

## Capability and Culture of the NDIA: Submission to the NDIS Joint Standing Committee

Joint Submission from Darwin Community Legal Service and Rights Information Advocacy Centre

16 December 2022



### Introduction

Darwin Community Legal Service (NT) and the Rights Information Advocacy Centre (VIC) welcome the opportunity to provide the Joint Standing Committee (JSC) with this submission related to the capability and culture of the NDIA.

Our organisations have separately provided submissions to this current inquiry.<sup>1</sup> We are jointly providing this brief submission to highlight an increasing and concerning trend of the NDIA to reduce and under-fund Support Independent Living (SIL). We share case studies to demonstrate the impacts of this decision making.

Currently, the culture of the NDIA's decision making process is driven by cost cutting rather than adopting a focus on the needs of participants to maintain their dignity, health, and wellbeing. This is especially obvious in decisions relating to SIL, as changes in funding for SIL can have immediate and catastrophic consequences.

Our organisations are experiencing an increase in demand for support to appeal SIL related decisions to the AAT. Our organisations are collectively witnessing the health, wellbeing, and human rights impacts of these decisions on the people with disability we can assist. Due to capacity limitations, we are unable to support the increased demand for SIL appeals, this causes an unacceptable additional layer of distress for participants appealing decisions.

We appreciate the NDIA must make individual decisions regarding SIL funding. However, there are general principles around the culture of the NDIA's decision making that require immediate improvement.

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<sup>1</sup> See submission 7 and submission 49

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Disability\\_Insurance\\_Scheme/CapabilityandCulture/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/CapabilityandCulture/Submissions).

## Recommendations

We recommend the following to improve the culture and capability of the NDIA’s decision making:

- Participants and their support team must be involved in a collaborative person-centric planning process to ensure all efforts are made to have the best available evidence to determine the appropriate level of funding.
- Draft plans must be provided to determine if there are any issues or disputes regarding funding.
- In the event of any issues or disputes regarding funding, the planner and the participant (and their relevant supports) must collaborate to clarify any gaps in evidence.
- If an internal review is required, all efforts are made by the internal review team to collaborate with the participant (and their relevant supports) to obtain further information.
- If the participant is seeking to review a reduction of SIL support, the NDIA must commit to funding the previous amount until the outcome of the internal review or appeal to the AAT has been determined. This will ensure continuity of support and basic human rights of the participant, especially if the impact of the decision requires the participant to relocate or be at risk of harm if supports are reduced.
- Greater transparency from the Home and Living Team regarding reasons for their decisions.

## **Case Studies**

The following case studies highlight the impact of the NDIA’s decision making relating to SIL. The case studies highlight the importance of person-centric decision making to prevent unnecessary internal reviews and appeals to the AAT which significantly impacts the wellbeing of participants and is economically inefficient.

	Client A
<b>Brief outline of situation</b>	<p>A is an elderly, aboriginal man with a non-indigenous wife that is proficient in English, this makes accessing supports easier for A than for many. A is experiencing a type of early onset dementia that includes violent episodes when he experiences misapprehensions. A is a large man who used to be a soldier. During episodes he often believes he is in a war zone and that his support workers are trying to kill him. This leads A to attack the support workers before they kill him.</p> <p>The NDIA reduced A’s ratios from 2:1 to 1:1 SIL. In addition to the above episodes, A experiences faecal incontinence and because he is a very large man, he needs the assistance of two people to</p>

	<p>use the bathroom for toileting and cleaning, for dressing and for other self-care.</p> <p>The NDIA didn't undertake consultations with A's supports before making the decision to reduce his supports.</p> <p>An appeal was run in the AAT.</p> <p>The SIL provider continued to provide 2:1 ratio service even though they were not being paid because it was not safe to provide 1:1 support. DCLS appealed the decision but had to fight hard to keep the 2:1 ratio.</p> <p>The NDIA repeatedly asked for additional evidence of A's support needs, despite having solid evidence. The NDIA sought further and more detailed evidence on each point, which required time and money for the specialists to write the reports. There was no evidence that supported the original change from 2:1 to 1:1.</p> <p>Eventually the 2:1 ratio was reinstated, and the NDIS eventually paid the debt accrued to the SIL provider, after much chasing and negotiating.</p>
<p><b>Impact on participant/individual</b></p>	<p>The decision and appeal process were upsetting for A's wife who suddenly had to worry about the continuation of A's supports. It also negatively impacted the SIL provider/coordinator who had been organising A's supports.</p> <p>If the decision had been upheld it would have been dangerous for A, his wife and the support workers trying to care for him.</p>
<p><b>Systemic cultural issues</b></p>	<p>Detrimental decisions made without consulting clients, families, support workers or legal representatives.</p>

	<p>Client B</p>
<p><b>Brief outline of situation</b></p>	<p>B is a young person experiencing intellectual disability and dyspraxia. B has a significant and documented history of behavioural problems. B lives in a privately rented unit. He has SIL supports that come into his house 24/7 at a 1:1 ratio.</p>

	<p>The NDIS reviewed the plan and reduced B’s SIL ratio to a 1:2 ratio without consulting or telling anyone. No transition period was included with the new plan. The plan ignored several pages of evidence that included a risk matrix. The review also emphasised that B’s behaviour had improved but ignored that this was because living on his own was easier for him.</p> <p>The reduction of support to a 1:2 ratio meant that B would be forced to break lease and move into shared accommodation and share a support worker with someone else.</p> <p>B has history of aggression with roommates, (shared accommodation had been trialled twice in the past- and B was destructive, aggressive, and dangerous (often when attempting to secure sufficient attention). Every support involved in working with B could have shared this important information, but none of the supports were consulted.</p> <p>An urgent remittal was sent to the AAT to extend the SIL funding to cover the 1:1 support worker until the appeal was resolved. The NDIA ultimately offered a large amount of SDA funding that hadn’t been asked for. No specific information was given about the proposed SDA accommodation.</p>
<p><b>Impact on participant/individual</b></p>	<p>As a result of the decision B may be forced out of his comfortable, safe environment. B may be placed in an environment where his behaviours of concern endanger both others and themselves.</p>
<p><b>Systemic cultural issues</b></p>	<p>Detrimental decisions made without consulting clients, families, support workers or legal representatives. This also seems to violate Article 19 of the CRPD dealing with living independently.</p>

	<p>Client C</p>
<p><b>Brief outline of situation</b></p>	<p>C is an Aboriginal man from a remote area. C has a physical disability meaning he needs supports with all activities of daily living. C was previously funded for 24/7 care at a 2:1 ratio. C had two assessments: an OT functional assessment and a physiotherapy assessment. Both assessments concluded that C required support at a 2:1 ratio or an increase to 3:1.</p> <p>The NDIS plan included funding for 1:1 supports only. C’s case was referred to disability advocacy, who initiated a review. The review took 7 months largely because C can only communicate</p>

	<p>verbally - he can't sign forms or send documents to the NDIA which requires a great deal of written communication.</p> <p>The AAT required a functional OT assessment which was undertaken by the NDIA by flying in a new OT from interstate.</p> <p>The report from the new OT was consistent with previous reports, similarly, recommending that C receive care at a 2:1 ratio 24 hours/7 days a week at a minimum.</p> <p>The NDIS returned with an offer of 6 months of 2:1 ratio SIL care and SDA (for which a suitable property is not available currently in C's location) with the proviso that once C enters SDA NDIS would cut supports back to 1:1.</p> <p>C applied to the independent expert review pilot. Once the matter was accepted for review by the pilot, the NDIA offered 2:1 ratio care 24/ 7 almost immediately, with the provision that they will reassess once C is in the SDA.</p> <p>C decided to accept 2:1 24/7 with the SDA included.</p>
<p><b>Impact on participant/individual</b></p>	<p>Detrimental effect on C who missed 3 lots of sorry business during this lengthy process.</p> <p>The SIL provider introduced house mates in response to absorb the loss in funding and C lived with several successive housemates because they were all competing for support. C's Relationship with his SIL provider was impacted because of the strain on resources.</p> <p>C suffered frequent hospitalisations from UTI's as the care workers were not able to change his pads enough etc due to limited resources.</p>
<p><b>Systemic cultural issues</b></p>	<p>Communication on the part of the NDIS was poor. C's disability specifically requires face to face communication which never occurred. The interaction was culturally insensitive. Well documented evidence of C's requirements was not considered. There did not seem to be a person-centred focus in the decisions especially when cutting funding, isolating C from friends/family and culture.</p>

	<p>Client D</p>
<p><b>Brief outline of situation</b></p>	<p>Client D previously resided in single-occupancy SDA. The NDIA did not approve the funding for D to live at this accommodation</p>

	despite care team reports recommending that D resides on their own.
<b>Impact on participant</b>	D has Huntington’s Disease and is fully dependent on support workers to manage their daily care.
<b>Systemic cultural issues</b>	<p>The NDIA did not provide proper consideration of reports from medical practitioners and therefore did not understand the complications of D’s disability.</p> <p>The NDIA evidently did not review the evidence provided appropriately and did not provide adequate consideration of the progressive nature of Huntington’s Disease when making its decision.</p>

	Client E
<b>Brief outline of situation</b>	<p>Client E has a history of complex cognitive and physical disabilities and requires 1:1 24/7 support. Prior to the most recent NDIS plan Client E was receiving 1:1 24/7 support and has been living in a rental home that was purposely re-built for his accessibility needs.</p> <p>All E’s evidence highlights they will be at risk of death or serious injury without 1:1 support.</p> <p>However, in 2022 E’s plan was reduced to 1:3 support without consultation and approved SDA funding without this being requested.</p>
<b>Impact on participant</b>	<p>As a result of the NDIA’s decision, E would have to move away from the home that he has been renting for 30 years and will be forced to move away from the community where they are a well-known and respected member.</p> <p>E’s wishes are to remain in their home and to be supported to continue living in their community. E’s disabilities result in them becoming distressed, dysregulated, and confused when there are small changes to routine.</p> <p>E is going through the AAT process and is utilising the plan funding at 1:1 to ensure they remain in their own home. They are under a significant amount of stress and the thought of this funding being utilised before the plan ends.</p>
<b>Systemic cultural issues</b>	The NDIA has a culture that lacks collaboration with the participant, their treating practitioners, informal supports and support coordinators. Instead of focusing on the needs and wishes of participants, the NDIA’s decision making is focused on cost-cutting at the detriment of NDIS participants.

	<p>The NDIA's culture of cost-cutting is resulting in an increase in the need for participants to engage in advocacy and legal resources which is draining these organisations' budgets and reducing the number of people that can be provided with assistance. Advocacy organisations are unable to assist all people who request assistance due to their limited resources. This often results in participants not being able to receive the necessary support that is required to access their appeal rights, and many give up on appealing the NDIA's decision and miss out on necessary funding and supports.</p>
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If you have any questions, please contact:

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