COMMONWEALTH OMBUDSMAN

Inquiry into the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 **Community Affairs Legislation Committee**

Submission by the Commonwealth Ombudsman, Iain Anderson

June 2026

Introduction and summary

I welcome the opportunity to make a submission to the Senate Community Affairs Legislation Committee inquiry into the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (**the Bill**).

The objectives of the Bill are:

- to address the growth of the National Disability Insurance Scheme (NDIS) and make it more sustainable
- to provide the National Disability Insurance Agency (NDIA) additional powers to regulate and monitor NDIS payments
- to make changes to NDIS governance including a mechanism to set and enforce prices under the NDIS and allow for the use of automated decision making, and
- to make technical amendments to improve the operation of the *National Disability Insurance Scheme Act 2013* (**the Act**).

The Bill proposes significant changes to eligibility, planning, payment integrity and administrative decision-making in the NDIS.

Improving the efficiency and integrity of the NDIS is a worthwhile goal. However, to deliver an effective administrative system, efficiency and integrity must go together as core elements of that system. Integrity does not just mean identifying and responding to fraud and non-compliance. It also includes ensuring that administrative processes operate fairly and are consistent with the law. As the Robodebt scheme illustrated, efficiency gains are fundamentally flawed if they come at the cost of integrity – resulting in negative impacts on the people the system is supposed to assist and a significant waste of taxpayer resources spent unravelling a system found to be unfair or unlawful.

My comments in this submission focus on proposed changes that will impact administrative action taken by the NDIA. I seek to highlight where these proposed changes will require careful consideration and appropriate administrative processes to be effective.

Background

The purpose of the Office of the Commonwealth Ombudsman (**the Office**) is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly, and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independent and impartial consideration of complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive, and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

The Office can investigate complaints about the NDIA, including NDIS Partners in Community, as well as the NDIS Quality and Safeguards Commission (the Commission). As Ombudsman, I can also investigate administrative action taken by the NDIA or the Commission by my own motion.

In 2024-25, my Office finalised 1,733 complaints about the NDIA, the second highest number of complaints about an Australian Government agency, and 139 complaints about the Commission. The complaints my Office receives may come from participants, their carers or nominees, support coordinators, or NDIS providers. Complaints frequently raise concerns about:

- issues associated with NDIS plans, such as their implementation or amendment (34%)
- issues associated with service delivery, including online portals and the NDIA complaints process (13%)
- the NDIA's interactions with service providers (13%)
- issues associated with access requests when a person applies to the NDIS (13%), and

- the NDIA's internal review process, including the implementation of decisions made by the Administrative Review Tribunal (12%).

Proposed changes in the Bill

Schedule 1 of the Bill proposes changes to NDIS planning and eligibility, including:

- clarifying the definition of 'permanence' in relation to a person's impairment(s) and eligibility to access the NDIS
- changing the application of the 'reasonable and necessary supports' decision framework by including scheme sustainability and consistency across government considerations
- enabling the CEO to suspend a participant's plan in certain circumstances.

Defining permanence

By clarifying the definition of permanence, the Bill would introduce a new requirement for a person to demonstrate they have sought 'all appropriate treatment' for their impairment(s) to meet the disability or early intervention eligibility requirements for the NDIS.

The text of the Bill [Section 25A(2)] states that treatment may be 'appropriate treatment' regardless of whether a person's individual circumstances restrict them from accessing the treatment, including financial circumstances or geographical location. The explanatory memorandum states that individual circumstances are not relevant in considering whether a person has sought all appropriate treatment, "…because ensuring people with disability have access to mainstream services, regardless of their circumstances, is the responsibility of all mainstream support systems."

As currently drafted, I am concerned these changes could lead to discriminatory outcomes for people with disability who cannot afford to seek appropriate treatments or live in a location where appropriate treatments are not reasonably accessible. While the NDIA is not responsible for ensuring people with disability have access to other support systems to seek appropriate treatments, the theoretical existence of these systems will not necessarily match reality in all cases. The NDIA may find itself making unfair or unreasonable NDIS access decisions (including for people currently in the

scheme having their eligibility reassessed) by applying the proposed universal test in circumstances where the agency should be reasonably aware that 'all appropriate treatments' are not available to a particular individual.

I note that amendments in the Bill (Section 25A[4]) would allow the NDIS rules to determine when a person has undertaken 'all appropriate treatment' and I recognise that future changes to the NDIS rules could address my concern with this part of the Bill by including specific circumstances where an individual's circumstances must be considered.

Reasonable and necessary supports

The Bill proposes amendments that would introduce stronger parameters around what is 'reasonable and necessary' to fund in a participant's plan, including consideration of scheme sustainability. The explanatory memorandum states that in effect this may mean what is reasonable for the NDIS to fund may be less than the actual cost of the support a participant requires. It is my understanding the main situation where this scenario could occur would be when the Minister has made a determination under section 34A to create a legislative instrument to reduce funding for groups of supports. The Bill would introduce a requirement for the CEO to notify the participant of the effect of such a determination when providing the participant a copy of their plan under section 38(3) of the Bill.

Implementing the proposed changes effectively will require the NDIA to communicate clearly with participants well in advance of such a determination taking effect – particularly if it relates to a reassessed plan or renewed plan. This will be essential to help participants understand what the changes mean for them and consider the impact on their ability to access required supports. While the Minister is required to consider the safety of participants before making a section 34A determination, given the potential participant safeguarding risks involved, it will be critical that the NDIA and the Commission are alive to unintended or unforeseen consequences of section 34A determinations and any adverse impacts on participant safety. There will also continue to be a need for the NDIA to provide participants with clear reasons for its decisions about support funding, including information about any review rights.

Plan suspensions

Proposed amendments in the Bill would enable the CEO to suspend a participant's plan where they have made 'reasonable attempts' to contact the participant, and the participant has not responded to requests for relevant information. The Bill states that a decision to suspend a participant's plan will be a reviewable decision, which I welcome.

However, the Bill does not define 'reasonable attempts' and I am concerned that without appropriate safeguards the NDIA's implementation of this measure could be problematic. Such safeguards would include the need for 'reasonable attempts' to encompass a range of different means applicable to people in different situations. The NDIA should develop a clear definition of 'reasonable attempts' and publish information on its website explaining this definition and the agency's process for suspending participant plans. Recognising that a plan suspension could have a significant negative impact on a participant, including their safety, it will be important that any delegation of the CEO's power to suspend plans and the development of supporting administrative processes to operationalise this section of the Bill are carefully considered to ensure fairness and consistency in NDIA decisions.

Schedule 2 of the Bill proposes changes to introduce new record-keeping requirements for providers, participants and other persons and establish that if a person fails to keep required records for NDIS payments they will owe a debt to the NDIA for the relevant amounts.

I recognise the intent of the enhanced record-keeping requirements is to improve the NDIA's power to monitor and regulate NDIS payments and overall integrity of payments in the scheme. The measures will also significantly expand the NDIA's debt-raising powers. In operationalising the new debt-raising powers, especially where a debt is raised against a participant, the NDIA should develop clearly defined policies and processes that are reasonable, proportionate and take into account the safety of impacted participants – including where it may be appropriate to consider debt write-off or waiver provisions. The NDIA should also publish information on its website that clearly outlines its expectations around record-keeping. As Ombudsman, we regularly encounter situations where agencies who have been subject to legislated record-keeping requirements for years nonetheless fail to keep and maintain appropriate records, which suggests that attaining effective compliance with record-keeping requirements is more complicated than simply legislating the requirement. At the same time, legislating that failure to keep records turns payments into debts has

the potential to be a very blunt instrument for driving compliance: this may overly penalise inadvertent non-compliance and may also in effect unfairly shift a provider's compliance burden to a participant.

The NDIA will also need to ensure it has appropriate processes in place to effectively communicate with people about debts raised under the proposed amendments. In March 2024, the Office published a factsheet titled 'How to tell people they owe the government money', which sets out best practice principles for notifying people about debts.

Any new processes for raising debts against participants warrant particularly careful consideration by the NDIA, noting the inherent vulnerability of people living with a disability.

Schedule 3 of the Bill introduces measures to support the use of automated decision making (ADM) processes in the NDIS.

The proposed changes would allow the CEO to automate administrative action in relation to preparing participant plans, NDIS payments and other areas as specified by the Minister.

The Bill includes proposed safeguards in relation to automating administrative actions that require evaluative judgement including:

- a requirement that the Minister be satisfied that it is appropriate to automate the relevant administrative action [Section 59C(3)]
- requiring the CEO to develop a standard operating procedure instrument [Section 59D]
- requiring the CEO consider factors such as lawfulness [Section 59E]
- enabling the CEO to personally review and substitute decisions that have been automated [Sections 59B(6) and (7)].

If appropriately designed, ADM systems have the potential to improve the quality and efficiency of government service delivery. There are however substantial risks of poor outcomes for the community if ADM is not used properly. While I welcome legislated safeguards around implementing ADM processes, at the agency level there would still be significant risks that will need to be addressed by the NDIA in operationalising the

automation of administrative actions that require discretionary decision-making and evaluative judgements. Legislated requirements alone cannot guarantee that administrative processes will in fact operate consistently in a fair, reasonable and lawful way.

In March 2025, my Office published an updated version of the 'Automated Decision Making Better Practice Guide'. The guide was updated by my Office in collaboration with the Office of the Australian Information Commissioner and the Attorney-General's Department. It sets out a series of guiding principles that agencies should consider when implementing ADM processes.

As outlined in the guide, automated systems must comply with administrative law principles of legality, fairness, rationality and transparency. They must also comply with privacy requirements and human rights obligations. As a matter of good public administration, they should be efficient, accessible, accurate and consider the needs of any vulnerable and non-digital ready users.

Agencies should also consider whether a particular administrative action is suitable for automation and recognise that automation is not appropriate if it would:

- contravene administrative law requirements of legality, fairness, rationality and transparency
- contravene privacy, data security or other legal requirements (including human rights obligations)
- compromise accuracy in decision-making, or
- significantly undermine public confidence in government administration.

Using ADM processes to achieve administrative efficiency is unlikely to succeed if agencies do not ensure the processes and systems they form a part of operate with integrity. This means building enduring policies and procedures around ADM use that ensure automation does not negatively impact the people the government is trying to assist. It also means putting in place robust assurance and oversight mechanisms to ensure that ADM processes are operating in a way consistent with the law.

The Bill envisages that the CEO could review and substitute automated administrative actions in circumstances where they are satisfied that "the administrative action taken

by the operation of the computer program is not correct or preferable". This power would assist with remediating ADM-related errors, but it does not replace the NDIA's responsibility to ensure that its use of ADM processes is lawful as a starting point.

When implementing processes and systems to enable automation, agencies should not see efficiency and integrity as being in tension with one another. Failing to ensure system integrity at an operational level will mean any initial short-term efficiency gains end up being lost when at a future time resources must be devoted to unravelling and remediating outcomes that have been found to be unfair, unlawful or wrong.