Joint Standing Committee on the National Disability Insurance Scheme PO Box 6100
Parliament House
Canberra ACT 2600

Via portal

Dear Committee Secretary,

Re: National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026

1 About the Victorian Office of the Public Advocate

The Office of the Public Advocate (OPA) is a Victorian statutory office, independent of government and government services, that works to safeguard the rights and interests of people with disability.

As Public Advocate I hold functions under the *Guardianship and Administration Act 2019* (Vic), the *Disability Act 2006* (Vic) and the *Medical Treatment Planning and Decisions Act 2016* (Vic) which relate to promoting the independence and human rights of people with disability and protecting people with disability from abuse, neglect, and exploitation. To fulfil these functions OPA provides a range of critical services for people with cognitive impairment or mental illness, including adult guardianship, investigations, advocacy, medical treatment decisions, advice and education. In 2024-25, OPA was involved in 879 new guardianship matters, 280 investigations, and 401 cases requiring advocacy. OPA runs an Advice Service which provided 9,149 instances of advice or information in the last year.

OPA is supported in its advocacy work by more than 500 volunteers across three volunteer programs: the Independent Third Person program (ITP Program), the Corrections Independent Support Officer (CISO) program and the Community Visitors program. Notably, our Community Visitors make unannounced visits to a range of supported accommodation settings, including NDIS-funded Specialist Disability Accommodation.

2 Public Advocate's general comment on the bill

I hold significant concerns for the safety and wellbeing of all people with disability if the *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* should pass in its current form.

Due to the time constraints of this inquiry, I will limit my contributions in this submission to the parts of the bill that I expect will most profoundly impact the human rights and safety of the people my office works with: people with decision-making disabilities (including people with cognitive impairment or significant mental health conditions). This group of participants frequently lack an informal support network and experience extreme social isolation: sometimes only interacting with paid support providers. This set of circumstances is known to increase their vulnerability to abuse and exploitation and acts to keep their perspectives and lives hidden from the general community.

3 Negative impacts of Part 2 of the bill: 'Limit unscheduled plan reassessments'

If this part of the bill passes unaltered, my view is that the changes therein will (together and separately) have significant impacts on the safety and dignity of the majority of NDIS participants my office engages with. The issues I detail below would also be felt by people with significant decision-making disabilities across the country and by everyone working to help them access the lives they want.

Part 2 includes clauses which seek to:

- Change who can request a plan reassessment (clause 18)
- Change what making a request entails (new compulsory requirements must be met or the request can effectively be ignored) (clause 18[1])
- Change how long the NDIA has to decide whether or not to grant your request (not to actually undertake it) (clauses 19 and 20)
- Seriously restrict the circumstances under which a request is able to be considered (Clause 21)
- Remove the pathway to appeal should the NDIA fail to respond to a request for reassessment (clauses 20 and 23).

Together and individually, these proposed Part 2 amendments would undermine the human rights of participants on multiple fronts, including:

- Unnecessarily removing decision-making rights from participants who require but are not able to lead their own plan reassessment request (undermining the right to make own decisions or, where desired, to access decision making supports)
- Undermining efforts to promote participant dignity and safety, especially in relation to inadequate or poorly considered NDIS plans (undermining right to safety)
- Preventing access to the Administrative Review Tribunal in situations where the NDIA fails to respond to the request within the legislated timeframe, or ever (undermining the right to appeal)

I illustrate these impacts below– drawing on both OPA's knowledge of the inaccessibility of NDIS systems and process for people with decision-making disability and OPA's experiences with adult guardianship clients– to show how and why people will be disadvantaged by these proposed changes.

3.1 Unnecessary limitations on participants' decision-making rights

In those cases where a person could not actively seek their own plan reassessment, amendments would prevent them from using person-centred, supported decision making practices to achieve this outcome by explicitly requiring the person submitting the request to

[1] New clause wording: "(2A) A request for a reassessment of a participant's plan must:
(a) be in the form (if any) approved by the CEO; and
(b) include any information, and be accompanied by any documents, required by the CEO.
Note: The CEO is not required to make a decision on the request if this requirement is not complied with (see section 197)."

have legally recognised substitute decision-making power for that participant (as either an NDIS nominee or guardian).

Legislating to actively prevent the use of person-centred, supported decision making practices in this way goes completely against Australia's commitments as signatory to the United Nations Convention on the Rights of Persons with Disabilities, as well as key principles guiding the NDIS Act itself.

My office has long spoken out, including in last year's publication Multiple Appointments, about the way in which the NDIS's inaccessible systems and processes (and now, perhaps, laws) have generated a greater need than existed pre-NDIS for people with disability to be reliant on substitute decision-making arrangements.

Aside from the fact that public guardianship bodies are not resourced to assist large numbers of NDIS participants with decision-making disability to navigate a scheme supposedly set up for their benefit, it is simply wrong to design a system that actively prevents the development of human rights-promoting supported decision-making– the less restrictive option for participants.

The government may rightly be concerned by the actions of some providers who are submitting requests for plan reassessment just to draw more money out of the scheme. However, the proposed amendment is an overcorrection that embeds unnecessary limitations on participant decision-making rights.

OPA recommends that:

Clause 18 is removed from the bill, and that any amendment to section 48 does not constrain participant access to current or future supported decision-making practices or opportunities.

3.2 Undermining efforts to promote participant dignity and safety

OPA has extensive experience with NDIS participants who have become subject to guardianship. At any point in time, since around 2019, OPA has annually held guardianship orders for around 900 Victorian participants. We are therefore knowledgeable about NDIS policies and processes and how they work (or don't work) for people with decision making disability. In our legislated role we regularly use NDIA administrative pathways in attempts to mitigate the safety and wellbeing concerns that led to our appointment.

As such, OPA guardians are very familiar with the current process for requesting plan reassessment. We use it regularly to address risks to the person's wellbeing that stem from having an inadequately funded NDIS plan.

The bill proposes an increase from 21 to 90 days for the legislated timeline the NDIA has to consider if a plan reassessment is justified. This would have significant impacts on our ability to protect the safety and dignity of people accessing disability specific accommodation and other essential services. While guardians may currently be able to convince a support provider to continue providing under-funded or precarious supports for a few weeks on the grounds that a successful plan reassessment might make the arrangement safe and sustainable, it is exceedingly unlikely that any provider will hang around for 90 days with no guarantee that an adequate funding package will be approved. Support providers responsible for assisting participants with their activities of daily living will cease services, and the person's life will be upended as they likely enter the local hospital through a social admission.

OPA recommends:

That clauses 19 and 20 are removed from the Bill – leaving the legislated 21-day response requirement in place.

Another issue is whether the bill's addition of criteria for requesting reassessment will enable advocates (and in our case guardians) to seek rectification of a poorly crafted plan. We regularly find that people with decision-making disability (and no informal supports) have been inadequately supported in the planning process and so are suffering due to an inadequate plan. We also have many examples of longstanding participants who do not currently have their disabilities correctly nor comprehensively recorded on NDIA systems– and multiple examples where poor NDIA administrative procedures resulting in a partial record of disability has directly contributed to a poor plan decision. This issue of poor NDIA documentation of existing disabilities is apparently widespread and well-known. It is of note that participants who become subject to guardianship do not usually have anyone in their lives who might have either intervened earlier regarding inaccurate recording of disability or taken on the role of NDIS nominee (who is able to operate as a substitute decision-maker for NDIS decisions).

OPA recommends that:
Clause 21 is removed from the Bill. If not removed – amend clause to include wording that enables the reassessment of plans that were developed based on insufficient information.

In OPA's experience, the request for reassessment process is already administratively onerous. The bill will require requests to be submitted in a very specific format and to include a specific set of information in order for the request to be considered by the NDIS. These compliance hurdles will further limit the number of people willing and able to support a participant to seek more adequate plan funding. Supported decision making services and advocacy services will need to engage in more time-consuming administration tasks to comply with the new legislation – making them less available to support other people. Informal supporters may spend significant unpaid support hours caught up in bureaucracy. Public guardians will struggle to comply due to the increased administrative workload demanded. Further, they may not actually have access to the information that will be required by this part, limiting their ability to undertake their safeguarding role.

OPA recommends that:
Clause 18 is amended to delete proposed subsection 48(2A).

3.3 Removal of right to appeal

The proposed removal of the current section 48(4), which OPA regularly uses to seek action to mitigate participant safety and wellbeing issues, is the removal of the right to appeal in the circumstance that the NDIA does not respond to the request within the legislated timeline. In OPA's experience this delayed response is a frequent occurrence. If the bill proceeds, OPA's current successes in using the section 48(4) pathway to seek safer outcomes (sufficient funding) for participants through to the Administrative Review Tribunal will be out of scope for many.

It is true that the CEO can still reassess a participant's plan on their own initiative. However, our experience is that this occurs rarely in relation to our guardianship clients. If the bill proceeds, appeal and advocacy options seeking redress of poor NDIA practice or other plan

OPA recommends:

inadequacies will be limited to reminding the NDIA that we are waiting for a response and hoping for the best.

OPA recommends:
Clauses 20 and 23 are removed from the bill – the right to appeal when the NDIA fails to respond to the person's request for reassessment should remain.

4 Part 6: Comments on Ministerial Discretion and 'financial sustainability'

I have serious concerns about the consequences for participants should the bill's proposed Part 6 changes be implemented. I note that these changes will enable significant funding cuts to be made to whole categories of participants without parliamentary oversight. It is also drafted to prevent access to appeals processes in situations where a person's funding becomes untenable following plan cuts stemming from a Minister's decision.

The changes proposed in Part 6 have the potential to re-make the NDIS to such an extent that it becomes unrecognisable. Part 6 changes see the scheme stepping away from its well-understood goal of promoting the social inclusion of people with significant functional support needs by adequately funding 'reasonable and necessary' supports to one stating at the outset that this goal might just be too expensive.

Wholesale cuts to entire categories of plan supports by 'legislative instrument' – read at the Minister's discretion – will be enabled by this bill (see clause 68). Here I will briefly highlight the likely outcomes of this part of the bill for the people my office works most closely with: adult NDIS participants subject to public guardianship. The vast majority of this group of people are socially isolated and often completely reliant on paid supports to meet their needs. This part of the bill, including clause 68, is designed to make explicit that the amount of funding in a person's plan will ultimately be decided by how much the scheme can afford as opposed to how much it actually costs to deliver the supports that have been deemed by the NDIS as 'reasonable and necessary.' (See, for example, clause 60 'provide NDIS supports for participants in the National Disability Insurance Scheme that are reasonable and necessary, *so far as is consistent with the financial sustainability of the scheme.*')

In practice, and consistent with our experience with NDIS participants, if a support category is not funded at the level required to deliver those supports, NDIS providers will not be able to provide them and participants will go without. Going without adequate funding in relation to a person's supported independent living arrangements due to poorly crafted plans (for example, inadequate participant-to-staff ratios to maintain everyone's safety) already regularly results in 'social admissions' to public hospitals. These changes would result in more pressure on public
health systems, while also undermining the capacity building efforts that the scheme was built to promote. Demand for other crisis response systems will also increase.

Not meeting a person's disability support needs does not make those needs disappear. It shifts the person into crisis mode. These proposed changes will place new forms of demand onto other service systems – mostly those services funded by States and Territories. I particularly want to emphasise that each hospital social admission costs the public significantly more per day than an adequately-funded supported independent living arrangement would. Clearly, arguments about the need to ensure 'scheme sustainability' are being made without consideration of the significant costs that will then accrue to other tax-payer funded systems.

This brings up another clear issue with scheme governance decisions that Part 6 seeks to evade. In a federal system, agreement between the state and territory level governments

OPA recommends:

should be reached to ensure that people are not caught in fights about service scope and responsibility. The

current document that speaks to jurisdictional responsibilities is more than 10 years old and was never fit for purpose (see The Applied Principles and Tables of support to determine the responsibilities of the NDIS and other Service systems | Australian Government Department of Health, Disability and Ageing). My office has been recommending for years that this document needs amendment as we are often appointed to be guardian for people who are suffering due to jurisdictional responsibility disagreements.

Instead of taking a collaborative path to determining responsibilities, which would protect people from being left without services, this bill seeks to hand this task to NDIA staff. Under Part 6, the NDIA would be able to decide which jurisdiction (service system) should be responsible for meeting an assessed disability support need, and, if they did not deem it an NDIS responsibility, the NDIS would not fund it. I note that this part does not require that the other service system could meet the identified need, just that they should be the one to do so. As above, the experiences of my office strongly indicate that this change would result in hospital admissions and worse.

Scheme costs will go down, but other tax-payer funded service costs will surely rise and people will be effectively abandoned.

Finally, under Part 6, participants will not have the right to administrative appeal after a plan cut arises from a Ministerial decision to cut funding across a category of support. These cuts will most impact people who are already very socially isolated and have no one in their lives willing or able to fill the support gaps created by these cuts.

As Victoria's Public Advocate, I foresee that passing this bill in its current form will generate a substantial increase in welfare and safety concerns for people with disability which will further increase the use of public guardianship across the country. An increase in guardianship is completely at odds with the tenets of the scheme promoting autonomy and supported decision-making for people with disability.

OPA recommends:

That the likely financial outcomes of this bill be re-investigated to include explicit consideration of the increased costs to be accrued to non-NDIS, tax-payer funded services.

OPA recommends:

That interjurisdictional service responsibilities should be decided by agreement between governments, not by the NDIA alone. Delete clause 70 from this bill. Amend Part 9 as necessary to reflect this.

OPA recommends:

That Part 6 of the bill be deleted. Noting particular concern about the inclusion of clauses 60 and 68.

5 Part 3: A backwards move towards a decontextualised model of disability

Finally, I am extremely concerned by the shift away from a whole-of-person approach to understanding a participant's disability support needs. The social model of disability is a well understood and widely respected concept – the social model accepts that a person's

circumstances and social resources, along with the built environment, can either promote or undermine their agency and life outcomes.

Part 3 of the bill limits the scheme to funding only disability needs that arise 'directly' from their 'qualifying impairment'. Alongside the many concerns disability advocates have already raised about decontextualising a person and then trying to understand their support needs, I want to reiterate that the experience of my office is that many longstanding participants do not currently have their disabilities correctly nor comprehensively recorded on NDIA systems. My staff have been involved in more than a few administrative review processes seeking a more adequate plan for the person, only for it to come to light during this (intensive) process that previous funding
decisions had been made on a less than full understanding of the person's disability profile (even where these disabilities were clearly described in medical or allied health reports on file with the NDIA).

OPA recommends:

That Part 3 is removed from the bill. If Part 3 remains in the bill, re-drafting must ensure that the NDIA is not permitted to make funding decisions that rely on information about 'qualifying impairments' until they have conducted a thorough investigation to identify an existing participant's full set of 'qualifying impairments'.

6 Conclusion

Thank you for the opportunity to share how I believe aspects of this bill will negatively impact the people my office supports. My recommendations for change would also mitigate the negative impacts of this bill for many other people with significant decision-making disability. I would be happy to discuss my submission at your convenience or to give evidence to your committee. On request, I would be able to provide further contextual information or deidentified case examples drawn from our work with NDIS participants should it be helpful.

Sincerely

Dan Stubbs
Public Advocate

10/07/2026