

The Future of the NDIS in Post COVID-19 Australia

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The Australian Government had to invest significantly in the economy and support Australians throughout the pandemic. COVID-19 related federal budget items have been on the increase for mental health support in the community. In mid-2022, the Hon Bill Shorten MP announced a review into the management and sustainability of the National Disability Insurance Scheme (NDIS).

This announcement came at a time when the NDIA Board forecast that the number of NDIS participants would increase to [670,400 by the end of June 2025 and up to 859,000 people by the end of June 2030](#). There were reports given stating that the growing NDIS costs could [exceed 41.9 billion dollars in the 2023-2024](#) financial year.

There is a stronger recognition of disability and mental health in the community as a result of the COVID-19 pandemic in Australia. There has been an increase of mental ill health in the community.

COVID Pandemic NDIS Changes

The National Disability Insurance Agency (NDIA) enabled more flexibility in the use of funding by participants. Some of these changes included increased flexibility of CORE budgets in plans from March 2020.

Relevance:

The NDIA and Government in 2020 made significant changes to the scheme that allowed greater plan usage flexibility. It is a legal requirement for the NDIA to maintain sustainability of the scheme in relation to assessing supports and funding under s. 34 of the NDIS Act.

The NDIA then makes planning decisions in accordance with s.34 of the NDIS Act. It can be argued that repeated reviews of their NDIS plans have meant that the NDIA has increased spending on internal and external reviews.

About this document:

NEDA (National Ethnic Disability Alliance) has created this submission in response to the recent NDIS review announced by the Hon Bill Shorten MP. This document draws upon the lived experience of people with a disability and who are from a cultural and language diverse background.

NEDA acknowledges that the diversity in these sub-groups and differences of opinion in relation to disability and social security. NEDA also wants to acknowledge the Traditional Elders of this land, past, present and emerging.

NEDA is deeply concerned about the management and assistance of vulnerable newly arrived residents who are eligible for the NDIS.

NEDA has undertaken a variety of tasks to obtain the opinions of CALD people with a disability. This has included weekly focus groups held nationally, in person and online as well as one-on-one interviews. This document draws on the experiences of the CALD/ disability community and these findings are presented below.

In Summary, NEDA urges the government to implement the following policy changes in the NDIS to support Australia's vulnerable CALD population:

- 1) To create and develop in-translation and Easy/Plain English brochures based on the **updated guidelines** used by the NDIA.
- 2) Explore and create detailed policy on the **flexible use of funding** in NDIS plans including across the four CORE budgets.
- 3) Develop and utilise **training resources** that target CALD populations to boost the capacity of NDIS planners to effectively engage and understand the cohort. NEDA strongly supports the development of educational content for CALD populations to include '*Are You Being Exploited?*' educational programs and brochures to support those who are most vulnerable.
- 4) Update and correct **inappropriate and outdated information** on the NDIS website.

- 5) The NDIA should consider **releasing external review decisions made at conciliation conferences** that don't end up at an AAT hearing.
- 6) The NDIA should consider detailing in-language and Plain English information documents on **NDIS portability and international travel**.
- 7) The agency **considers earlier application of s.6** of the NDIS Act to assist people with disability onto the scheme. This section of the NDIS Act enables the NDIA to pay for assessments on behalf of participants.

Guidelines and the NDIS Act

The NDIA has developed a set of guidelines that work under the NDIS Act. The guidelines assist decision makers in applying relevant legislation e.g., s. 34 of the NDIS Act. They are always present when determining reasonable and necessary supports.

Many NDIS participants find it hard to understand the policy and procedures that the NDIA applies in developing plans and the review decisions for participants of the scheme.

What does this mean for CALD participants?

NDIS participants from a CALD background have reported the lack of clarity and knowledge in how the NDIA applies legislation. There may be a lack of understanding for CALD populations on how the operational guidelines work and assist planners in performing their duties.

There is a lack of awareness of them for participants who are seeking access to the NDIS.

Recommendation:

It is strongly advised to develop content in Easy English and in-language translations around the NDIS guidelines, their purpose under the NDIS Act as well as their importance to the NDIS and planning decisions.

The NDIA would benefit from developing its CALD communication strategy with a focus on the legal governance and operations of the agency. The NDIA could also be proactive and start developing review process content in the early stages of the application process.

The Need for Greater Flexibility

Many participants are not always aware that NDIS funding e.g., CORE budgets are increasing more flexible in what participants can use the funding for during their participation. As stated above, the Government has flagged that it will enable more participants greater control over their funding.

What does this mean for CALD participants?

Many participants would benefit from increased flexibility in their plans. This includes people from a CALD background who are often unable to get NDIS providers that are culturally safe and appropriate. Increased flexibility in the NDIS budgets would enable CALD participants greater access to the community.

Recommendations:

NEDA recommends that the NDIA develop coherent and detailed policy on the flexibility of NDIS budgets. This should be explained to participants prior and during the planning process and added into the plan as to avoid participants incurring unnecessary debts.

Psychosocial Disability and the NDIS

The impact of mental illness in the community is finally being properly investigated. Stigma and taboo surrounding mental illness has meant that people with chronic illness have been marginalised.

The COVID-19 pandemic has brought mental health and well-being to the forefront of public debate. The NDIS was a big step for participants as the NDIS Act enabled people with an on-going mental health impairment access to disability support.

This means that people with a psychosocial disability got access to funding for community support, daily activities and numerous types of allied-health services. This can be life-changing for people with permanent and severe mental illness.

This means that people are given an opportunity to participate in employment and their community, particularly with funding from Capacity Building and Core budgets.

What does this mean for CALD populations?

The NDIA is in unique position to assist people with a mental illness into employment and studies. The agency is also in unique position to help combat stigma surrounding mental illness.

Disability is often interpreted differently across cultures. People with symptoms of persistent mental illness can experience varying levels of stigma as cultures and society have different understandings of mental illness.

This means that NDIS participants from a CALD background may not understand the implications of illness and their access to NDIS funding.

Applications for Internal and External Reviews

The NDIS operates like an insurance company supporting people with disability in the community. Most decisions made by the NDIA can be reviewed by the internal reviews team.

Internal review applications include decisions e.g.

- a) Accessing the NDIS
- b) Funding participant supports as per s.34 of the NDIS Act
- c) Review requests by participants

The internal reviews team provides an avenue for the participant to provide new information and evidence and for the agency to re-assess claims. It is during this time that participants have access to a higher degree of authority in planners to grant claims and funding.

In this process, participants are asked to provide further evidence and information that enables planners to assess their circumstances and claims under s.34 of the NDIS Act.

This means that this is final point that that agency will look at it before going to another review outside of the NDIA.

External Reviews at the AAT

If the participant is unhappy with the internal review decision, they have the right to apply to the AAT – Administrative Appeals Tribunal for an external review of the original internal review decision.

It has been reported that most people seeking assistance with the external review process and other NDIS matters are from the CALD community. They are a very vulnerable group who are affected by misinformation and more likely to lack NDIS specific knowledge and language.

The NDIS AAT review process and the contacts involved seem to have broader authority to grant funding to participants than the other stages of the review process. The participant is given the opportunity to present evidence and information for a third party to assess.

It is a lengthy process that involves gathering evidence, discussions and negotiation. It may mean that a court session is the result of the parties are unable to reach agreement. It is often the case that participants are asked to provide an “in depth” level of evidence and information by the lawyers of the NDIA.

There is insufficient information on the process of this stage of review. The review outcomes that don't result in an AAT hearing aren't made available to the public and other NDIS participants.

This means NDIS participants are unaware of their appeals rights and entitlements under the NDIS Act. It also means that participants are unable to research or understand their needs prior to or an access request as there is a continued lack of understanding.

What does this mean for CALD participants of the scheme?

NDIS participants from a CALD background need further support and information surrounding the scheme and the right to review decisions made by the NDIA.

NEDA recommends that the NDIA starts to take a proactive approach when detailing the appeals process inside and outside the agency. The NDIA must release outcomes of external appeals that don't make it to an AAT hearing.

NDIS Training in the Health System

The NDIS system is often very complex and overwhelming for new arrivals humanitarian and refugee people who are eligible for supports and services to navigate to obtain the support that they require. This means that allied health and medical practitioners need to receive adequate on how the NDIS and evidence works to support those most vulnerable.

It is still being reported that medical professionals are still struggling to provide adequate evidence for the NDIS purposes. There needs to be better engagement with the healthcare system given the higher rates of participants coming onto the scheme.

There is too much emphasis on medical diagnosis and less emphasis on the need to demonstrate functional impairments.

CALD Training for NDIS Planners

CALD participants have reported that planners are failing to take their needs and wants into consideration as part of their NDIS reviews. Planners and decision makers are failing to consider language, religion and culture as part of their assessments under s.34 of the NDIS Act. The "churn" nature of the work leads to a loss of in-house knowledge by way of the planners, we suggest regular CaLD/ disability training for new planning staff and refresher training at regular periods. As stated NEDA in in the process of developing e-learning modules that will be suitable for just such a service.

Evidence Gathering for NDIS participants

There is still higher amounts of misunderstanding and knowledge around the NDIS and evidence to support requests due to cultural and language differences. CALD and newly arrived residents are vulnerable as they can find that obtaining evidence is costly, problematic and confusing. This is particularly for people who are sole reliant on the Disability Support Pension and who are living under the Henderson poverty line in Australia. The cost of obtaining medical reports for specialists together with the time frame, with PWD's waiting months for a specialist appointment. It has been reported that many people just walk away from the process of application as its "just too difficult" it takes too long, and the cost can be prohibitive. This is likely for the carers of PWD's especially in households with more than one child or single parent families.

With PWD's getting reports from medical practitioners that do not support their application for NDIS supports due to the disconnect between illness and disability, that some doctors do not see the connection/ intersectional nature of illness that then causes disability. They report only on the underlining illness but fail to adequately address the disability that is a product of the illness. This is especially frequent with regard to cancer patients.

There is still a general lack of understanding and awareness among this cohort in relation to mainstream services and required evidence to satisfy s.34 of the NDIS Act.

What can be done about these issues?

NEDA calls upon the NDIA to fund and develop training modules for planners, medical practitioners and NDIS participants to support them through their NDIS journey. NEDA is developing a series of e-learning modules for the NDIS marketplace and realises the importance of CALD training for planners and decision makers. To better understand the causal nature of various illness about disability, these situations are difficult when language is a barrier.

This should also be extended to medical professionals and general support for NDIS participants in relation to what the NDIS requires and how the insurance scheme operates.

Residency - Access to the NDIS

Many parts of Australian law require applicants to be residentially qualified in order to be eligible for the funding, programs and payments. For example, *the Social Security Act 1991* requires applicants to be permanent residents and citizens.

For people who have been granted Permanent Residency (PR) are required to wait for up to four years from the date of grant of their PR to access welfare and Centrelink payments.

The NDIS Act requires participants to have permanent residence, Australian citizenship or a special class visa.

The NDIS Act also places the need for applicants to have a connection with Australia to maintain access to the scheme.

What are the implications for CALD participants of the scheme?

There is a strict requirement that Permanent Residence needs to be granted before the NDIA will consider an application for newly arrived applicants. This means that people who hold temporary residence are not eligible for the NDIS.

Participants must continue to show a strong connection to Australia. Participants can port their NDIS plan overseas for a general period of 6 weeks. The NDIA then will need to grant extra time to participants and there are provisions that enable participants port their funding for extended periods of time.

What can be done about it?

We need stronger recognition of CALD participants in NDIS guidelines and rules regarding portability of plans. It is often the case that participants from a CALD background maintain

connections with communities overseas. CALD participants need more information and resources surrounding portability.

NEDA strongly recommends improving participant access to information and resources on portability in-language and in accessible formats.

NEDA also recommends that the Australian Government documents and creates accessible and culturally appropriate policy on portability and reasons why participants can extend their overseas portability.

It is crucial that the Government and NDIA align residency and qualification rules for payments and support programs across multiple legislative areas. This is in the context of an increase in migration and international mobility. This will support people participated in their communities, both domestic and internationally.

Cross-Cultural and Diversity Training for NDIA Staff

The number of participants in the NDIA has been increasing in recent years, which means that the participant pool is increasingly diverse. This means that NDIA staff members and planners will need further training in the management of diverse groups external to the agency. The NDIA would benefit from developing educational content in diversity and stakeholder engagement with a focus on the CALD community.

How does this help NDIS participants?

The development of alternative content for participants would benefit all NDIS participants. Diversity and Inclusion principles would enable more effective engagement and participation for the entire NDIS marketplace. It would also serve to effectively assist to serve CALD participants and other similar groups.

NEDA recommends that the government and NDIA enhance participant and provider access to training materials. It is also further recommended that registered providers be required to develop and maintain policies and procedures on appropriate training for their staff members.

NEDA also recommends developing resources to assist CALD participants navigate the system and where to get support as the system is often complex. There should be informative interventions to assist participants at stages such as access/review as all more concise information on the regulation of NDIS registered providers e.g., exploitation by providers.

NDIA Planning Decisions and Reasoning for Supports (s.34 NDIS Act)

The NDIA (the agency) is responsible for making decision for participant supports and funding. There have been reports from participants that the reasoning behind decisions around access and funding claims made by the NDIA are unclear and ambiguous.

The agency is responsible for most participant related decisions and therefore it plays an important role in the economy, Australian community and in the lives of people with disability. The need to improve current practice is growing as the population diversifies and the cohort grows.

Issue #1

The content on the NDIS website doesn't sufficiently cover NDIA policy and application s.34 requirements to employer and support participants. The NDIS website does detail the guidelines and other policy tools that is used by the agency and decision makers.

However, the website and publicly available NDIS websites don't sufficiently explain and cover the specifics needed by the decision makers.

- 1) Exhaustion of Evidence needed by the agency.
- 2) New AAT/case law developments on the NDIS Act
- 3) The interactions between mainstream services and the NDIS
- 4) Nuances that occur in relation to participant circumstances and s.34 of the NDIS Act

For example

- a) Participants can be asked to provide extensive amounts of evidence for decision makers to review. The NDIA could pre-empt this and provide further guidelines for providing evidence for participants prior to the review process.
- b) The NDIA website (guidelines are a good example) has not been recently and appropriately edited to give feedback on recent and new case law.
- c) There is no clear guidelines or examples for participants on how to and what to do when exhausting mainstream services and the evidence needed from this in their claims.
- d) Every participant is different, and their circumstances are diverse in the NDIS cohort. The agency and decision makers need expanded training in the application of this including in s.34 of the Act.

Issue #2

Participants are reporting that the NDIA does not give sufficient reasons and feedback on their access applications, reviews and other funding requests. This means that the NDIA does not adequately explain and detail decisions for all participants.

It is noted that Services Australia and DSS have developed a Social Security Guide for stakeholders to understand how Centrelink applies policy in decision making. It is suggested that detailed guidelines and policy be developed for the NDIS and the participants that can be accessed publicly.

What do these mean for CALD participants?

CALD participants are a vulnerable group within the population and are less likely to possess the knowledge and understanding needed to obtain funding for supports.

NEDA recommends that the agency develop guidelines for the agency to classify and determine disability and decision-making processes for supports. The specific reasoning behind rejections for access or supports must be clearly identified.

NDIS Communications and Website Content

The NDIS website is an official channel for participants to obtain relevant and reliable information on supports and the scheme in general. A review of the guidelines and other areas on the website indicate out of date and/or incorrect information including cited case law in the guidelines section of the website.

This is unfair to participants who are reliant on the website to obtain information on supports and funding for their conditions.

What does this mean for NDIS participants?

People with a disability can't access up-to-date information on the NDIS website. CALD participants are unable to adequately grasp the areas of changing law within the NDIS system and marketplace.

What can be done about this?

NEDA highly recommends that the agency makes a continuous effort for the guidelines and content on the website be updated regularly. The NDIA is failing in it's duty to support participants as the website isn't regularly updated with new policy and case law changes.

NEDA – Who We Are

NEDA, the National Ethnic Disability Alliance, is a not-for-profit that aims to support people with a disability who come from a culturally and/or linguistically diverse background.

NEDA sees the importance of intersectionality of culturally and racially marginalised people with a disability that means that they find it harder to access disability support services. It is also recognised that people from a CALD background suffer lower rates of workplace participation. It is important that we continue to focus on health equity of this population group in Australia.

Our History

The National Ethnic Disability Alliance is a federal Disability Representative Organisation. We develop policy and advocacy for people with a disability from a CALD background for close to thirty years.

NEDA has a long history in supporting members of the community and is dedicated to enhancing the lives of people with a disability in Australia. NEDA has been on the forefront on developing reliable data on Australia's CALD population that has had a significant impact on government planning and assessment. NEDA developed initial data prior to the NDIS going to scheme that challenged the proposed number of participants, NEDA presented our data and several weeks later the eligible cohort numbers were raised by close to seventy thousand people. NEDA has been consistently engaged with the NDIA with the development of its CaLD strategy, utilising our in-house skills and that of our membership and the CaLD disability community in general.

Background

The introduction of the National Disability Insurance Scheme in 2013 created a national disability support system. Previously, it was left to Australian states and territories to provide funding and support to people with disability.

The NDIS Act 2013 was introduced by the Gillard Government in 2013 and currently covers more than 550,000 participants.

In 2022, [the Albanese Government](#) announced a review into the Administration Appeals Tribunal seeking to abolish it to create a new judicial review system. This submission comes at a crucial point in time of review of federal administrative law.