



Addendum to Notice of Concern: Use of Algorithmic Processes in NDIS Funding Decisions

Submitted to: United Nations Committee on the Rights of Persons with Disabilities

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Purpose of Addendum

This Addendum supplements the existing Notice of Concern lodged regarding systemic harm arising from the implementation of the National Disability Insurance Scheme (NDIS) reforms in Australia.

It raises a new and urgent concern regarding the possible use of algorithmic or automated decision-making processes in carrying forth the implementation of this legislative change; NDIS funding determinations, support needs assessments, and related administrative processes.

Central Question for Immediate Clarification

Are algorithmic or automated processes being used to inform decisions at any stage of any NDIS process?

This question must be directed to:

- The Minister for the NDIS
 - The Minister for Health
 - The Prime Minister of Australia
 - The NDIA CEO and Deputy CEO
 - All relevant senior executives of the NDIA and Department
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Basis for Concern

There is a clear and reasonable basis to believe that algorithmic or automated systems may be influencing or determining participant funding outcomes. This belief arises from:

- The unprecedented speed and scale of participant reassessments since September 2025
- The unusually high number of adverse decisions later overturned at the Administrative Appeals Tribunal
- The Australian Government's significant investment in "AI-enabled service delivery" across Commonwealth programs
- The involvement of senior officials previously associated with the Robodebt scheme in drafting key NDIS legislative instruments

Together, these factors establish a reasonable and credible foundation for concern.

Legal and Human Rights Implications

The introduction or use of algorithmic decision-making without transparency, consent, or oversight would violate the foundational principles of **legality, procedural fairness, transparency, and individualised consideration** under Australian administrative law, as well as key obligations under the **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**.

Risk of Breach of the UNCRPD

The potential use of algorithmic decision-making within the NDIS gives rise to multiple, serious risks of breach of Australia's obligations under the Convention.

1. Article 3 General Principles

States Parties must ensure respect for inherent dignity, individual autonomy, and full and effective participation in society.

Automated or class-based decision-making negates autonomy and dignity by treating people as data points rather than individuals.

2. **Article 4 General Obligations**

Governments must take all appropriate measures to modify or abolish discriminatory laws, customs, and practices.

The use of opaque algorithms risks embedding discriminatory practices within administrative systems.

3. **Article 5 Equality and Non-Discrimination**

All persons are equal before and under the law and entitled to equal protection and benefit of the law.

Algorithmic systems that classify participants by statistical similarity rather than individual need create indirect discrimination and systemic inequality.

4. **Article 12 Equal Recognition Before the Law**

Persons with disabilities have the right to recognition as persons before the law and to enjoy legal capacity on an equal basis with others.

Delegating decisions that affect rights and entitlements to an algorithm amounts to a denial of equal recognition and legal agency.

5. **Article 13 Access to Justice**

States Parties must ensure effective access to justice, including through procedural accommodations.

Automated processes obscure reasoning, making it impossible for participants to understand or challenge decisions, thereby violating the right to a fair hearing.

6. **Article 19 Living Independently and Being Included in the Community**

Automated funding reductions based on algorithmic classification may directly undermine the right to live independently and participate in the community.

7. **Article 28 Adequate Standard of Living and Social Protection**

Algorithmic rationing of essential supports threatens participants' access to housing, food, and basic supports, contravening Article 28.

The Problem with Algorithmic Parameters

Algorithms cannot function without parameters. A human being must always first set parameters for an algorithm for it to function. We tell it what to do, look for, research or organise. Prior to human ignition, it is static. A human being must first give it a set of boundaries to work within, in order to work at all.

Those parameters define the scope of the system and create **classes** by design. Once parameters are set, the algorithm divides people into groups based on shared characteristics or patterns, and those classes shape outcomes.

Such classification directly contradicts the NDIS Act's promise of *individualised, reasonable, and necessary* supports, as well as the UNCRPD's requirement for individual dignity and equality before the law.

Risk of Legal Liability and Class Action

If funding outcomes are being influenced or determined by automated systems, this could expose the Commonwealth to a future **class action** for unlawful or discriminatory administrative decision-making. This is because algorithms cannot function in the absence of the creation of a class.

It is reasonable to be concerned that this has already happened, with a key example being the cohort of 5-9 year olds with developmental Disabilities and/or who are Autistic issued with eligibility reassessments and with supports cut or reduced since the passing of the NDIS Bill.

Automated processes that generate or guide legal decisions without human judgment would likely breach the **Administrative Decisions (Judicial Review) Act 1977**, the **Public Governance, Performance and Accountability Act 2013**, and the **NDIS Act 2013**.

When coupled with the denial of procedural fairness, the risk of harm mirrors that seen in the **Robodebt** scheme, which was found to constitute unlawful debt recovery, breach human rights, and cause preventable deaths.

Financial Benefit and Conflicts of Interest

The Committee should request disclosure of all entities involved in the procurement, licensing, or development of any algorithmic systems used by the NDIA or Department.

Transparency is required regarding:

- Which companies or consultants are profiting from these systems
- The value and scope of related contracts
- Any financial, professional, or personal connections between these entities and government officials

The Robodebt Royal Commission demonstrated the danger of opacity and private profit in automated systems that make or influence public decisions.

A Human System Must Remain Human

Australia's common law system, for all its imperfections, is deeply and irrevocably human. It is built on context, discretion, and at its best, empathy - values that machines cannot replicate.

AI and algorithms may have limited uses. However, **human matters must remain human**. The NDIS Act is a human rights instrument, and the realisation of the promise of the UNCRPD. It must remain so.

Until full transparency, independent oversight, and participant consent are guaranteed, the only responsible and lawful course of action is to **turn the robots off** and to take a risk averse approach pending further information and community engagement.

Requested Action by the Committee

That the United Nations Committee on the Rights of Persons with Disabilities:

1. Seek immediate clarification from the Government of Australia as to whether algorithmic or automated systems are used in any NDIS decision-making processes.
2. Request that any such systems be suspended pending independent review.
3. Recommend that Australia reaffirm and comply with its obligations under Articles **3, 4, 5, 12, 13, 19, and 28** of the Convention.
4. Urge Australia to ensure that all administrative decisions affecting persons with disabilities remain human-led, transparent, lawful, and rights-based.

Submitted respectfully,

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