Villamanta
DISABILITY RIGHTS LEGAL SERVICE

Submissions to the

Joint Standing Committee on the National Disability Insurance Scheme

Performance of the National Disability Insurance Scheme

15 August 2025

About Us

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990. We are funded to provide advocacy under the National Disability Advocacy Program, NDIS Appeals and the National Legal Assistance Partnership Agreement.

Villamanta engages in the following activities which inform this submission:

- **Telephone Information Service** – our intake team receives around 2,000 contacts per year from people with disability seeking assistance.
- **Advice calls** – our legal team provide discrete advice to over 300 people with disability per year. Many of these are about NDIS Appeals, or else about their NDIS experience.
- **NDIS Appeals** – our representation of clients at the AAT provides us ongoing insights into how the current legislation and rules are working for different participants.

Villamanta have been providing NDIS Appeals support since 2017. In this time, we have assisted over 1,900 people with their NDIS concerns, representing 343 people at the Administrative Appeals Tribunal.

Contact

Naomi Anderson, Legal Practice Manager

[redacted]

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Acronyms

Administrative Appeals Tribunal	AAT
Administrative Reviews Tribunal	ART
Alternative Dispute Resolution	ADR
Explanatory Memorandum	EM
National Disability Insurance Agency	NDIS
National Disability Insurance Scheme	NDIS

Executive Summary

The past year has been a challenging one for NDIS participants.

Aside from legacy issues of delays in plan reviews, there have been both legislative changes and apparent policy changes within the NDIA which have created uncertainty and negative outcomes for participants.

Specific shifts in approach, including eligibility reassessments, funding periods and a focus on eliminating 1:1 support has been implemented without any evident risk assessment from the NDIA, causing significant hardship to participants. Furthermore, ART concerns about procedural fairness have not resulted in improved processes.

The targeting of a participant, and revocation of their access outside of the NDIA's operational guidelines, has been received as a threat to the advocacy community, of which a high proportion are either people with disability or their family members.

The significant increase in appeals to the ART is not matched with any increase in advocacy funding for participants, leaving huge numbers of participants unsupported in what is an unduly adversarial process.

The NDIA have obligations as a model litigant which are demonstrably not being upheld.

It has been a very tough year.

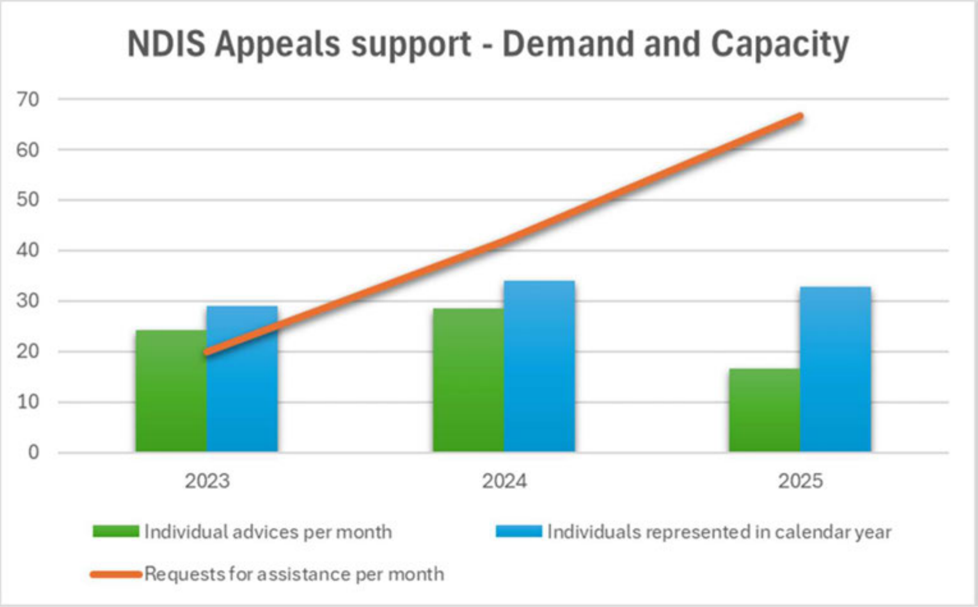
Introduction

We thank the Joint Standing Committee on the NDIS for the opportunity to provide evidence about the performance of the NDIS since legislative changes made in 2024.

Our submissions are based on our experiences with the clients we represent, and the people to whom we have given advice. They are also based on the discussions our intake team have with the hundreds of callers we cannot assist. Our submissions are also based on the feedback from 460 people who have attended our community forums in the past 14 months, the majority of whom have had no support dealing with their NDIS issues.

OUR WORK IN THE NDIS APPEALS SPACE

The volume of requests for assistance with NDIS appeals received by Villamanta has continued to increase significantly.[1] However, the funding for NDIS Appeals and advocacy services has not increased to match, with our capacity to assist remaining comparatively fixed.[2]



Our previous strategy of providing an advice call to individuals where we do not have capacity to provide ongoing representation has become less popular in the last 12 months. People no longer want advice; they want support.

Despite the fact that we cannot assist all the additional callers, we still have to respond to every contact. This impacts our capacity to thoroughly triage and identify those at greatest risk. Our intake team are constantly dealing with highly distressed people who have not been able to access support despite contacting numerous organisations.

Likewise, our capacity to provide representation has reduced as matters remain under appeal longer. We note that the number of new appeals tripled between March 2024 and September 2024,[3] and that this rate has continued through the next three quarters. Our current experience is that both the ART and

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[1] Data for 2025 has been annualised for comparison purposes.

[2] Note that the data above has different timescales for comparability. Advices and requests are monthly averages, representation is an annual count.

[3] NDIS Quarterly report Q4 2024-2025, page 39

the NDIA are struggling with the workload, and every step of the appeals process is taking longer than it ever has before.

All of our clients who have had appeals to the ART have reported this to be a very stressful and frustrating experience. They are appealing because they require supports which have not been funded. Those supports are necessary for them to live a good life, and in the majority of the matters we are involved in, the supports are required for fundamental needs such as safety, the ability to eat, bathe, get dressed, keep their home in a sanitary and safe condition, and attend medical appointments. Any more fulfilling goals such as making friends, working or volunteering, being part of community activities, attending a family function or celebration, are not even in consideration while they battle to have their basic needs met. The time spent in appeal is often experienced as wasted time, with their life on hold and in a state of perpetual anxiety and crisis management.

Our lawyers report acute frustration with the power imbalance when acting in these appeals. While the external lawyers engaged by the NDIA may be acting in good faith to the best of their ability, they are frequently waiting on instruction and unable to progress the matter. Meanwhile our lawyers are receiving frequent calls from their clients who are deeply distressed and anxious about their predicament.

Aside from the legislative and policy changes discussed below, callers are stating the following concerns:

- Rollover of successive plans has occurred and this has meant there has been no consideration of the evidence about the participants needs. Participants have had plans that are underfunded for some time, and their requests for an actual review of support needs have been ignored.
- NDIS funding has been cut for no apparent reason and contrary to the available evidence of support needs.
- Payment requests are being denied for reasons that participants do not understand, leaving them out of pocket or with debts to providers.
- Participants who have been through the external review process and resolved the dispute by agreement are having the same issue recur a year later when the plan is due for review. It certainly does seem to us that some participants are targeted or vulnerable to having repeated issues, but the reasons for this are unclear.
- Participants are being hospitalised due to lack of funding for supports, despite not requiring medical attention. This is not only a misuse of the health system's resources but a destructive experience for the participant who is ostensibly locked out of their own life and relationships.

For reasons that are unclear to us we have had a significantly higher demand from both Aboriginal participants and the CALD community.

Anecdotally we have also had more reports of participant mortality. It is difficult for us to gauge the significance and cause of this, especially given that there are very few reasons for legal assistance to be sought after the participant has passed away.

> The participant has a diagnosed psychosocial disability and has been receiving support through the NDIS in recognition of this. In 2022, the NDIS declined funding for psychology supports. As a result, we pursued a formal review process, ultimately escalating the matter to the AAT. Following this, weekly psychology sessions were funded in her plan. In the 2025 plan review, the NDIS removed funding for psychology supports.
>
> Bianca Keep Connected Support Coordination

NOTE: In the following section we provide case studies to illustrate the issues discussed. Given the revocation of access of a participant for their advocacy, there is a generalised anxiety in the community about making public statements. Where we have consent, we have used names and photos to be clear with the Joint Standing Committee that these are real people and they are struggling. Others have provided limited consent and they have pseudonyms or initials. Other clients had nobody who could consent and we have had to be silent on their stories. Those are generally the most difficult situations, and we hope that the courage of those who have consented to sharing their story assists you to understand on behalf of those who couldn’t.

What has changed?

LEGISLATIVE CHANGES

Impairment Notices

Within the legislative changes commencing 3 October was a requirement at s 32BA that the CEO provide participants with a notice of impairments, stating the category of impairments for which they have been accepted.[4] These notices were to commence on 1 January 2025 for new participants, but no timeframe has been announced for existing participants.

Funding Periods

Within the legislative changes commencing 3 October was a provision to segment NDIS plans into funding periods, allowing for a gradual release of funding. The EM explains that the purpose for shorter funding periods is to 'safeguard participants where others may seek to exploit or coerce the participant to use their package in a way that is not consistent with their best interest'.[5] It is also described as 'discretionary and will add to the safeguards available where there are concerns around a participant's safety and wellbeing'.[6] These restrictions were to only occur in set circumstances, and flexibility will be the standard approach 'wherever possible'.[7]

POLICY AND PRACTICE CHANGES

Eligibility Reassessments

In November 2024, NDIA's acting chief executive, Scott McNaughton, told Senate estimates that in the last six weeks 7,487 eligibility reassessments had been conducted, implying this process commenced sometime mid-September. Noting that a team of 95 staff had been hired to conduct 1,000 reassessments per week, this change was a policy decision of the Agency and not a result of the legislative changes which did not commence until 3 October.

The EM states that the power in regards to the revocation of participant status is to only be used 'when it is abundantly clear that a participant no longer meets the eligibility criteria'.[8]

Policy Shift Towards Shared Supports

Towards the end of 2024 there was a distinct shift in the Agency's position on people receiving 1:1 supports and a clear policy objective of funding 1:3 supports instead. We have had multiple ART appeals matters where individuals with extremely high needs and demonstrable inability to share supports have had their funding reduced on the basis that they should only be funded for 1:3 supports.

We are hearing reports of this shift from NDIS appeals advocates across the country.

Funding Periods

From 19 May 2025 the NDIA started implementing the funding periods discussed above. However, rather than the stated intent that they would only occur in set circumstances, and flexibility will be the standard approach, new plans were issued with three or even one month funding periods.

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[4] In order to provide clarity around the requirement in s 34 to only fund supports for those impairments which had met access requirements.

[5] Explanatory Memorandum, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, page 2.

[6] Explanatory Memorandum, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Schedule 1 – Amendment, page 18.

[7] Explanatory Memorandum, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, Schedule 1 - Amendments, page 19.

[8] Ibid, page 8

This includes plans where funding is replenished while the matter is before the ART.

THE ADMINISTRATIVE REVIEW TRIBUNAL

On 14 October 2024 the Administrative Appeals Tribunal ceased and the Administrative Reviews Tribunal commenced. The EM states that the objective is a new federal administrative review body that is user-focused, efficient, accessible, independent and fair.[9]

MODEL LITIGANT OBLIGATIONS

When the NDIA appears at the ART they have obligations to act as a model litigant, including:

- Dealing with appeals promptly and not causing unnecessary delays
- Making an early assessment of the matter and resolving legitimate appeals without litigation
- Acting consistently in the handling of appeals
- Endeavouring to limit the scope of the matter, including engaging in ADR
- Not requiring the other party to prove a matter the NDIA knows to be true
- Monitoring the progress of the matter and attempting to resolve
- Ensuring that a decision maker is present for negotiations
- Not taking advantage of an Applicant who lacks resources to litigate their matter
- Apologising where the NDIA is aware that their lawyers have acted improperly

While these obligations are not new, we remind the Joint Standing Committee of them in relation to the current status of matters before the ART.

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[9] Explanatory Memorandum, Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024, paragraph 1.

What Has Been the Impact to Participants?

THE VIEW FROM OUR INTAKE TEAM

Our intake team receives requests for assistance from many more people than we are able to support. While the reports from our legal team are reflective of the experience of our priority cohort, the observations from our intake team are a broader reflection of the community perspective.

- A significant increase in demand, with callers reporting cuts to their NDIS funding and being unable to access the supports they need
- Long delays for any kind of review, resulting in people taking matters to the Administrative Reviews Tribunal as "deemed decisions", an additional step that would not be needed if the Agency met its Participant Service Charter timeframes
- More matters are being met with intransigent conduct by the NDIA at the Tribunal, resulting in an increase in other funded advocacy services seeking our assistance for support with their work
- An increase in turnover in the advocacy sector generally. It seems burnout is causing turnover, which results in knowledge loss within the organization and challenges supporting clients.

Earl[10]

A Villamanta intake worker spent over an hour on the phone with Earl, who stated he wanted to tell his story so things could change.

Earl has multiple disabilities and was a victim of institutional abuse. In 2022 Earl had his NDIS access revoked, and subsequently reinstated for another disability. Earl states that this disability is not the one for which supports are most needed, but the choice was made for him.

He was given a new plan but there was insufficient funding and he was unable to get the supports he needed. When contacting the NDIA about these concerns Earl says he was put down, spoken to with disrespect and when he requested a trauma informed approach, it was denied. Due to insufficient supports Earl was unable to do basic daily tasks such as grocery shopping and daily hygiene routines. Earl says his mental health deteriorated rapidly, and at one point he considered assisted dying.

Earl did an FOI request and was appalled when he received the documents back. He says he was retraumatised reviewing the documents due to the way he was spoken about by the NDIA. He described it as making them feel "less than human". He can now no longer engage and is not using his plan, meaning he is without supports. Earl called right before his appointment with his psychologist so he would have mental health treatment after retelling this experience.

IMPAIRMENT NOTICES

The tight nexus between "approved" disability and funding for supports has exposed significant issues with the participant records held by the NDIA. We have had **multiple reports of impairments being "switched off" or "end dated"**, resulting in an incorrect descriptor of the individual in question.

The impairments held on record by the NDIA are invisible to participants, and in the case studies that follow, the nominees for these participants were unaware of the issue until they were provided with a Statement of Issues at the ART. Where internal advice is sought it is demonstrably based on incorrect foundational information.

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[10] Not their real name

We see no evidence that risk assessment is occurring in this process; it seems more clear that the push to only fund for shared supports is the primary driver, and even internal reviewers are not raising concerns that the materials on file do not match the technical advice being received. The most vulnerable individuals are being affected by this and those that support them are undergoing extremely stressful appeals while fearing for the safety of their loved ones.

Pearl[11]

Pearl was born with Down Syndrome and a moderate intellectual disability. At age 16 she was struck by a car as a pedestrian and sustained a Traumatic Brain Injury (**TBI**). Post-accident neuropsychological testing revealed irreversible cognitive and profound behavioural changes. Pearl is now 45 and in the years since her TBI has also been diagnosed with Impulse Control Disorder and Obsessive Compulsive Disorder.

The Statement of Issues filed by the NDIA stated her disability as “Down Syndrome, moderate intellectual disability, impulse control disorder and obsessive-compulsive disorder”, even after requests to correct this.

The supports Pearl required prior to her TBI were entirely different to those she needs now, however on the basis of the impairments acknowledged by the Agency, those supports cannot be funded. On the basis that the supports were previously funded, it can only be assumed that a change has been made to the impairments recorded in the NDIA system.

There is ample evidence that Pearl cannot share supports and that she and those around her suffer negative consequences when this is attempted. At the time of writing, she does not have sufficient funding to pay for her supports until the end of the month. If the Agency agrees to replenish her funding while the matter is at the Tribunal, funding periods will automatically be implemented, accelerating the progression towards her supports being withdrawn due to absence of funding and placing her at grave risk.

> *Since 2021, on professional advice, our family made the difficult decision to transfer my sister into Supported Independent Living (SIL) care arrangements. Her behaviours of concern had become unmanageable at home, and my mother’s age and poor health meant she could no longer provide the level of care required.*
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> *Since then, our experience has been one of constant struggle and despair. Continued challenges for additional funding, constant change and under-skilled care resourcing to be managed, My mother and I are constantly required to help the systems that are supposedly there to help us. I could make extensive lists here to demonstrate the struggle of the last four years, but what is most disappointing to me is that, despite years of medical evidence supporting her need for higher-level funding, she remains in unsafe, unstable housing without the essential support she needs. The system forces us to fight for even the most basic care — it truly feels the system's goal is to wear families down until they are too exhausted to continue.*

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[11] Not her real name

> *I am still here fighting, but my mother's health has been irreparably damaged by the sacrifices she has made. Families should not have to risk their own wellbeing simply to secure safe, basic living conditions for a loved one.*
>
> *Is this how our government wants to support its most vulnerable citizens?*
>
> *Lastly, I want to thank the few people in our team that we have been lucky to meet and have been willing to go above and beyond their remit to help us. If it wasn't for them we would simply be in a much worse position and I truly feel sorry for all other families out there struggling though this system. – Jonathan, nominee and brother of "Pearl"*

Further, there is no agreed process for adding impairments once the NDIA has removed them (or have not recorded them in the first place). Some participants are told to make a change of circumstances request, others to make a new access decision. One participant seeking to add an impairment relied on the advice to make a new access decision but was then informed their entire access was being reassessed.

Even once the NDIA has agreed a condition meets the access criteria and can be included as part of the disability for which funding can be allocated and spent, the decision before the ART is about supports and not access, so the agreement as to impairments is not generally recorded in any decision of the ART.[12] Decisions about impairments made by the NDIA at the ART have been overridden by the NDIA's technical advice team in subsequent plans, leaving participants without recourse.

FUNDING PERIODS

From 15 May 2025 we started to receive both an influx of calls, but also new plans, reflecting a NDIA decision to commence implementing funding periods. Rather than the standard 12 month plan, people had a new time period inserted, called a funding period. A twelve month plan could have four funding periods of three months, 12 periods of one month, or a range of different periods for different components of the plan.

We refer to the statements from the EM at the time the legislation was passed, that the gradual release of funding is to 'safeguard participants where others may seek to exploit or coerce the participant to use their package in a way that is not consistent with their best interest'. It was also to be discretionary, would only apply in specific circumstances, and flexibility would be the standard approach.

In our work we have seen people whose plans have been defrauded and all their funding stripped by criminals posing as service providers, so we can see how a gradual release could prevent this occurring, especially if it's application was limited to specific circumstances.

That is absolutely not what happened.

Funding periods have been implemented for everyone, automatically, and NDIA staff and lawyers are claiming that they have to do this because of the legislation. Some have gone so far as to state we should take it up with "the Minister" because their hands are tied.

That is absolutely not the case, the legislation does not require that they enforce a gradual release of funding, and in certain circumstances it is downright dangerous.

- Funding periods are resulting in crisis for those with underfunded plans at the ART. Where previously they would use their funding at a higher rate than anticipated while the matter works its way through the ART, now they will hit a funding cliff when the gradual release runs out.

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[12] We have seen this occur in one decision, after significant advocacy for this outcome. However other advocates report members have declined to do this.

- Funding periods for things like assistive technology and complex assessments prevent participants accessing the funding. If they have to wait for 9 or 11 months to have the full amount released, the price will have increased by then.
- Funding periods can prevent meaningful work from taking place. Some supports such as Behaviour Support and Support Coordination are generally more intensive at the commencement of a plan and then taper off. Releasing funding in smaller increments over time prevents this front loading which is often crucial to ensuring safe and coordinated provision of supports in complex cases.

Rebecca[13]

In a directions hearing recently, the ART stated that the earliest possible hearing of the matter would be November. Rebecca's nominee stated "I don't know if she will be alive that long." The NDIA's lawyer tried to extend the timeframe because they considered the ART would be assisted by an Independent Medical Examination.

Meanwhile the participant, who is in a palliative stage of their life, is unable to be supported overnight due to the underfunded plan and funding periods of one month. Our lawyer has requested the NDIA remove this restriction, but they declined.

Rebecca is not at risk of fraud, but she is at risk of neglect and harm. The nominee has grave fears that Rebecca will die alone due to this decision, rather than her preferred outcome, which is to be supported in her final months and pass in the presence of family, if that is possible.

JW

JW's grandmother, Aunty commenced an appeal at the ART in March 2025 after his intellectual disability had been removed from the accepted impairments. This resulted in a funding reduction and it was impossible to provide JW with the supports he needed for his safety and wellbeing.

The NDIA subsequently confirmed it had been "end-dated" but could not explain why this occurred. At the time of the application, Aunty stated that the funding was running out and the matter required urgent attention.

Some weeks after the application Aunty was contacted by the NDIA Case Manager and she raised her concerns about the imminent depletion of funding. The Case Manager stated he would resolve this. He did not.

On 22 May 2025 the ART issued a direction that the NDIA respond to this by 29 May 2025. They did not.

On 2 June 2025, we also wrote to the NDIA about the immediate risk to the Applicant who was now out of funding, and when we had no response from the NDIA's external lawyers, we escalated within the NDIA's legal team.

When the funding was replenished it had a complex set of funding periods imposed that effectively meant JW would be at risk again almost immediately. There were one month periods, three month periods and 12 month periods. Aunty was at a loss to understand the very long and complicated document. She has very real fears for JW's welfare while this matter is at the ART.

The next stage of the matter involved the NDIA completing an action by 7 August 2025. They did not, and at the time of writing have refused to do so.

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[13] Not her real name

> *The participants are the ones that are suffering because the ones making the decisions don't know diddly squat. They just sit in their office and get their information from books. They ought to get out in the real world. There's a flow on effect to the families of these participants who are left to pick up the pieces. I'm 68. Who can I trust to look after him when I'm gone? He can't look after himself. That is a constant worry on my mind every day. - Aunty*

ELIGIBILITY REASSESSMENTS

Anton[14]

The NDIA made a reviewable decision on 19 June 2024 to revoke Anton's access to her funding and plan. On 17 July 2024, Anton's access to the NDIS was completely revoked, and Anton lost access to her funding and supports completely.

After requesting an internal review on the matter, which subsequently affirmed the NDIA's previous decision, Anton appealed this decision with an application to the ART on 26 July 2024.

Anton had her access reinstated with funding available from 20 May 2025, a full month and a half after the agreement between the parties was made. Note that by this time, Anton had been without adequate support for 307 days or ten months.

When examining the materials provided in relation to the revocation, and subsequent materials attained under Freedom of Information, it because clear that the revocation had occurred at the direct instigation of the CEO, outside of the Operational Guidelines, and in response to Anton's public advocacy. This revelation has sent a shock through the disability community, with the very real possibility of retaliation from the NDIA for advocacy.

Veronica

Veronica's access to the NDIS was revoked on 9 September 2024. Following an unsuccessful internal review she appealed to the ART on 27 October 2024.

Villamanta applied for a stay of the revocation on Veronica's behalf, in order to restore her access to supports while the matter was before the ART. In it's decision, the Tribunal stated that "the manner in which the **Respondent has approached the revocation in this case is troubling**. The impact of the loss of services on a vulnerable person with a disability or medical conditions is serious and has a much greater impact on their health and quality of life than the continued provision of those services on an interim basis to a single individual would have on the Respondent." [15] (emphasis added)

The ART also went on to say: "The NDIA could have obtained an independent functional assessment of the Applicant in response to this advice, rather than revoking her access. There was no impediment to it doing so. If it had done so, and this assessment had supported a view that the Applicant does not have a substantial impairment in the domain of mobility, the revocation decision it made would have been on much firmer ground than that on which it presently stands. It is arguable that this would have been the best procedural course considering the TAPIB advice. **The issue of whether there is a reversed onus in the case of a revocation of access has not been firmly decided by the Tribunal or the Court, but it is arguable in law that there is**. It is the removal of a benefit conferred by beneficial legislation and

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[14] Not their real name

[15] https://austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/43.html, 52

such a reversed onus has been found in other administrative law matters dealing with the removal of benefits and the raising of debts of social security payments."[16] (emphasis added)

We remind the Joint Standing Committee of the expectation in the EM that the revocation powers would only be used when it is abundantly clear that a participant no longer meets the eligibility criteria. Clearly this is not the case, given both individuals had access restored. The stress cased by this process and the loss of supports is considerable, and such decisions should not be made lightly. As reflected in the statements of the ART, it is arguable that the onus is on the NDIA to prove that the participant does **not** meet the access criteria, rather than the participant being required to somehow guess what the NDIA holds to suggest that they don't.

> *The NDIA are very unclear about what evidence they require. This resulted in the revocation of my NDIA access. The NDIA only told me what evidence I needed to provide after my internal review was unsuccessful. This is completely unethical; I lost all of my supports. The NDIS is broken, and they need a completely new system: the 'National Disability Investment Scheme'.*

These concerns are underlined in the case of Colin revocation of access.

Colin

Colin was approved as an NDIS participant in around 2021. He than had his access revoked in May 2025. Given the many hurdles to achieving access and the level of evidence required, it is difficult to comprehend how this decision could be reversed four years later.

At the time of writing he has had no supports since 29 May 2025.

Villamanta assisted Colin to apply to the ART and seek a stay of the revocation decision on 18 July 2025. Despite numerous phone calls and emails to the ART, at the time of writing there has been no response to this application.

> *The NDIS is stuffed! The local area coordinator was hopeless and unhelpful. The NDIA have been completely unsympathetic and far from helpful too. I am suffering every day due to the NDIA's neglect and mismanagement of my case. My mental health is suffering, and my safety is compromised.*

SHARED SUPPORTS

In the latter half of 2024 there was evidently a shift in policy within the NDIA, resulting in us receiving an influx of requests for support from participants who:

- Have significant and complex disabilities

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[16] Ibid, 36

- Have had significant restrictive practices in the past due to trauma and behavioural responses
- Have multi-disciplinary teams who had provided reports over a number of years about the 1:1 support required and the bad outcomes when they attempted to live with others.

Some of these individuals have been discussed in case studies above, others could not consent. They are generally the people with the highest needs, and they are being told that they can only be funded at a rate of 1:3, which would require them to move into a group home.

That is not safe, and it is not reasonable.

A good proportion of these individuals have also had impairments removed from their records, which, if it occurred prior to the Home and Living Advice, would likely have resulted in incorrect advice. However, it does not explain why an internal reviewer doing an actual review would not have recognised that the evidence on file is entirely inconsistent with the recommendation made.

These matters are ending up at the ART, where they waste time in ADR. Given that this is clearly a policy position, the case manager has no authority to make a different decision. Meanwhile the underfunded plan then has funding periods implemented and the situation heads toward crisis.

We have a number of these matters, all with similar characteristics, and all headed towards some kind of crisis. Neither the NDIA nor the ART has shown any capacity to modify their approach in response to risks for these individuals and their supports.

Failure to respond to changed circumstances

An outdated building was to be destroyed and two of the three SDA residents were relocated. The NDIA was asked about how best to support the remaining resident who only had funding for 1:3 but needed 1:1 support, but this was not attended to for nine months. On appeal at the ART, funding was replenished, but in the interim there has been a debt of over half a million dollars accrued.

We have a number of clients with such debt issues. Aside from the debt itself, for which there is no clear mechanism of resolution, providers cannot continue to provide support and not be paid. At some point there will come a time when they simply cannot continue to support the participant, regardless of how dire their situation is. They then risk a social hospitalisation for an unknown period, entirely disrupting their lives, and often returning them to a place of significant trauma.

> *Broadly, we are seeing continuous reductions in support and very lengthy timeframes for Change of Circumstances, Access Requests, Appeals and Home and Living Applications. The general timeframes we are currently seeing are around 6 months which* ***often results in participants being without care or moving to hospital under social admissions*** *whilst awaiting decisions from NDIS.*[17]

THE ADMINISTRATIVE REVIEW TRIBUNAL

As noted, the ART was to be user-focused, efficient, accessible, independent and fair. To date we have not seen this as an outcome, which does not cause, but certainly does not mitigate, the issues with the NDIA's conduct at the ART.

As noted the NDIA are required to act as model litigants, including dealing with appeals promptly and not causing unnecessary delays.

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[17] Bianca Keep Connected Support Coordination

Minelle

Minelle is a proud Pitta Pitta and Gunggari woman, who was involved in an ART appeal. On 10 October 2024 the NDIA stated that they had legal advice that a particular support was reasonable and necessary and therefore should be funded in Minelle's plan.

Minelle needs culturally safe supports, so she was pleased to hear that the item would be funded, and she could start making arrangements with providers. Certainly, as it drew close to the Christmas period when people would start to be on holidays and with their own families, there was a risk of not having access to supports.

This is the level of sustained advocacy required to have the NDIA add the support to her plan:

- We emailed the NDIA on 17 October 2024 requesting this be progressed
- We emailed the NDIA on 6 December requesting an update on why this had not occurred
- We emailed the NDIA on 12 December to ask why this was not yet actioned and stressing the challenges for Minelle if this did not occur before Christmas. We were told the case manager still did not have authorisation.
- We escalated the issue within the NDIA legal team on 12 December.
- We received contact on 16 December apologising for the delay, but not confirming the status of the promised support.
- We followed up again on 18 December and were told the relevant materials were sitting with the NDIA's external lawyers.
- When they did not reply to our enquiry, we escalated within the NDIA's legal team again on 20 December.
- On 23 December the external lawyer stated they would respond on or before 15 January 2025. When we replied to this email, we received an out of office notification that the lawyer was already on leave.
- We escalated within the NDIA's legal team again on 23 December. We were advised the funding had been added to her plan. It was not.
- On 15 January 2025 the NDIA's external lawyers sent some questions about the breakdown of the funding.
- On 20 January 2025 we answered those questions and sought clarification of status.
- On 29 January 2025 the Respondent's lawyers provide some clarification but no update on status.
- On 3 February 2025 we requested an update on the status.
- On 7 February 2025 the NDIA's lawyers stated they would respond shortly.
- On 5 February 2025 we were told the funding had been added to the plan. It was not.
- On 10 February 2025 we were told that ART orders would be required to add the funding to the plan.
- On 11 February 2025 we requested the NDIA take whatever steps were needed to implement the funding.
- On 11 February 2025 the NDIA's lawyers provided a Statement of Issues in which they confirmed in writing the supports from the 10 October case conference, which still had not been implemented.
- On 18 February 2025 we made a formal complaint to the Deputy Chief Counsel in relation to the failure to fund these supports, and noting the following.[18]

> *Ms is extremely unwell, and spending more than half of her time in emergency admissions that are completely avoidable, and could have been avoided if she wasn't rationing her funding. She is about to be evicted from her tenancy and is attempting to attend medical appointments to determine if there is any explanation for her blackouts and collapses. Uncertainty right now is a significant risk to her ability to cope and I have real concerns for her mental health and physical safety.* This

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[18] We never did receive a reply to that complaint.

> *process, and the Agency's conduct, are literally putting Ms life at risk. She blacked out during the conference today and could not be roused until it was over.*

- On 20 February 2025 we requested an update on the terms of agreement the NDIA's lawyer was to have been drafting, in order to implement the supports.
- On 21 February 2025 draft terms were provided proposing a period of 6 months. This was over 4 months since the supports had been deemed reasonable and necessary. We resisted this due to the work taken to get to this point.
- On 26 February 2025 we were told that funding could be replenished if the matter remained at the ART after six months. Again we resisted, due to the extreme stress this was causing our client.
- On 28 February 2025 we received draft terms with a 12 month duration.
- On 4 March the NDIA's lawyer filed signed terms with the ART.
- On 11 March 2025 the ART remitted the matter back to the NDIA.
- On 19 March 2025 the NDIA's lawyers sent further queries in relation to the breakdown of the funded support.
- On 26 March 2025, a new plan dated 25 March 2025 was provided to the Applicant.

Five and a half months of follow up for a support that was deemed reasonable and necessary by the NDIA is a terrible stressor for the participant and complete waste of advocacy resources. That support was not even the substantive support in dispute.

When it came to resolving the substantive support in dispute, the NDIA again did not conduct itself in a manner appropriate to a model litigant. On 30 May 2025, the NDIA made an offer in unclear terms regarding the main support in dispute and subsequently signed terms of agreement were filed with the ART. On 24 June 2025 the ART declined to remit the decision to the NDIA, stating the NDIA can simply implement the supports. On 27 June 2025 the NDIA's lawyers provided a new plan, with **$8,337 less funding** than in the signed agreement.

More Evidence

There are a number of standard responses given by the NDIA when involved in an ART appeal. Firstly they will always say the Applicant needs "more evidence" even when it is abundantly clear they have not read (or understood) the evidence available to them in the T docs.

Then they will ask for a Statement of Lived Experience and/or a Carer Impact Statement. When a participant does so in good faith they can be horrified to have the NDIA use their own words against them. In attempts to argue that a support is parental responsibility, families have had felt accused of neglect or worse. In attempts to argue that a support is the responsibility of the health system, participants have felt accused of deceit, exaggeration, or outright cheating the system.

> *Families play a critical role in advocating for the rights of their loved ones with severe and lifelong disabilities. Yet they are being encouraged to write carer impact statements by the Agency and then having them used against them. Trauma responses are being reframed as mental health issues, rather than being recognised as unmet disability support needs. This has led to the misclassification of disability related impairments and the inappropriate shifting of responsibility to the health system, even in cases where long history of neuropsychological assessments confirms irreversible cognitive impairments and profound behavioural changes directly related to a person's disability. This undermines the core purpose of the NDIS, which was established to support people with permanent and*

> *significant disabilities and yet we are seeing disability related impairments being offloaded as not NDIS supports. Annette. Support Co-ordinator*

Another tactic is to request the SIL provider complete a 14 day record of supports provided.

The preparation of such a document is then used as evidence that no further support is required, with extraordinary inferences from the NDIA. The fact of the matter is that this is no evidence at all. For privacy reasons there will be no context in relation to what staff are rostered on or what the other resident of the house were doing or needed. Staff are not trained or instructed in completing these notes and it is not their role to be doing so. Their role is to be supporting the residents.

These strategies of the NDIA do not bring the matter any closer to resolution, but do take months and can negatively impact the wellbeing and health of the participant and their family in the interim.

Lastly, there are generally significant ongoing records of all the necessary information on file. There have been for years now, and the NDIA still insists on them being collected over and over again, despite there being no change. Arguing that a new Functional Capacity Assessment should be completed because the last one is from 2023 is absurd when talking about a fifty year old whose reports have read the same for three decades. Furthermore, it is an imposition on that individual and a waste of their therapy funding. A model litigant should not be making participants prove what the NDIA knows to be true.

> We have been supporting 2 wonderful brothers, 22-year-old participants with severe intellectual disability, autism level 3, nonverbal communication, epilepsy, PICA, and documented PTSD from early school experiences. They requires comprehensive assistance for all activities of daily living—behaviours support, feeding, continence management, mobility support—and continuous supervision to mitigate risks such as hazardous ingestion behaviours that have previously resulted in hospital admissions. Each annual plan review, their family and specialist support coordinator must assemble a full suite of assessments (occupational therapy, speech pathology, continence, and behavioural reports) to demonstrate that their condition remain severe and profound, despite minimal change over successive twelve-month cycles. These repeated requirements impose significant out-of-pocket costs and administrative burden. Bianca Phelan, Keep Connected Support Coordination