Executive Officer



Judy Harrison
Principal Solicitor



Jessica Brugmans
Senior Advocate, DCLS Seniors and
Disability Rights Service

Attachment:

Copy of a joint letter dated 16 March 2022 by NT NDIS appeals advocacy organisations raising these matters previously.

16 March 2022



Northern Territory Disability Advocates call for action on NDIS Appeals crisis.

Darwin Community Legal Service (**DCLS**), Disability Advocacy Services (**DAS**) Alice Springs and NPY Women's Council (**NPYWC**) are all NT based organisations that receive funding from the Department of Social Services for NDIS Appeals Advocacy.

NDIS Appeals Advocacy provides specialist support to National Disability Insurance Scheme (**NDIS**) participants and people seeking access to NDIS supports when appealing decisions made by the National Disability Insurance Agency (**NDIA**) to the Administrative Appeals Tribunal (**AAT**).

Rights of people with a disability in the NT

However, the funding our services receive for NDIS Appeals Advocacy is highly inadequate, to the point that none of us now have funding for even one full-time position.

DSS has not correlated funding for NDIS Appeals Advocacy support to NT participant needs, the service areas or the specialist nature of the work.

On top of this DSS has advised that the NDIS Appeals Advocacy funding of \$80,000 pa received by DCLS for NT wide assistance, will be reduced by 30% next financial year.

The NDIS Appeals Advocacy funding each of our organisations receives is unresponsive and tokenistic to the NT context and is dismissive of the rights and needs of people with a disability in the NT especially those in remote and very remote settings.

Compounded by a crisis in NDIS Appeals legal representation in the NT

Further to this, an access to justice crisis for people with a disability is currently unfolding in the NT.

The only organisation receiving specific funding to provide legal representation at the AAT for NDIS Appeals has suspended assistance for new matters for this financial year and stated that the funding allocation on offer to them for 2022 – 23 will still not be enough to meet current demand let alone the increasing



free legal advice and information | general legal service | tenants' advice service
seniors and disability rights service | older person's abuse information line
Darwin Community Legal Service

demand for assistance we are seeing occur. As a result, there are currently no funded pathways for legal representation for NDIS participants looking to appeal NDIS decisions.

Other legal services, such as DCLS' General Legal Service, cannot fill this gap, and have not received resources to do so. This further increases the burden on the advocacy organisations, as we continue to support clients through the AAT appeals process without additional legal support to refer to and cooperate with.

Deeply concerned

We are deeply concerned for Territorians looking to appeal NDIA decisions due to the insufficient availability of specialist advocacy support and suspension of legal representation for new matters.

Many NDIS participants who need to exercise their appeal rights are already at breaking point and are facing major risks to their health and safety.

In the AAT and well before, through the internal appeals process, we are typically arguing for sufficient support worker hours to ensure the person's safety and basic needs are met. The lack of appropriate NDIS funding for our clients means isolation, deteriorating health and increased hospital admissions. People in these situations are at significant risk of harm due to the inadequate level of funding provided for in their NDIS plans.

Having run out of internal review options through the NDIS, participants are left with no choice but to appeal to the AAT.

An AAT NDIS Appeal is a traumatic, labour intensive, and lengthy process. Supporting people through this process requires intensive support, specialist advocacy and legal representation.

In our experience, the NDIA frequently briefs top tier legal firms and barristers. This means that an NDIS appeal is already a significantly unbalanced process.

Underfunding specialist advocacy and legal services leaves people with disability unsupported in the AAT and on the current allocations offered to our services by DSS for the next 3 years will also compromise the level of support, advocacy, and assistance available to participants through the internal review process. This exposes people to what they experience as highly skewed and unfair processes, which are damaging in many ways, especially in the areas of their physical and mental health. Participants often cannot proceed alone and they ultimately give up by withdrawing their application.

Published statistics from the AAT show that NDIS appeals applications are increasing. Trends in NDIA decision-making, participant needs, and the decision review process means that NDIS participant AAT appeals are likely to continue to escalate.

Summary

We call for:

- Urgent funding to deal with the immediate crisis to ensure that people with disability have access to NDIS Appeals legal representation.
- Urgent NDIS Appeals advocacy funding increase for the remainder of the financial year.

- Substantial increase in funding for specialist NDIS Appeals advocacy for 2022-2023 and subsequent financial years.
- A long-overdue needs-based analysis of the funding and service model in the NT for advocacy and legal support in the NDIS that is suitable, culturally appropriate, and accessible.

Yours Sincerely,

Darwin Community Legal Service

Disability Advocacy Services

NPY Women's Council



Rachael Bowker
Executive Director



Adrian Scholtes
CEO



Liza Balmer
CEO



Judy Harrison
Principal Solicitor

