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1 October 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: [REDACTED]

Dear Dr Popple,

NATIONAL DISABILITY INSURANCE SCHEME NEW FRAMEWORK PLANNING RULES

The Law Society is grateful for the opportunity to provide input to the Law Council of Australia to inform its response to the Department of Health, Disability and Ageing's (**Department**) Consultation Paper on the National Disability Insurance Scheme (**NDIS**) New Framework Planning Rules (**Rules**). The Law Society's Human Rights, Public Law and Privacy and Data Law Committees contributed to this submission.

Transparency of the "core needs" assessment tool

Under the Rules, the "core needs" assessment will be undertaken with the assistance of a modified version of the Instrument for the Classification and Assessment of Support Needs (**I-CAN**) version 6. We note that I-CAN has been developed in consultation with the disability community and is a tested form of needs assessment tool. However, we encourage the Department to publish details of the technical specifications of this assessment tool and explain, in lay persons' terms, how it is used to inform the assessor's decision. It will also be important to clarify the extent to which an assessor can exercise discretion when using the tool and override any decision made by it. Without such transparency, it will not be possible for meaningful analysis of whether such technology is appropriately designed, legally compliant and operating in accordance with good administrative practice.

We note that the assessment tool will collect a wide range of sensitive health information from the parties and therefore has significant privacy implications. These include the collection of personal information from affected individuals, the adequacy and validity of consent mechanisms, the collection and use of information from third parties, and the integrity, accuracy, currency and reliability of data used in automated processes. It will be important for the Government to further clarify whether this data will be used to improve the assessment tool (eg by aiding the speed or accuracy of assessments, or helping to identify inconsistencies or changes across a person's condition over time).

We suggest these transparency requirements should be supported by appropriate accountability mechanisms. This should include a formal assessment of the data used by the assessment tool, as is required by the new

transparency obligation under Australian Privacy Principle 1 for personal information and rights of review that provide for additional scrutiny and challenge in light of the use of automated decision-making.¹

The measures above are particularly critical in this context, given the inherent vulnerability of applicants for NDIS supports, some of whom may experience barriers to participation in administrative processes. In this respect, we note that concerns have been raised about the use of automated tools in comparable contexts. For example, we understand that the Integrated Assessment Tool is currently the subject of a Commonwealth Ombudsman investigation, including into whether its design permits human reviewers to exercise professional judgement in assessments and whether review pathways are accessible and effective.²

Training and accreditation of assessors

A National Disability Insurance Agency (**NDIA**) assessor is defined in the Consultation Paper as a “trained and accredited NDIA employee who undertakes a support needs assessment or replacement assessment for the purposes of section 32L of the *National Disability Insurance Scheme Act 2013* (Cth)”.³ We note, however, that the Consultation Paper contains little detail around what types of training and accreditation will be required. We suggest that it would be appropriate for the Rules to prescribe minimum professional qualifications and competency requirements for assessors, for example tertiary qualifications in the relevant field.

Role of support person during an assessment

The Consultation Paper notes that “participants can have a support person with them during the assessment, such as a family member, nominee or advocate”.⁴ We suggest that clear guidance be developed and published regarding the types of assistance that support persons may provide during an assessment, noting that the nature and extent of any assistance may vary significantly depending on a participant’s circumstances and support needs. Such guidance would promote consistency in the conduct of assessments and help ensure that participants, support persons and assessors have a shared understanding of the role that support persons can play in facilitating effective participation and achieving fair outcomes in the assessment process.

Use of evidence

There is limited detail regarding the evidence that may be provided and considered in preparing a support needs assessment report. We suggest it would be helpful for participants to understand the types of evidence they may be permitted or expected to provide in support of their assessment. It would also be helpful to understand whether, and in what circumstances, the NDIA may independently obtain evidence, either of its own motion or on request, to inform an assessment. Further, we consider it desirable that participants are afforded a meaningful opportunity to respond to any concerns or questions identified by an assessor before an assessment is finalised.

Clear guidance on these matters at the earliest opportunity would allow applicants and assessors to prepare for assessments, and help to enhance efficiency and ensure consistency and procedural fairness across different assessments.

Targeted assessments

Under the Rules, targeted assessments “will be used where a more detailed assessment of a participant’s needs is required” based on reports from a medical or allied health professional.⁵ We suggest that it would be useful to

¹ Australian Privacy Principle 1.7 was introduced by the *Privacy and Other Legislation Amendment Act 2024* (Cth) and will commence on 10 December 2026.

² Australian Human Rights Commission, “Commissioners welcome Ombudsman probe of automated aged care assessments” (Media release, 22 April 2026).

³ Department of Health, Disability and Ageing, *New Framework Planning Rules* (Consultation Paper, August 2026) 16.

⁴ *Ibid* 7.

⁵ *Ibid* 6.

publish guidance regarding the assessor's consideration of medical and other professional reports. This will be particularly important in cases where an assessor is minded to depart from an opinion contained within a report. Clear guidance would promote transparency, consistency and fairness in decision-making, particularly in cases of conflicting evidence.

We suggest participants should be permitted to provide relevant medical, allied health or other professional reports for the purposes of a targeted assessment, regardless of whether such reports have been specifically requested by an assessor. Participants may have existing evidence that assists an assessor's understanding of the nature, extent and impact of their disability and support needs. Providing the information to the assessor would support more informed and accurate assessments.

Replacement assessment

The Consultation Paper notes "if a participant is concerned about the assessment process or the report, the NDIA delegate will work with them to decide if a replacement assessment is needed".⁶ The circumstances in which a replacement assessment may be ordered will be determined under the Rules.

It is unclear whether arranging a replacement assessment is the only avenue to correct an error in the original assessment process or report. In the interests of efficiency of the scheme generally, and reducing burden on applicants, we suggest there should also be an avenue for an applicant to raise concerns about minor factual or administrative errors, rather than requiring a replacement assessment to take place.

Plan variation

The Consultation Paper provides limited information regarding the circumstances in which a participant may seek a plan variation. We suggest that it would be of assistance for applicants for the Rules to clarify when and in which circumstances this option may be available.

New support groups categories and items that NDIS will not fund

In the experience of our members working with NDIS participations, the application of the current definition of "standard item" disincentivises participants from adopting solutions to their needs which may be straightforward, practical and more cost-effective than items developed specifically for the purpose of disability support. In our view, exclusions of standard items should be limited to items that do not deliver a distinct functional benefit to the person with disability. Further, participant feedback should be sought on whether the new categories can be easily understood and applied.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney

President

⁶ Ibid 7.