18 March 2026

To: **Secretariat, Joint Standing Committee on the National Disability Insurance Scheme**

Re: **Annual Report No. 2 of the 48th Parliament Inquiry**

Dear Secretariat,

I thank the Committee for the recommendations made in Annual Report No. 1, and pick up on several topics explored to make 14 further recommendations.

I consider all to be urgent.

In reviewing my commentary and recommendations on integrity measures and their relationship to other key issues, I ask the Committee to remember one key message:

Sustainability, flexibility and faithfully upholding our human rights CAN coexist with integrity.

It simply requires Parliament having the will to work *with* us and actively engage with the solutions the community proposes to get to the same place, without collateral damage.

Yours sincerely,

Cat Walker

[redacted]
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NDIS Supports and the role of Parliament in addressing and preventing adverse outcomes: A principles-based approach *can* coexist with integrity

1. As the Committee has acknowledged, significant concerns and negative outcomes resulting from the Section 10 NDIS and non-NDIS support lists have been raised by organisations and individuals. However, much of Annual Report No. 1's commentary on the consultations is based on summaries by the Department which substantially downplay the feedback and criticisms received.

2. The disability community and legal experts urged (and continue to urge) a principles-based definition of NDIS support in Section 10, and subsequently, in the Section 10 rules.

3. The Department acknowledges this, but at no point has any attempt been made to engage with alternative options. The Department's ongoing excuses for refusing this, insisting that Section 10 requires lists of things and services, lack evidence or substantive legal justification, and in any case, are refuted by legal submissions on the 2024 Bill.

4. In my submission to the 2025 DSS 'consultation' on Section 10, I highlighted issues of concern arising from revelations about the genesis of the purported need for legislative changes to insert a definition of support at Section 10, in the context of previously undisclosed raising of unlawful historic debts by the NDIA:

In Submission 183 to the second inquiry on the Back on Track No. 1 Bill, my co-authors and I had questioned the real goal of Section 10:

"One must question whether this is the real motivation for restricting the definition of NDIS support. It would certainly be an attractive shortcut to more convenient compliance interventions, but that path is fraught and unlikely to achieve genuine savings if it denies participants access to many cost-effective and practical supports. What's the point of the Wedding Tax argument if we are forced into using those charging Wedding Tax just to have some confidence our claims will be paid out in a timely manner?"

Unsurprisingly, that's exactly what an ANAO report just found: The Section 10 we were sold as reinforcing the constitutional basis by "implementing the CRPD" was really a bait and switch:

On 3 October 2024 the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024 came into effect, which amended the NDIS Act to strengthen the legislative basis for the NDIA's compliance activities by:

• Defining NDIS supports (section 10 of the NDIS Act)

Why? Because…

In May 2023, the NDIA received advice that it was limited in ***its ability to recover payments as debt****, due to difficulties in:* ***determining that spending was not in accordance with a participant's plan****; and setting a hard limit on plan budgets when supports were described generally in participant plans.*

What else did the ANAO report reveal?

*Lack of alignment with the NDIS Act (2013), resulting in the raising of **unlawful debts…***

I find it quite infuriating to have that confirmed when [we] had not only put forward an alternative in the same submission that took aim at compliance activities (as reproduced in the 2024 submission appended to this one), but demonstrated we were ready and willing to help build principles-based justifications into the claiming and audit processes.

What is the goal here? To claw back funds and limit spending for poisonous political reasons? Or to uphold the original intent outlined in the Objects and Principles?

*Because you're doing a fantastic job of making Australia a more hostile place to live if you need disability support, and the rhetoric of the last 14 months and the ANAO report strongly suggest it's the former. This rhetoric is making it **unsafe** for us.*

These lists and the sick narratives they were sold with have placed targets on our backs by deliberately eroding social licence and encouraging the wider community to assume everybody is rorting the Scheme, whilst making it impossible for us to get the support we actually need to achieve the intended outcomes of full inclusion and participation.

*I get that in some cases the 'right' support will cost more. But in many cases, the problem isn't how big a slice of the NDIS pie we get. **The problem is that the Government Approved Pie Recipe is inedible, overpriced rubbish we're expected to shut up and be grateful for, even if it makes us unwell – or causes a deadly anaphylactic reaction, and even if our own recipe would sustain us fabulously for half the price.***

5. It should be a matter of significance to Parliament that we were denied the opportunity to make submissions on the real purpose and driver for Section 10 before it passed in 2024, particularly when it betrays the predetermined intent for ignoring other options: A compliance shortcut.

6. The alternative Section 10 my co-authors and I proposed in Submission 183 to the second inquiry on the NDIS Bill 2024 was always less rights-restrictive. **This can coexist with integrity.**

7. I submit that Parliament has a constitutional and international obligation to consider such options, and should take responsibility for developing them with the community. This is underscored by the "disrespectful" (as the Independent Advisory Council called it) approach taken to development of the Section 10 rules, which is especially stark when placed in historical context.

8. The 2013 Rules were subject to exposure drafts and comply with the CRPD. The 2024 NDIS Supports rules – and to date, any changes to them – were not, and do not. More importantly, the 2013 rules permitted tailored and flexible responses to individual needs, including support needs which were – and remain – the difference between life and death.

9. The 2024 Section 10 rules, as we warned they would, have already resulted in preventable death.[1] This Parliament has the ability to fix this with the urgency it demands.

10. I do not discount the need for accountability over NDIS expenditure, and I remain as willing as I was in 2024 to explore the ways in which such a principles-based definition of NDIS support could be operationalised for compliance purposes, including at a public hearing with this Committee.

[1] Julie Cross, *Aussie mother loses disabled son while fighting the NDIS at Tribunal*, The Daily Telegraph (16 January 2026).

11. My concern is the lack of consistency in Section 10 and rules made under it with the intended outcomes of the NDIS – including giving effect to Australia's international obligations.

12. This is especially significant in the failure to preserve genuine discretion to accommodate individual needs and the ability of participants to live safely and with dignity, and in the further relationship to s45 and s46 powers which deem those outcomes irrelevant for the purposes of cancelling claims or determining a participant owes a debt, in the absence of merits review to dispute cancelled claims or the legitimate existence of a debt against a participant.

13. Ongoing harmful media narratives, including headlines in recent days I will not dignify with references, are plainly dog-whistling to all of Australia that people with disability should go back to being shut in and shut out:[2] That equal opportunity is not reasonable and necessary. That the only kind of support *people like you* can have is support which shrinks one's world to predefined boxes.

14. Accepting the premise of such narratives, any ongoing lists-based approach to Section 10 or further attempts to confine the scope of NDIS support would amount to endorsement of a dehumanising view of people with disability the NDIS promised to leave in the rearview mirror.

> ***Recommendation 1***
>
> ***Repeal ss 10(4) to (8) of the NDIS Act 2013 and substitute the previous definition and boundaries of s 34(1)(f) into s 10(4) as per Supports for Participants Rules 2013***

> ***Recommendation 2***
>
> ***Align Section 10 to the dominant purpose of support, to be interpreted consistently with faithful pursuit of the relevant international obligation(s) under the CRPD***

Scrutiny of NDIA interpretation of Section 45 and 46 events is essential

15. In 2024, my co-authors and I stated:[3]

> *It is extremely concerning to realise that the pre-payment review plan rolled out by the Scalable Integrity Responses Branch in recent months – and protections against the scenario highlighted in this case study – has specifically been omitted from the new powers inserted at proposed Section 45(4), let alone from having an associated reviewable decision.*
>
> *At present, we have a situation which allows the Agency to be judge, jury and executioner, potentially leaving participants without supports they may well be entitled to, no recourse to challenge the decision, and the risk of being pursued by private debt collectors on behalf of unpaid providers.*

[2] John Delmonico, *The media wants disabled people to be locked inside until they die*, The Shot, 18 March 2026.

[3] Cat Walker, Uli Cartwright and Kath Madgwick, Submission No 183 to Community Affairs Legislation Committee, *Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* (19 July 2024).

The Agency will report this as the number and value of "non-compliant" claims successfully stopped, without any mechanism for the validity of such claims to be scrutinised... Would the Agency be so quick to call this a success if they waited until the payments were made and reported on the number and value of debts raised against participants?

That seems doubtful, and the fact remains that keeping the Agency's fingerprints off of debts arising from cancelled claims for support already received could have dire consequences such as those we saw in Robodebt.

As the impacted individual put it:

> ***"In addition this episode has taken a toll on my [partner] who has scrupulously accounted for expenditure over 10 years and now feels like [they are] somehow at fault and also worries if we can't resolve this we will be saddled with the debt to the Service Provider (into several thousand dollars)."***

If the Agency believed in the "integrity" of its Integrity program, it would have recommended it be legislated.

It is essential that the Committee recommends amendments to enable scrutiny and legal challenge of this approach, including robust review rights for all decisions that are currently taking advantage of a non-reviewable No Man's Land to avoid scrutiny of compliance activities...

When all current reforms are being shaped to an arbitrary 8% target, a claimed "error rate" of 5% is a very attractive weak spot to squeeze perceived savings from.

We therefore must ask the question: Is this current program about genuine compliance, or is it going harder as part of an overall push to reach this ultimate KPI through any means necessary?

16. Recent correspondence shared with me demonstrates that ***Crack Down On Fraud*** is morphing into ***Crack Down On Legitimate Claims for Prescribed Disability Shop™ Assistive Technology.***

17. Predictably, the informal 'reconsideration' in the absence of statutory review rights confirmed the decision. The participant is now out of pocket. **This is exactly what we said would happen:**

At this point, it is worth revisiting the Robodebt testimony of whistleblower Colleen Taylor – awarded an Order of Australia Medal just today – of what she observed when the level of human involvement was restricted in favour of scale and savings, while still in the manual phase...

> *Ms Taylor expressed her earnest concern, "...as a Compliance unit, we should not be the ones stealing from our customers." When asked about that comment in oral evidence, she responded:*
>
> ***"Well, if we know there's no debt, and yet we're sending a debt notice out to someone, isn't that stealing?"*** [11]

[11] *Report, Royal Commission into the Robodebt Scheme, p. 126*

Even in the context of cancelled claims rather than debts raised, Ms. Taylor's perspective is an important one when discussing the Agency's stated 5% error rate, with no scrutiny of the risk that some of these determinations may well be wrong, or the consequences for participants who are left out of pocket, in debt or without support if their claims are cancelled incorrectly.

18. It is therefore disturbing to see in DHDA's Additional Estimates published last month, the note that ***Other Gains*** in NDIA figures to the value of more than **a billion dollars** is attributed to *"In-kind services contributions from state and territory governments,* ***Scheme payment cancellations****, reversal/write back of provisions."*

19. As we concluded in Submission 183 in 2024:

> *The Government may have recognised her as Colleen Taylor OAM today, but did they understand what she was trying to teach them?*

20. When it comes to Section 46, and approaching two years after the "media firestorm" my co-authors and I referenced in Submission 183, there is still no evidence the NDIA's decision-making in relation to Section 46 would withstand judicial scrutiny.

21. I lack time to reference all submissions and oral evidence of legal experts urging this Parliament to enshrine review rights for the Section 46 "compliance event." In brief, administrative law expert Dr. Darren O'Donovan explained to the Community Affairs Legislation Committee that this compliance event is the "birth of the debt", among other adverse consequences for participants.

22. I further refer to Dr. O'Donovan and Rick Morton's plain language explanation of the equivalent Robodebt situation in *Mean Streak*,[4] with **one** important exception:

> *Ryman and his team also introduced a new 'right of review' designed to trick a welfare recipient into thinking a Centrelink decision could be re-examined by a (usually) competent Authorised Review Officer (ARO).*
>
> *Under an ordinary review, a customer could test their case internally and then take it to the Administrative Appeals Tribunal for a fair(er) hearing. This official step was moved even further away from a person, if they even knew how to ask for it properly.*
>
> *'The customer has the right to request a reassessment of income details at any time,' Ryman's process map says. 'A reassessment is undertaken as part of the intervention process. The customer still has the right to exercise the formal review and appeal rights after this period.'*
>
> *Darren O'Donovan explains the chilling effect of this clinical statement.*
>
> *'So unless you asked for an authorised review officer to do a review, magic words right, unless you specifically asked for that you were getting checked by some lackey in the compliance unit,' he said.*
>
> *These intentional frustrations mirror the maddening dimensions of K's ordeal in Kafka's The Trial. In K's increasingly knotty legal drama there are no charge sheets and no legal records of the case, because the Court has simply deemed it unnecessary to release them either to the public or, indeed, the defendant or his counsel. That any plea could be constructed at all was done entirely by guesswork, based on inferences drawn from various interrogations which were themselves held in obscure locations hidden in a snarl of staircases and corridors.*

23. The exception is that, as Miles Browne of Victoria Legal Aid told the same Committee in 2024, ***"Well, in Robodebt, at least people could seek a review of their debt."*** In other words, the Parliament has *"simply deemed it unnecessary"* for participants to have any defence whatsoever.

[4] Rick Morton, *Mean Streak* (Harper Collins, 2024), 175-176.

24. Yet, at the time of writing, and despite my bringing this to the Agency's attention, there remains a false and misleading claim regarding seeking review of a debt on the NDIS website:[5]

> *We have safeguards in place to support participants*
>
> *We understand that managing an NDIS plan can be complex. That's why we've put safeguards and fair processes in place to support participants before a debt is raised…*
>
> *We consider individual circumstances before raising a debt. Participants* ***can request a review****, waiver, or write-off if needed.*
>
> (Bold emphasis added)

25. This **is not a statutory review right.** This is exactly the process Dr. O'Donovan was referring to in *Mean Streak* – and while it is no doubt the result of consistent criticism about the absence of s 46 review rights, it has the express effect of lulling NDIS participants into a false sense of security with ***no formal review right*** when they get the same answer.

26. *Mean Streak* won the Prime Minister's literary award, and yet NDIS participants are being exposed to the risk of substantially greater debts – or payment cancellations – without the same rights as Robodebt victims to challenge them.

Recommendation 3

Insert specific review rights for Section 45 and 46 determinations into Section 99

Recommendation 4

Insert an additional function of the NDIA at s118(1)(bb) of the NDIS Act to ensure all activities relating to s118(1)(ba) comply with the CRPD, are ethical, and uphold the highest standards of procedural fairness in all processes relating to participants, with regard to disability-related procedural accommodations and vulnerability indicators.

Recommendation 5

That the Committee require the NDIA to table all current operational guidance and policies regarding participant debt determination and management.

[5] *The NDIS supports transition period is ending* (3 October 2025). Captured changes available upon request.

The integrity conversation cannot be one-sided, and nor can accountability: We must be able to interrogate the integrity and ethics of NDIA decision-making, reporting and administration if we are to avoid adverse outcomes.

27. Relevant to ongoing discussions regarding integrity measures and lack of granular detail on non-compliant claims, I urge the Committee to review the joint Submission 183 to the NDIS Bill 2024 I co-authored with Uli Cartwright and Kath Madgwick in full.[6]

28. Given what was subsequently revealed about unlawful historic debts raised against participants – which was not only far too late for debate on the 2024 Bill but ultimately resulted in **24% of the 475 participant debts reviewed being revoked by the NDIA** – the issues we raised then, including those cited earlier, are part of the important conversations we still need to have.

29. This is underscored by the ongoing discourse playing out in a landscape where participants lack any pathway to seek external scrutiny of NDIA determinations of non-compliant claims falling within the statistics cited by the Agency, or indeed, determinations they have misused funds.

30. As we said in that submission (as quoted earlier), the previous 5% error rate claimed deserves significant scrutiny.

31. If that estimate has now doubled based on the volume of claims stopped, it requires even greater scrutiny: **Participants should not carry the risk or consequences of incorrectly cancelled claims or debts they may not lawfully owe without the right to challenge their basis.**

32. Parliament therefore should not accept such statistics on face value in the absence of dispute pathways and independent external scrutiny. However, such external scrutiny or audits which lack understanding of the relationship between highly individual disability impacts, contexts and support needs and instead rely on reductive, homogenised internal guidance, would nonetheless be inadequate for assurance purposes.

33. I make this submission in my personal capacity and as an individual, and all sources cited are in the public domain if not part of the Parliamentary record. However, and having now concluded my two-year term on the NDIA's Participant Reference Group, I make the following comments which are equally applicable to participants impacted by their own mistakes, or those of the Agency, which they currently have no genuine pathway to challenge:

    a. Since we made that joint submission, I have been involved in approximately six sessions on integrity processes, including debts.

    b. I stand by **every** concern I have previously raised and the lack of procedural fairness inherent in the Agency's approach to systems, business rules, and processes which are now rolling out at scale without any independent scrutiny to protect the rights of participants.

    c. I have consistently raised important questions in good faith. None of these have ever been adequately answered, including by current and former senior executives.

    d. I **do not** believe the NDIA can be trusted to self-assess the fairness of any changes made based on the historical debt review. I believe all findings and information it is based on should be made publicly available as a matter of urgency.

[6] Cat Walker, Uli Cartwright and Kath Madgwick, Submission No 183 to Community Affairs Legislation Committee, *Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* (19 July 2024).

e. I **do not** have any faith in the NDIA's capacity to prevent harm or self-assess compliance with the NDIS Act or 'lessons' from the Robodebt Royal Commission.

f. I believe review rights for Section 45 and 46 determinations are urgently required and that failure of this Parliament to enshrine them in the NDIS Act will see harm, death, and consequences amounting to far more billions in downstream impacts, including potential class actions should such harm ensue.[7]

34. **Section 45 and 46 review rights can prevent these predictable outcomes.** The further proposed changes to the Agency's functions at Section 118 would assist in improving accountability of NDIA decision-making enough to render them somewhat less frequently required.

> *Recommendation 6*
>
> *The NDIS JSC should conduct an extended inquiry (of no less than 12 months) into NDIA integrity activities, placed squarely in the rights-based framework of the CRPD; including:*
>
> *a) The Crack Down on Fraud program*
>
> *b) The historical debt review, including public submissions on all associated materials and reports (such as the Kordamentha report)*
>
> *c) Past and current debt determination and debt management policies*
>
> *d) Participant experience of NDIA integrity activities and decisions engaging s46*
>
> *e) NDIA media strategies and conformity of NDIA statements to media with Articles 3, 4, and 8 of the CRPD*
>
> *f) Integrity measures required to address participant experiences of fraud, sharp practices or consumer law breaches which currently lack cross-jurisdictional resolution pathways or are beyond the capacity of the Commission to pursue*
>
> *g) Conformity of participant-directed integrity measures with the CRPD, objects and principles of the NDIS Act, natural justice and other legal principles*

Consultation, co-design, and the need to prescribe an enforceable duty to consult capable of invalidating the outcome of noncompliant consultations

35. I am grateful to the Committee for its recommendations for more transparent consultations.

36. However, experience to date would suggest that this is insufficient without an enforceable duty to consult which is capable of invalidating the outcome should the Department or NDIA fail to do so adequately, fairly, accessibly, or before they have made the important decisions.

[7] *Exclusive: Misfeasance case paves way for robodebt action.* Rick Morton, The Saturday Paper (31 January 2026).

37. As Dr. O'Donovan recommended in 2024, the Gunning Principles offer procedural fairness criteria which, if not complied with, are an appropriate test for invalidating inadequate outcomes. The four criteria closely mirror those in General Comment No. 7 regarding Articles 4.3 and 33.3:[8]

> *At a minimum, propose we adapt the standard process of disallowance to reflect a commitment to co-design, scrutiny and transparency. In a scheme marred by the dark governance of closely held or redacted information,* ***an enforceable duty to consult*** *will anchor the scheme's future in the community not bureaucratic venues.*
>
> *The duty to consult should reflect the Gunning Principles,[1] namely:*
>
> *1. Consultation must occur when proposals are still at a formative stage, not when issues have been predetermined.*
>
> *2. There must be sufficient information to give 'intelligent consideration'*
>
> *3. Information regarding the proposal must be sufficiently available, accessible, and easily interpretable for consultees to provide an informed response.*
>
> *4. There is adequate time and 'conscientious consideration' must be given to the consultation responses before a decision is made.*
>
> *These are a proven mechanism for upholding the rights of people with disability to agency and impact assessment. They have been judicially recognised as a 'prescription for fairness' in policy-making.[2]*
>
> *[1] Formulated by Stephen Sedley QC (as he then was) in R v London Borough of Brent ex parte Gunning [1985] 84 LGR 168.*
>
> *[2] R (Moseley) v LB Haringey [2014] UKSC 56. See for instance: See for instance the United Kingdom case of R (KE) v Bristol City Council [2018] EWHC 2103 (Admin)*

38. Failure to adopt this recommendation in 2024 as an enforceable means of invalidating rules which violate such basic tenets mirroring those of the CRPD, has allowed the Executive to demonstrate it will not only continue as it wishes unless forced to comply, but go to even greater lengths to avoid meaningful feedback or accountability to it.

39. This was clearly demonstrated in the choice to silo 2025 engagement and cross-sector discussion even within the few parts of the sector engaged (per the graphic on p.6 of the *Getting the NDIS Back on Track – New NDIS Rules – Engagement strategy published in February 2025*), and if anything, has only escalated.

40. **The intent is obvious: To keep us all from having any genuine influence until it is too late.** This does not comply with the objects of the Act, or indeed, the international obligations at issue.

41. Moreover, fair and adequate further public consultation cannot be substituted for or fulfilled by DRO consultation alone: Participants and their families have a right to be consulted.

[8] Dr Darren O'Donovan, Submission No 56 to Community Affairs Legislation Committee, *Inquiry into the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]* (May 2024) 8-9.

42. While the Committee has already recognised and acknowledged some of these issues in its recent report, the reality is even more concerning and prompts me to bring further issues to your attention.

> ***Recommendation 7***
>
> ***Amend s209(3)(a) to provide that the Minister must comply with four principles before making Transitional Rules under amending Acts or any category of NDIS rules affecting the rights or obligations of participants under the NDIS Act 2013:***
>
> ***a) Public consultation must occur when proposals are still at a formative stage, not when issues have been predetermined; and***
>
> ***b) There must be sufficient information to give 'intelligent consideration'; and***
>
> ***c) Information regarding the proposal must be sufficiently available, accessible, and easily interpretable for consultees to provide an informed response; and***
>
> ***d) There is adequate time and 'conscientious consideration' must be given to the consultation responses before a decision is made.***

Sanitised consultation statements or briefs pose serious risks to NDIS participants by erasing the risks. Dissenting reports would enable scrutiny.

43. In practice, the requirement for consultation statements has failed to address or honestly acknowledge the weight of our concerns, much less offer any safeguard by prompting deeper scrutiny: Consultation statements to date substantially sanitise feedback received, including on material risks to participants which have since resulted in preventable deaths.

44. While that may not immediately seem a high priority, I draw the Committee's attention to relevant matters in the sealed Robodebt chapter tabled this week; specifically, matters relating to the APS Code of Conduct rather than the six NACC referrals.

45. Although it remains unknown whether these were among the 12 individuals ultimately found by the APSC to have breached the Code of Conduct or APS Values, a key reason for the Commissioner's referrals of individuals who subsequently spent years in NDIA executive/SES roles was that they:

> ***"...adopted words in a brief to the then Secretary of DHS that attempted to put a positive spin on the alarming results of a pilot for what would ultimately become the Robodebt Scheme and thereby fail to uphold the standard of frankness and candour in the provision of advice that should be expected of a public servant in their position."***

46. My experience and observations of reforms to date is that such 'positive spin on alarming results' – or feedback – is a culture so pervasive, and a tendency I have so frequently witnessed and personally encountered, as to suggest this is completely normalised, in spite of the seriousness of the risks many of us have raised to the Department, NDIA or Ministers offices along the way.

47. Academics Adam Hannah and Linda Botterill explored the nature of such patterns in detail in their paper, ***'Ignoring harm, saving face: non-knowledge, senior public servants and the Robodebt scheme.'***[9] For example:

> *"Strategies of non-knowledge go beyond an unintended lack of awareness or bounded rationality (see Hannah et al. 2023). Rather, policy actors may strategically cultivate claims to not know or deliberately avoid acknowledgement or inscription of inconvenient or troubling information, to preserve a favourable status quo or to protect organisational or individual reputations (Boswell and Badenhoop 2021; Howlett 2023; McGoey 2007; Stark and Head 2019) …*
>
> *[We] highlight four specific strategies used to avoid grappling with these fundamental issues:*
>
> ***1. Avoiding consultation***
>
> ***2. Knowing what not to know and not to ask***
>
> ***3. Non-inscription of inconvenient knowledge***
>
> ***4. Repetition of exculpatory narratives and focus on things that 'did not matter'.***
>
> *…*
>
> ***Considering the role of non-knowledge in the Robodebt case moves us to a murky area of policy practice which sees inconvenient or 'uncomfortable' knowledge ignored, obfuscated, hidden, or discredited in policy development and implementation.***
>
> ***In this way, we contribute to calls for scholars to pay greater attention to the 'dark side' or 'malign' policy-making*** *(Howlett 2020; Legrand 2022; McConnell 2018) and to the issues of strategic ignorance and knowledge avoidance in the policy process (Hannah et al. 2023).*
>
> *The case suggests that when individuals – reacting to implicit organisational priorities, as well as interactions with their superiors – perceive the costs of 'knowing' to be high,* ***they will employ a varied range of strategies of ignorance or non-knowledge.*** *These range from failing to ask obvious questions and deliberately avoiding those who might offer a critical view, avoiding inscription of 'bad news', and focusing on minutia at the expense of more fundamental issues.*
>
> *Importantly, while the results were unethical, in the context of the Departments of Human and Social Services during this period, they can hardly be described as irrational for the individuals deploying these strategies.*

[9] Hannah, A., & Botterill, L. C. (2025). Ignoring harm, saving face: non-knowledge, senior public servants and the Robodebt scheme. Australian Journal of Political Science, 60(2), 149–162. https://doi.org/10.1080/10361146.2025.2486108

***There were few incentives for individual public servants to think seriously about the social costs of their actions**, especially at a senior level and especially not compared to the risks of disappointing a Minister or enduring media scrutiny.*

Clearly, the knowledge and experiences of those the two Departments are meant to serve, namely welfare recipients, have been sidelined in favour of convenient narratives around fraud, fanciful projections of budget savings, and obsessive monitoring of media reporting."

48. I am increasingly unable to shake the view that these reforms echo such knowledge avoidance or strategic non-knowledge, despite the continual hope our concerns will be taken seriously.

49. I personally have lost count of the occasions on which such non-knowledge has risen to the rather dystopian level of being told *"to reject the evidence of [my] eyes and ears."*

50. Illustrative examples range from flatly denying the existence of differing public advices or guidance documents, despite the documents proving otherwise, to the claim in a 2024 DSS Ministerial brief obtained under FOI that the ***"The NDIA is working with DRCO, the IAC and PRG to define the substitution arrangements. Items for replacement will be identified such as commercially available household items."***

51. I therefore suggest that the Committee should keep such possibilities front of mind at any time evidence from officials or Ministers diverges significantly from community feedback, or dismisses community concerns as 'anxiety', misinformation[10] or lack of understanding without engaging with substantive concerns.

52. The truth is that the PRG were **not** consulted on what would be eligible, let alone the mechanics of the substitution arrangements.

53. Major concerns expressed were not answered (many of which, in fact, ended up baked into the process), extremely inadequate information was provided and still drip-fed, and risks identified were largely if not wholly ignored, as they were for s10 broadly.

54. It was of further concern that the direct request I made to the Department for the opportunity to have our views accurately reflected in the eventual s10 rule consultation statement was never provided.

55. As is nonetheless reflected in one PRG meeting summary:

"PRG members said they do not support the lists." [11]

56. The following recommendation is proposed on the basis that Parliamentary scrutiny must be adequate to capture serious risks omitted, dismissed, or substantially erased by inappropriate positive spin in discussion papers, consultation reports, briefs seeking Ministerial approval of instruments, or the resulting consultation statements.

[10] I further suggest that the frequent invocation of 'misinformation' by Government in the face of clearly-evidenced criticisms or valid questions about **lack** of information, undermines public trust more broadly.

[11] Participant Reference Group Meeting Summary (14 August 2024). https://www.ndis.gov.au/news/10454-participant-reference-group-meeting-summary-14-august-2024

Recommendation 8

Insert at s211(3): A person, body or organisation may submit a dissenting consultation report to the Senate Standing Committee for the Scrutiny of Delegated Legislation during the disallowance period

This section should further provide that:

a) Any such dissenting reports are to be tabled in the Senate during the disallowance period.

b) Dissenting reports raising human rights issues are to be brought to the attention of the Joint Committee on Human Rights for consideration during the disallowance period.

57. In the interim, I urge the Committee to explore Parliamentary mechanisms for such 'peer-review' during the disallowance period.

58. I also strongly recommend an ongoing inquiry be referred to the Human Rights Committee until the conclusion of all NDIS reforms, given the exemption of all instruments from sunsetting, the widespread delegation of significant elements to legislative instruments and NDIS rules, and the inadequate opportunities for scrutiny to date, including human rights impacts in implementation.

Recommendation 9

Human Rights Scrutiny Committee to inquire into all NDIS legislation and delegated legislation and monitor human rights impacts in implementation

59. Lastly, I recommend that NDIS rules should not be permitted to commence until after the disallowance period. It is not reasonable for the disallowance period to be democratically useless if Parliament is reluctant to interfere with implementation of rules which have been delegated to the Executive Government against the Handbook position that ***"rules which have a significant impact on human rights and personal liberties"*** and ***"procedural matters which go to the essence of the legislative scheme"*** are ***"generally implemented only through Acts of Parliament."***

60. As such, I further recommend that delegation of measures which belong in the Act and deserve robust Parliamentary scrutiny and inquiry be revisited and where appropriate, repealed.

Recommendation 10

Insert a requirement that NDIS rules may not commence until after the disallowance period

Recommendation 11

Failure to consult on full exposure drafts of any NDIS rules or transitional rules should be immediate grounds for disallowance.

> ***Recommendation 12***
>
> ***Repeal provisions of the NDIS Act which inappropriately delegate the following matters "generally implemented only through Acts of Parliament":***
>
> - ***"rules which have a significant impact on human rights and personal liberties"***
> - ***"procedural matters which go to the essence of the legislative scheme"***

Upstream safeguards requiring amendments to the NDIS Act to ensure Section 32L needs assessments achieve positive outcomes rather than harm

61. I appreciate the Committee's recommendations responding to community concerns over New Framework Planning, Support Needs Assessments, and the lack of transparency or genuine consultation. However, these recommendations are insufficient to address the serious risks present, and Government needs to go much further if New Framework Planning is to succeed and prevent harm.

62. I strongly recommend New Framework Planning be immediately halted until further safeguards are enshrined in the NDIS Act and meaningful, transparent consultation is undertaken in the form of full parliamentary inquiry and scrutiny, including sufficient time for the community to be heard.

63. I believe the Department and NDIA have waived any right to be trusted with this responsibility, and that Parliament should not be delegating such a responsibility to the Executive at all, but rather fulfilling Australia's international obligations under Article 4.3 by overseeing such consultation itself, including by inviting more community members to appear as witnesses.

64. I further strongly oppose proceeding with New Framework Needs Assessments conducted by NDIA-employed or contracted needs assessors. It is unacceptable that the NDIA and Government have proceeded on this basis despite consistent feedback and concern about conflicts of interest, choice and qualifications of assessor. I support the proposal published by OTSi on 31 January 2025[12] for independent delivery through the Medicare Benefits Schedule and recommend amendments to the NDIS Act be moved to this effect.

> ***Recommendation 13***
>
> ***New Framework Planning should immediately be halted until full Parliamentary inquiry into all draft rules and operational materials has occurred, with adequate, accessible, and substantive opportunity for members of the disability community to be heard on legislation and policy impacting them, before the important decisions are made.***

[12] *Delivering Trauma-Informed, Best Practice Support Needs Assessment for the National Disability Insurance Scheme (NDIS) through the Medicare Benefits Schedule*, Occupational Therapy Society for Invisible Disability (OTSi, 31 January 2025).

Recommendation 14

The NDIS Act be amended to incorporate the following upstream safeguards into support needs assessments (s32L):

- *Insert subsection 32L(1A): Assessment must be undertaken by an AHPRA-registered professional independent of the NDIA and of the participant's choice*
- *Insert subsection 32L(4)(ab) to ensure assessors must have regard to information or reports provided by the participant*
- *Proposed subsection 32L(10): Assessed need for any ancillary support to be funded under the NDIS in order to carry the intended outcome of an NDIS support into effect*
- *Proposed subsection 32L(11): Requirement for quarterly independent evaluation sampling quality and accuracy of needs assessments, to be published within 30 days*
- *Proposed subsection 32L(12): Needs assessment must relate assessed needs to findings of material fact with disclosure of any information held by the Agency supporting those facts*
- *Proposed subsection 32L(13): Assessor or CEO may override needs assessment if reasonably necessary to capture complex needs and/or facilitate a tailored and flexible response to individual needs of the participant*

Endnote: Communications received earlier today underscore the need for urgent Parliamentary intervention to hold the Department accountable

65. Despite the recommendations of the Committee tabled last week, the provider newsletter sent out by the NDIA earlier today states:

> *"The Department of Health, Disability and Ageing is reviewing feedback from the recent public consultation to **finalise** the rules.*
>
> *Once this work is **complete**, we will share more information to help participants and providers **understand** the new way of planning."*

66. It would therefore appear the Department has no intention of changing course despite joint statements and the overwhelming consensus that danger lies ahead and exposure drafts must be fully disclosed and properly consulted on.

67. I also observe that this reads as an admission that the Department failed to provide sufficient information for any of us to **"understand"** the new way of planning before they **"finalise"** the rules.