

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

Submission to the Senate Community Affairs
Legislation Committee

1 June 2026

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA is the peak body representing plaintiff lawyers across Australia. Our members act for individuals who have suffered personal injury, including injuries arising from motor vehicle accidents and workplace incidents. We appear regularly in compensation proceedings before state and territory tribunals and courts, and have extensive experience advising clients whose needs fall at the intersection of the National Disability Insurance Scheme (NDIS) and the various workers' compensation and compulsory third party (CTP) insurance regimes.
2. The ALA welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee regarding the *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* (the Bill).
3. The ALA recognises the importance of ensuring the long-term financial sustainability of the NDIS. However, the Bill as currently drafted contains a number of provisions that will materially reduce the eligibility, entitlements and procedural rights of Australians with permanent disability — and will do so with a degree of executive discretion and a lack of parliamentary oversight that is inconsistent with the scheme's foundational character as a statutory entitlement based on need.
4. This submission identifies ten distinct concerns with the Bill. Each is addressed in a numbered section below. The concerns are not ranked by priority — each raises a serious issue of principle or practical consequence that the ALA submits warrants amendment. A consolidated table of recommendations is set out at a later part in the submission.
5. Further, we note the extraordinary brevity of the period for submissions. When the NDIS was first legislated, it was rushed by a year, fundamental design problems were identified and analysed and suggestions for delaying the scheme, and amendment to get things right, were rejected. Over 20 major inquiries into the scheme since, all identified the major design flaws. This latest Bill has fundamental problems, which if not remedied by removal or amendment, will guarantee the worst possible outcomes for some participants. The short period for consultation assures that past egregious mistakes will be repeated.

Background: The NDIS as a Needs-Based Scheme

6. The NDIS was established as a universal, needs-based scheme. Its foundational principle is that a person's disability support needs should be met regardless of the cause of their disability. This principle reflects the scheme's character as a no-fault social insurance system designed to provide reasonable and necessary supports to Australians with permanent and significant disability.
7. The ALA's membership has direct experience of the scheme's operation in practice. Our members regularly advise and represent injured persons — workers and road users — who have sustained permanent disability and whose needs fall at the intersection of the NDIS and alternative insurance schemes. The concerns identified in this submission are not abstract. They reflect the real circumstances of real people whom our members represent.
8. The ALA does not oppose the Bill's stated objectives of ensuring sustainability, preventing fraud, and clarifying scheme boundaries. Our concerns are directed at specific provisions whose drafting or design will cause disproportionate harm to vulnerable participants, introduce unjustifiable executive discretion, or produce outcomes that are inconsistent with the scheme's foundational character.

Concern 1: Discrimination Based on the Cause of Disability (Schedule 1, Part 9 — Section 25B)

9. Proposed section 25B excludes from NDIS eligibility any impairment arising from a workplace injury or motor vehicle accident where a workers' compensation or CTP scheme 'provides' for that impairment. The ALA submits that this provision is discriminatory in its effect, legally problematic, and — critically — directed at a problem whose existence and materiality has not been established.
10. Of particular relevance to the s 25B concerns, the ALA draws the Committee's attention to the fact that the existing legislative framework already addresses the overlap between the NDIS and workers' compensation and CTP schemes. The NDIS Act, Rules and bilateral agreements already operate to prevent double-dipping. Under the existing framework, the NDIS should not fund supports that are the responsibility of a compensation scheme. Where a compensation scheme provides support, the NDIS should not duplicate it. Where a compensation scheme does not provide support — because the person's entitlements have been exhausted, because the scheme does not cover a particular need, or because the person

has no ongoing entitlement — the NDIS can and does step in to fill the gap. This is not double-dipping. It is the safety net functioning as designed.

11. Against that background, the ALA questions the premise of section 25B. The Government has not identified, and the Explanatory Memorandum does not disclose, any evidence that the existing framework is failing to prevent double-dipping, or that persons with workplace and motor vehicle injuries are accessing the NDIS in a way that duplicates their compensation entitlements at material cost to the scheme. Before Parliament enacts a provision that will discriminate against an entire class of people with permanent disability on the basis of the cause of their injury, it should require the Government to demonstrate that the problem section 25B purports to solve actually exists, and that it exists at a scale that justifies the harm the provision will cause.

The problem section 25B purports to solve is already addressed by existing law

12. The Government's justification for section 25B is, implicitly, that persons with workplace and motor vehicle injuries are accessing the NDIS in a way that duplicates their compensation entitlements — that there is, in effect, a double-dipping problem requiring a legislative remedy.
13. The ALA submits that this premise has not been established, and that the existing legislative framework already addresses it. The NDIS Act, read with the Applied Principles and Table of Support (APTOS) developed through bilateral agreements between the Commonwealth and states and territories, already prevents the NDIS from funding supports that are the responsibility of a compensation scheme. A person with a workers' compensation or CTP entitlement does not receive the same support from both the compensation scheme and the NDIS. Moreover, the NDIS can already take into account lump sum compensation when approving NDIS funding through the application of the Compensation Reduction Amount. This prevents 'double dipping' in circumstances where someone has exited a workers compensation or CTP insurance scheme with a lump sum.
14. What the NDIS does — and what it was always designed to do — is supplement gaps where compensation entitlements are insufficient or where the person's needs extend beyond what the scheme covers. This is not a design flaw. It is the scheme functioning as intended.

15. The Explanatory Memorandum does not identify any evidence that double-dipping under the existing framework is occurring at scale. It does not quantify the problem. It does not identify cases where the current framework has failed to prevent duplication. It asserts a problem without demonstrating it. **The ALA views that this is an insufficient basis on which to enact a provision that will, as demonstrated in sub-sections 3.2 to 3.4 below, discriminate against an entire class of people with permanent disability and remove the NDIS safety net from some of the most vulnerable participants in the scheme.**
16. The Committee should require the Government to produce the evidence base for section 25B before the Bill proceeds: specifically, the data on the cost and scale of NDIS access by persons with workers' compensation or CTP entitlements, disaggregated to show the extent to which that access represents duplication of existing scheme coverage as opposed to supplementation of gaps in it. Without that evidence, the Committee cannot assess whether section 25B is a proportionate response to a real problem, or a significant restriction on rights in search of a justification.

The same disability; different rights

17. Consider two people, each with paraplegia requiring full-time support coordination, home modifications, assistive technology, and community participation funding. Their functional impairment is identical. Their support needs are identical. Their prognosis is identical.
18. The first person acquired their paraplegia in a diving accident. They have full access to the NDIS. Their needs will be assessed and funded on the basis of what is reasonable and necessary.
19. The second person acquired their paraplegia in a workplace accident. Under section 25B, their impairment may be excluded from NDIS eligibility entirely. They are directed to a workers' compensation scheme that may not provide a commensurate, or even sufficient, level of support.
20. Entitlements vary significantly between jurisdictions. They do not uniformly provide the breadth of support the NDIS offers — including community participation, support coordination, and capacity-building — nor do they necessarily operate on a needs-based assessment model. The person's supports are also subject to the financial and political circumstances impacting the alternative schemes but, under the amendments, would no longer have the safety net currently provided by the NDIS.

21. The result is that a worker injured in New South Wales may receive substantially different support from a worker with an identical injury in Queensland, and both may receive support that falls far short of what the NDIS would provide. Section 25B locks in that inequality, jurisdiction by jurisdiction, with no floor, no consistency, and no review. Under the existing framework, the NDIS fills the gaps where compensation entitlements are insufficient. Section 25B removes that safety net.
22. This will create inequalities, with some people receiving less supports for the same injury or disability.
23. These two people are not differently disabled. They are not differently needy. They are treated differently for one reason only: the circumstances in which their disability occurred. Section 25B makes the NDIS a scheme for some people with permanent disability, but not others — not because their disability is less real or less significant, but because of where they were standing when it happened. The NDIS was intended to a safety net to mitigate such inequities, not create them.

CRPD compatibility

24. The CRPD, ratified by Australia in 2008, requires that persons with disability enjoy their rights without discrimination of any kind. Article 28 recognises the right to an adequate standard of living and social protection, to be provided without discrimination. Articles 4 and 5 collectively require States Parties to take all appropriate measures to ensure that persons with disability can exercise their rights on an equal basis with others.
25. The CRPD Committee has made clear that discrimination includes indirect discrimination — measures that appear neutral on their face but have a disproportionate adverse effect on persons with disability. Section 25B, by excluding from the NDIS a class of persons defined by how they acquired their disability rather than by what their disability is, produces precisely that effect. The Government has not provided a CRPD compatibility analysis of section 25B.
The ALA submits that such an analysis is essential before the Bill proceeds.

Section 25B should be removed entirely

26. For the reasons outlined above, **the ALA recommends that Section 25B should be removed for the Bill.**

Concern 2: CEO Determination of Cause of Impairment Creates a Support Vacuum (Schedule 1, Part 9 — Section 25B)

27. Section 25B confers on the NDIA CEO the power to determine whether an impairment 'arises from' a workplace injury or motor vehicle accident for the purposes of the exclusion. This is, in principle, a straightforward factual inquiry. In practice, it is anything but.

Causation disputes are protracted and legally complex

28. In compensation law, questions of causation — whether an injury arose in the course of employment or from a motor vehicle accident, the degree to which an impairment is attributable to a pre-existing condition versus the accident, and the extent of consequential injury — are among the most contested issues in litigation. They frequently require multiple independent medical examinations, expert evidence from different disciplines, and adjudication. In the workers' compensation and CTP context, eligibility disputes can take up to two years or more to resolve before a tribunal or court.

29. Section 25B requires the NDIA CEO to make a determination on precisely these questions — without any apparent obligation to defer to the outcome of compensation proceedings, and without procedural rules ensuring access to the same standard of evidence applied in compensation tribunals. The ALA is deeply concerned that the CEO will make a finding that an impairment arises from a compensable event, thereby excluding it from NDIS eligibility, in circumstances where eligibility for the alternative workers compensation or CTP scheme is yet to be determined.

30. In such circumstances, a person could be denied NDIS access for the duration of the eligibility proceedings — potentially two years or more — only for a court to determine that they were never entitled to cover from the alternative scheme in the first place. The NDIS exclusion would have been applied in error, and the person would have been without supports throughout.

The trigger should be formal acceptance by the compensation scheme

31. Noting our objection to the entirety of Section 25B, if it is pursued it must be amended so that the appropriate trigger is the formal acceptance of liability by the relevant workers'

compensation or CTP scheme — not a determination by the NDIA CEO — and the benefits flowing subsequently. This would ensure that the exclusion only applies where the compensation system has actually accepted responsibility for the impairment; that the determination is made by the body with the statutory expertise and jurisdiction to make it; and that a person is not excluded from the NDIS while causation remains genuinely disputed.

32. Under this approach, an applicant whose compensation claim is pending would remain eligible for NDIS access in the interim, and the NDIA would be empowered to seek recovery from the compensation insurer upon acceptance of liability — consistent with models already operating in other insurance and public funding contexts.

Concern 3: The Word 'Provides' Captures Persons with No Ongoing Entitlement (Schedule 1, Part 9 — Section 25B)

33. Section 25B excludes an impairment where a compensation scheme 'provides' for it. The ALA submits that this language is overbroad in a manner that produces results plainly at odds with the provision's evident purpose.

Short tail insurance schemes

34. Some workers compensation and CTP schemes around Australia provide for injured people to be removed from the scheme at a certain point (for example, after a finite period of time or once it is determined that their injury has sufficiently improved). Affected people may receive a lump sum on exit but do not receive ongoing funded supports. The critical question is whether that scheme still 'provides' for such a person's impairment within the meaning of section 25B once they have exited that scheme.
35. On a plain reading of 'provides', the answer is arguably yes. If this reading is correct, a person who has received a lump sum and has no ongoing entitlement to care supports will nonetheless have their impairment excluded from NDIS eligibility. While it could be said that the lump sum provided on exit provides for the person's ongoing support needs, the reality is that this sum is unlikely to be sufficient in many circumstances for reasons completely out of the person's control. Removing the safety net that the NDIS currently provides will lead to some injured Australians having no support at all or, at best, a level of support much lower than that enjoyed by others with exactly the same disability who have access to the NDIS.

Ongoing, actual entitlement should be the test

36. Again noting our objection to the entity of Section 25B, if pursued it must be amended to make clear that the exclusion applies only where the person currently holds ongoing entitlements to receive supports from the relevant scheme. A scheme that once applied, but from which the person has exited by accepting a lump sum — or whose entitlements have been exhausted or have expired — should not constitute a scheme that 'provides' for the impairment. An appropriate formulation would require that the person 'is currently entitled to receive' relevant supports, rather than that the scheme 'provides for' the impairment.

Concern 4: Eligibility Threshold Delegated to Post-Passage Instruments (Schedule 1, Part 1)

37. The Bill replaces some diagnosis-based access criteria with a new threshold requiring an applicant to demonstrate a 'substantially reduced functional capacity' impacting daily life. The threshold and assessment methodology are not defined in the Bill — they are to be set by future rules and instruments developed after the Bill passes.

38. The ALA does not oppose the principle of needs-based assessment. However, the delegation of the substantive eligibility threshold to subordinate legislation — instruments that may not be subject to parliamentary disallowance — creates a fundamental accountability gap. Parliament is being asked to authorise a new eligibility framework without knowing what the threshold will actually require in practice. The Government has estimated that 160,000 current participants may be transitioned out of the scheme under the new criteria. The basis for that estimate, and the methodology that would produce it, is not disclosed in the material.

39. There also does not appear to be any transitional protection for existing participants who may no longer meet the new threshold when reassessed.

40. The ALA recommends that the substantive eligibility threshold — including the definition of 'substantially reduced functional capacity' and the methodology for its assessment — be included in primary legislation or, at a minimum, in disallowable instruments tabled before the Bill commences.

Concern 5: Unscheduled Reassessment Restrictions Entrench Deterioration (Schedule 1, Part 2)

41. Part 2 significantly restricts a participant's ability to seek an unscheduled reassessment of their plan. An unscheduled reassessment will only be available where there has been a 'significant and ongoing' change in functional capacity affecting daily activities. The response window is extended from 21 to 90 days.
42. This restriction is poorly designed for the clinical realities of acquired disability. Persons injured in workplace accidents or motor vehicle incidents frequently present with conditions that are episodic, fluctuating, or progressive — including traumatic brain injury, spinal cord injury, complex regional pain syndrome, and post-traumatic psychological conditions. The trajectory of these conditions is not linear, and a person may experience significant deterioration that does not constitute a permanent change in functional capacity but creates an urgent and immediate need for additional support.
43. The requirement that a change be both 'significant' and 'ongoing' before a reassessment can be triggered means that a participant whose condition has deteriorated must wait — potentially for the deterioration to become entrenched — before the NDIS will respond. This is directly contrary to the scheme's early intervention principles, which recognise that timely support can prevent deterioration and reduce the long-term cost of disability.
44. The 90-day response window compounds this problem. A participant in crisis who cannot obtain a timely reassessment has, in practice, no recourse within the scheme for three months. For persons with acquired brain injury or severe psychological injury, this is an unacceptable gap. **The ALA recommends that the criteria be amended to allow reassessment on any material change in support needs, whether or not it reflects a permanent shift in functional capacity, and that the response window for urgent clinical situations be capped at 30 days.**

Concern 6: The 'Directly Related' Requirement Excludes Consequential Disability (Schedule 1, Part 3)

45. Part 3 provides that supports will only be funded where the need for a support arises directly from an impairment for which the participant met the access criteria. The ALA is concerned that the word 'directly' will be interpreted to exclude support for the secondary and

consequential effects of a primary impairment — effects that are in many cases more disabling in practice than the primary injury itself.

46. A person who sustains a severe spinal injury may subsequently develop a depressive disorder, chronic pain syndrome, or social isolation as a direct consequence of the physical impairment and its impact on their capacity to work, maintain relationships, and participate in the community. Under a strict reading of 'directly', the NDIS may decline to fund mental health supports or community participation supports on the basis that the need arises from the secondary condition, not directly from the original impairment.
47. This produces a perverse outcome: the original physical injury becomes the gateway to NDIS access, but some ongoing support needs risk being excluded from funding. In law and medicine, “directly” is rarely a neat and simple concept. Supports, the need for which may arise from the combined effects of multiple disabilities, could become excluded. Litigation may be required to then attribute a need to particular diagnosis.
- 48. The ALA recommends that 'directly' be replaced with language capturing support needs arising from an impairment, including its secondary, consequential and interactive effects on a participant's functional capacity, mental health, and community participation.**

Concern 7: Ministerial Power to Cut Category Budgets Without Parliamentary Oversight (Schedule 1, Part 4)

49. Part 4 enables the Commonwealth Minister to reduce support budgets for specified categories of support — initially social and community participation and capacity building daily activities — by a set percentage, by legislative instrument. No sunset clause is provided, and the Bill does not specify that such instruments are subject to parliamentary disallowance.
50. The ALA is deeply concerned by the concentration of executive power this represents. The ability to reduce, by ministerial determination, the funding available to 760,000 people for whole categories of support — without a parliamentary vote, without a defined review mechanism, and without a sunset clause — is inconsistent with the scheme's character as a statutory entitlement. Combined with the ministerial pricing power in Schedule 3, this gives a single minister unchecked control over what the NDIS pays for and how much, indefinitely and without parliamentary scrutiny.
51. Social and community participation is not a peripheral support type. For many persons with acquired disability — including injured workers rebuilding their lives after a serious workplace

accident — community participation supports are central to rehabilitation, mental health, and the capacity to re-engage with employment and social life. An arbitrary percentage reduction in this category will have real consequences for real people, imposed by ministerial decree without any individual assessment of need.

- 52. The ALA recommends that any power to reduce category-wide support budgets by ministerial determination be subject to mandatory parliamentary disallowance, a sunset clause, and a statutory consultation process with the disability community before any determination is made.**

Concern 8: Plan Suspension and Revocation Powers Endanger Vulnerable Participants (Schedule 1, Part 7)

53. Part 7 allows the NDIA to suspend a participant's plan where the NDIA has been unable to contact the participant after 'reasonable attempts', and to revoke a participant's status after 90 days of suspension.
54. The categories of persons most likely to be unreachable by the NDIA are precisely those whose need for support is greatest: people experiencing a mental health crisis, people who are hospitalised or in residential care, people experiencing homelessness or housing instability, people with communication impairments, and people in regional and remote areas with limited connectivity. Section 25B already directs persons with workplace and road injuries away from the NDIS. Part 7 creates a further mechanism by which those who do retain access can lose it through administrative failure rather than a determination about their needs.
55. The consequence of revocation is severe. A person who has had their status revoked must reapply and meet the access criteria afresh. For a person with a serious acquired disability, the reapplication process is burdensome and may take many months. In the interim they have no funded support.
56. The term 'reasonable attempts' is undefined. There is no requirement that attempts to contact a participant include engagement with their support network, treating practitioners, or Local Area Coordinator before suspension is initiated, and no safeguards for participants with communication impairments or those in crisis. **The ALA recommends that the suspension and revocation powers be amended to require the NDIA to contact the participant's support network and treating practitioners before suspending a plan, prohibit revocation where clinical evidence indicates the participant is unable to respond, and**

establish an expedited reinstatement pathway for persons revoked due to circumstances beyond their control.

Concern 9: The Treatment Requirement Penalises Those Unable to Access Treatment (Schedule 1, Part 8)

57. Part 8 amends the definition of permanence to require that, before an impairment is considered permanent, all appropriate treatment available to remedy or alleviate the impairment must have been undertaken. The Bill states that individual circumstances — including financial circumstances and geographic location — may be disregarded in assessing what treatment is 'appropriate'.
58. Many people who have acquired a disability live in regional and remote areas of Australia, and/or are of limited financial means. For these persons, access to specialist treatment — neurosurgery, specialist rehabilitation, pain medicine, specialist psychiatry — may be severely constrained by geography, cost, or wait times, regardless of their willingness to pursue it. These factors can create barriers even for those who live in metropolitan centres. The Bill's explicit disregard of financial circumstances and geographic location means that a person in outback New South Wales who has not been able to access a specialist available only in Sydney may be told their impairment is not permanent — not because their condition is remediable, but because a treatment theoretically exists that they have not been able to obtain. The failure is one of the health system, not of the person's disability or their commitment to treatment.
59. This provision also creates a perverse interaction with the compensation context specifically. Insurers in workers' compensation and CTP schemes routinely dispute the extent and permanence of impairment, and may decline to fund specialist treatment or referrals. A person whose insurer has refused to fund recommended treatment — or whose treatment has been delayed by the compensation system's own processes — may find their NDIS access barred on the basis that they have not completed appropriate treatment, through no fault of their own. The insurer's refusal becomes a bar to NDIS access.
- 60. The ALA recommends that the permanence definition be amended to provide that an impairment will be treated as permanent where appropriate treatment is not reasonably accessible to the person, having regard to their financial circumstances, geographic location, and the availability of the treatment in their region. Theoretical availability is an insufficient standard in a country with significant rural and remote healthcare gaps.**

Concern 10: Sustainability and Equity as Planning Factors Introduce Rationing (Schedule 4)

61. Schedule 4 provides that the NDIA must consider scheme sustainability and equity across participants with similar needs and circumstances when determining what supports are reasonable and necessary to fund. The ALA is concerned that the introduction of these factors into individual planning decisions marks a significant departure from the scheme's needs-based character.
62. The NDIS has always operated on the basis that each participant's plan reflects their individual reasonable and necessary support needs. The introduction of scheme sustainability as a planning criterion means that a participant's supports may be assessed downward not because their needs have changed, but because the aggregate cost of the scheme requires restraint. This is a rationing principle, not a needs-based one.
63. The equity factor — requiring consistency with participants of similar needs — could operate positively if it prevents unjustified disparities in planning outcomes. However, it could equally operate to cap supports at a median that is insufficient for participants with higher-than-average needs within a category. For persons with complex acquired disability, whose support needs may be intensive and individually variable, a consistency requirement driven by peer group averages risks systematic underfunding.
64. **The ALA recommends that the sustainability and equity factors be framed as matters the NDIA may have regard to in designing the scheme's overall resource allocation, rather than as factors in individual planning decisions that can operate to reduce a participant's supports below the level of their reasonable and necessary needs.**

Accountability and Access to Justice in NDIA Decision-Making

65. The ALA has since before the scheme commenced, been critical of the lack of accountability of the NDIA due to the failure of the legislation to provide legal costs to participants who are successful in the AAT (now ART).
66. That legal costs are not payable, no matter how badly wrong the NDIA's decision are, forces participants and their families to either self-represent against the NDIA who uses expensive and skilled national law firms; or to pay their own legal costs. This gross power imbalance is well-understood and leveraged by the NDIA, whose modus operandi continues to be one of dispute and delay until the matter is at the door of the Tribunal, then to concede or

negotiate. Legal costs consequences following participants' success in the ART would assist to drive better quality decisions and engender improved accountability of decision-makers."

Summary of Concerns

67. The ALA's concerns with the Bill are as follows:

- a. **Concern 1 (s 25B — no evidence base, discrimination):** The existing framework already prevents double-dipping between the NDIS and compensation schemes. The Government has presented no evidence that the current framework is failing or that duplication is occurring at a scale that justifies section 25B. The provision removes the NDIS safety net from people with identical disabilities to those who retain full scheme access, based solely on the cause of injury — a distinction with no principled basis in disability law and serious CRPD compatibility implications.
- b. **Concern 2 (s 25B — CEO determination):** The NDIA CEO is required to determine causation questions that properly belong to compensation tribunals and courts. A person may be excluded from the NDIS for years, left without supports, and later found by a court never to have had a valid compensation entitlement.
- c. **Concern 3 (s 25B — 'provides'):** The word 'provides' will likely capture persons who have opted out of ongoing NIISQ entitlements by accepting a lump sum, leaving them with neither compensation supports nor NDIS access despite presenting no duplication risk.
- d. **Concern 4 (functional capacity threshold):** The substantive eligibility threshold is delegated to post-passage instruments, meaning Parliament is authorising a framework that will remove an estimated 160,000 participants without knowing what the operative criteria will require.
- e. **Concern 5 (reassessment restrictions):** The 'significant and ongoing' change requirement and 90-day response window are poorly calibrated for episodic, fluctuating and progressive conditions, and are contrary to the scheme's early intervention principles.
- f. **Concern 6 ('directly related'):** The requirement that supports arise directly from an eligible impairment risks excluding support for the secondary and consequential

effects of disability — including psychological conditions and social isolation arising from a primary physical injury — which are often the most disabling in practice.

- g. **Concern 7 (ministerial budget cuts):** The power to reduce category-wide support budgets by ministerial determination, without parliamentary disallowance or a sunset clause, is inconsistent with the scheme's character as a statutory entitlement and removes a fundamental check on executive power.
- h. **Concern 8 (suspension and revocation):** The plan suspension and revocation powers lack adequate safeguards for the participants most likely to be unreachable — those in crisis, hospitalised, homeless, or with communication impairments — who are also those with the greatest need.
- i. **Concern 9 (treatment requirement):** Disregarding financial circumstances and geographic location in assessing whether a person has undergone appropriate treatment will bar NDIS access for injured persons in regional and remote areas who cannot access specialist treatment, through no fault of their own.
- j. **Concern 10 (sustainability and equity as planning factors):** Introducing scheme sustainability as a factor in individual planning decisions imports a rationing principle into a needs-based scheme and may systematically undermine the plans of participants with intensive or individually variable support needs.

Recommendations

68. The ALA makes the following recommendations to the Committee:

- a. **Recommendation 1 — Remove Section 25B.** The current framework already addresses the problem it seems to be directed at, and there is no evidence that there is a significant problem with duplication or 'double dipping'. Further, these amendments are not neutral – they will create inequities and gaps for people living with disability.
- b. **Recommendation 2 - Amend the s 25B exclusion trigger:** Section 25B should only exclude an impairment from NDIS eligibility where the relevant workers' compensation insurer or CTP scheme has formally accepted liability for that

impairment. Pending acceptance — including during any dispute, appeal, or litigation — the applicant should retain NDIS eligibility, with provisions for NDIA recovery against the insurer upon subsequent acceptance.

- c. **Recommendation 3 — Require ongoing actual entitlement:** The s 25B test should require that the person currently holds ongoing entitlements to receive supports from the relevant scheme. Persons who have accepted lump sum settlements, whose entitlements have expired, or whose claims have been rejected should not be excluded from the NDIS.
- d. **Recommendation 4 — Expressly exclude NIISQ lump-sum opt-outs:** The Bill should expressly confirm that a person who has exercised their right under the National Injury Insurance Scheme (Queensland) Act 2016 or applicable CTP legislation to accept a common law lump sum and exit ongoing scheme entitlements is not subject to the s 25B exclusion.
- e. **Recommendation 5 — Provide a CRPD compatibility analysis:** The Government should provide the Committee with a full CRPD compatibility analysis of section 25B before the Bill progresses, addressing the non-discrimination obligations engaged by differential treatment based on the cause of disability.
- f. **Recommendation 6 — Disclose the eligibility threshold before passage:** The substantive definition of 'substantially reduced functional capacity' and the assessment methodology must be included in primary legislation or disallowable instruments tabled before the Bill commences.
- g. **Recommendation 7 — Broaden unscheduled reassessment criteria:** Reassessment should be available on any material change in support needs. The 90-day response window should be capped at 30 days where there is medical evidence of deteriorating or urgent need.
- h. **Recommendation 8 — Amend 'directly related':** The requirement that supports arise directly from an eligible impairment should be amended to capture secondary, consequential and interactive effects of an impairment, including psychological conditions and social isolation arising from an acquired physical disability.

- i. **Recommendation 9 — Subject budget reduction powers to parliamentary scrutiny:**
Any ministerial determination reducing category-wide support budgets must be a disallowable instrument, subject to a sunset clause, and preceded by statutory consultation with the disability community.
- j. **Recommendation 10 — Strengthen safeguards for suspension and revocation:**
Before suspending a plan, the NDIA must be required to contact the participant's support network, nominees and treating practitioners. Revocation should be prohibited where clinical evidence indicates the participant cannot respond. An expedited reinstatement pathway must be established.
- k. **Recommendation 11 — Amend the treatment requirement:** An impairment should be treated as permanent where appropriate treatment is not reasonably accessible to the person, having regard to their financial circumstances and geographic location. Theoretical availability is an insufficient standard.
- l. **Recommendation 12 — Reframe sustainability and equity as scheme-level factors:**
Sustainability and equity should be factors in the NDIA's overall resource allocation framework, not criteria applicable in individual planning decisions that can reduce a participant's supports below the level of their reasonable and necessary needs.

69.

Conclusion

70. The ALA welcomes the opportunity to have input to the Committee on this Bill.

71. The ALA supports efforts to ensure the long-term sustainability and integrity of the NDIS. The concerns identified in this submission are not directed at the Bill's objectives. They are directed at specific provisions whose drafting or design will cause disproportionate harm to Australians with permanent disability — and in particular to workers and road users with acquired disability, who are already subject to the additional burden of parallel compensation proceedings.

72. The ALA draws particular attention to the absence of any evidence base for section 25B. The existing framework already prevents double-dipping between the NDIS and other work and CTP compensation schemes. The NDIS does not duplicate compensation entitlements — it supplements gaps in them. Before Parliament enacts a provision of this significance, it should

require the Government to demonstrate that there is a material duplication problem that the existing framework has failed to address. No such evidence has been presented. Section 25B appears to address a problem whose existence and scale has not been established, at the cost of removing the NDIS safety net from some of the most vulnerable participants in the scheme.

73. The ten concerns identified are each amenable to targeted amendment. None requires the defeat of the Bill. The ALA urges the Committee to recommend the amendments set out in section 14, and to ensure that the Bill does not proceed in its current form without those protections in place.

74. The ALA is available to provide further information or to give oral evidence to the Committee if that would be of assistance.

Ian Murray

National President

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