

NDIS Access Submission

**Response to consultation
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Recipient

NDIS Access Branch, Department of Health, Disability and Ageing

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Dietitians Australia acknowledges all traditional custodians of the lands, waters and seas that we work and live on across Australia. We pay our respect to Elders past, present and future and thank them for their continuing custodianship.

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About Dietitians Australia

Dietitians Australia is the national association of the dietetic profession with over 9000 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for the profession and the people and communities we serve.

The Accredited Practising Dietitian (APD) program is the credentialling program of Dietitians Australia. It provides an assurance of safe and quality dietetic practice and is the foundation of self-regulation of the dietetic profession in Australia.

APDs are trained to provide essential support for people with disability by preventing and managing malnutrition and complex nutrition needs, and work alongside health professionals to assess and manage swallowing difficulties and tube feeding to ensure safe mealtime practices. They also guide families in managing allergies, intolerances, and specialised diets that can affect growth, learning, and participation. Recognising dietitians as part of the disability workforce will ensure children and adults receive safe, timely, and holistic care.

APDs are also uniquely trained to provide one-on-one medical nutrition therapy to people with disability in a clinical context across a broad range of disease and health conditions. Dietitians must hold the APD credential and meet continuing professional development and recency of practice standards annually to access Medicare, Department of Veterans Affairs, National Disability Insurance Scheme, worker's compensation schemes and most private health insurers. Dietitians are essential providers of functional capacity-building supports that enable people with disability to participate more fully, confidently and independently in inclusive community life.

This submission was prepared by members of the Dietitians Australia Policy and Advocacy team, including input from Dietitians specialising in disability care, following processes approved by the Board of Dietitians Australia.

Summary

The Department of Health, Disability and Ageing is seeking feedback on proposed reforms to improve access and eligibility to the National Disability Insurance Scheme (NDIS). This reform process is supported by the Technical Advisory Group (TAG) on NDIS Functional Capacity¹.

The consultation paper states that access to the NDIS will no longer rely mainly on a person's diagnosis but be based on a standardised, evidence-based assessment of a person's functional capacity, and how this impacts their daily living¹.

Dietitians Australia understands the importance of these reforms to ensure consistent and fair access to NDIS supports. The National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026 has passed, and this submission addresses the design of the new access process. Dietitians Australia are concerned that shifts from diagnosis-based to functional capacity-based assessment for NDIS access, may inadvertently exclude those with complex and fluctuating support needs, whose needs may not be adequately captured through standardised functional capacity assessments, including those with episodic feeding and hydration difficulties.

Dietitians Australia are equally concerned that a person's response to ongoing nutrition support may be read as evidence that an impairment is not permanent, and that people and families may have to produce the same evidence for the NDIS, Thriving Kids and other supports. Continuity of nutrition supports for current participants during reassessment is a matter for the transition consultation and is noted under Question 4.

Dietitians Australia's recommendations to the Department of Health, Disability and Ageing and the TAG are stated below, along with detailed responses to the consultation questions.

Recommendations

Dietitians Australia Recommendations to the Department of Health, Disability and Ageing and the Technical Advisory Group (TAG):

- **Ensure Principle 3 recognises “contemporary evidence” from a range of appropriate sources, and that any assessment tool is validated for assessing functional capacity in eating, drinking, swallowing safety and food preparation before it is used for access decisions.**
- **Ensure that, in applying section 9B of the National Disability Insurance Scheme Act 2013 to access decisions, ‘environmental and personal circumstances’ are defined so that the exclusion applies only to extrinsic circumstances and not to how an impairment presents when a person eats, drinks or prepares food.**
 - Require access assessments to draw on evidence of how the person eats, drinks and prepares food in their usual settings, including treating clinician reports, to inform the judgement of capacity.
- **Establish an integrated assessment and reassessment framework, with referral pathways across the NDIS, Thriving Kids and Foundational Supports, including secure transfer of participant information between systems to minimise participant safety risk, duplication, and assessment burden.**
- **Introduce accessible communication protocols for NDIS access assessments, including flexible formats, communication aids, options for reassessment, and sufficient time for participants to communicate support needs.**
- **Ensure evidence guidance on permanence distinguishes treatment that can remedy an impairment from ongoing support that maintains function, consistent with Note 2 to subsection 24(5) of the Act, so that a person’s response to ongoing nutrition support is not treated as evidence that the impairment is not permanent.**

Consultation Questions

1. Do the draft guiding principles provide the right foundation for a future NDIS access process?

The draft guiding principles:

- Aligned to the NDIS Act and the human rights of people with disability.
- Informed by lived experience, including people with disability, families and carers.
- Evidence-based and consistent.
- Person-centred and strengths-based.
- Equitable, inclusive and safe.
- Transparent, proportionate and accessible.
- Continuous quality improvement.

While the guiding principles provide a high-level framework to safeguard individuals with disability, improvements could be made in Principle 3 to strengthen the equity, inclusivity, and safety of the access decision-making process. Please see Dietitians Australia's recommendation below.

2. Should any principles be added, removed or changed?

Recommendation

- **Ensure Principle 3 recognises “contemporary evidence” from a range of appropriate sources, and that any assessment tool is validated for assessing functional capacity in eating, drinking, swallowing safety and food preparation before it is used for access decisions.**

Principle 3: “Evidence-based and consistent”

“The access decision-making process should be informed by contemporary evidence and supported by methods that are reliable, valid, equitable and capable of consistent application across diverse disability cohorts. It should provide a standardised and nationally consistent approach to assessing eligibility criteria, including functional capacity and substantially reduced functional capacity, to support fair, transparent and equitable decision-making.”¹

Contemporary evidence should encompass a range of appropriate evidence sources relevant to disability and functional capacity. If the access decision-making process prioritises narrow evidence sources as a sole determinant of access, the impact of disability on a person's ability to meet foundational needs, including preparing and consuming nutritious food and fluids, may inadvertently be excluded. The assessment tool should be validated for eating, drinking, swallowing safety and food preparation, including for people with communication or cognitive disability. An individual's evidence should be drawn from several sources, including validated measures, treating clinician reports, longitudinal records, and the lived experience of the person and their careers.

3. *What do we need to consider when designing an access decision-making process that is fair, consistent, transparent, disability-informed and evidence-based?*

Recommendations

- **Ensure that, in applying section 9B of the National Disability Insurance Scheme Act 2013 to access decisions, ‘environmental and personal circumstances’ are defined so that the exclusion applies only to extrinsic circumstances, such as housing and transport, and not to how an impairment presents when a person eats, drinks or prepares food.**
 - Require access assessments to draw on evidence of how the person eats, drinks and prepares food in their usual settings, including treating clinician reports, to inform the judgement of capacity.

The NDIS access reforms base eligibility on an individual’s “functional capacity”.¹ Section 9B(1) of the National Disability Insurance Scheme Act 2013, inserted by Schedule 1, item 4 of the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026, defines functional capacity as “the person’s ability to undertake the activity” without assistance, or only with commonly used assistive technology or modifications and, for a child, age-appropriate assistance from other people, and “in a context that **excludes, as far as possible, the impact of the person’s environmental and personal circumstances**”.²

The World Health Organization’s International Classification of Functioning, Disability and Health (ICF) distinguish capacity, which describes what a person can do in a standardised environment, from performance, which describes what a person does in their current environment.³ Section 9B closely resembles the capacity construct. For eating, drinking and swallowing, capacity cannot be judged reliably without evidence of performance in varying environmental circumstances.

In practice, excluding a person’s contextual factors may disadvantage people whose functional feeding impairments, are only expressed, or only manageable, within specific environmental contexts. A person’s ability to perform an activity in a standardised assessment environment may not accurately reflect their ability to perform that activity in their everyday environment, such as, at home, school, or in a day program.

For example, children with autism commonly experience exacerbated restrictive eating patterns in certain sensory environments where hypersensitivity to food texture, taste, smell and temperature may influence their ability to consume nutritious food.⁴⁵ Severe food selectivity in children with autism is associated with a risk of multiple nutrient inadequacies.⁶ Children with autism are more likely than typically developing children to have exacerbated food selectivity and restrictive eating patterns in certain environments, such as at restaurants or at school.⁷ Appropriate supports can foster reduced food selectivity, food refusal and distressed mealtime behaviours in children with autism in these environmental contexts.⁸

Similarly, people with intellectual disability (ID) may experience significant difficulty independently selecting nutritious food, as well as planning and preparing nutritious meals without appropriate supports.⁹ Food intake and feeding problems in children and adolescents with ID can be due to personal and environmental circumstances including difficulty developing independent eating

habits, selective eating and strong preferences about the temperature and presentation of food, which increase the risk of malnutrition and dehydration.¹⁰

Assessment of functional capacity should consider how an impairment presents in the person's usual settings. This should include evidence of how the person eats, drinks and prepares food in those settings, including treating clinician reports. Dietitians Australia has previously recommended that dietetic assessment reports be accepted and funded to inform support needs assessments.¹¹ The same should apply to access assessments where a risk of feeding problems and nutrition inadequacies is identified. With appropriate assessment and access to NDIS supports, dietetic care can help a person manage these functional limitations. Dietitians can support improvements in restrictive eating patterns, sensory triggers, mealtime environments, and nutrition literacy to foster selection of nutritious food and fluids, while ultimately helping individuals with disability establish simpler routines and more manageable and nutrition-rich feeding environments.

Dietitians Australia recommends that, in applying section 9B of the National Disability Insurance Scheme Act 2013 to access decisions, 'environmental and personal circumstances' are defined so that the exclusion applies only to extrinsic circumstances, such as housing and transport, and not to how an impairment presents when a person eats, drinks or prepares food. Section 9B (2) and (3) allow the National Disability Insurance Scheme rules to prescribe methods and criteria, and the matters that may, must or must not be considered. The exclusion should apply to extrinsic circumstances only, and not to impairment-driven interactions with a setting, such as a person's ability to prepare and consume nutritious food.

4. *How could the access decision-making process, including referral pathways, be designed to reduce administrative burden and make it easier and more equitable for people with disability, their families and carers to understand what information is needed and how decisions are made?*

How could this support a proportionate approach to minimise the assessment burden on persons who are clearly eligible with very significant functional impairment?

Recommendation

- **Establish an integrated assessment and reassessment framework, with referral pathways across the NDIS, Thriving Kids and Foundational Supports, including secure transfer of participant information between systems to minimise participant safety risk, duplication, and assessment burden.**

People with disability and their families should not be required to repeatedly demonstrate the same functional needs when transitioning between support systems. Where lifelong and significant disability has been demonstrated, a streamlined pathway should be available to avoid unnecessary assessment or repeated requirements to provide evidence of disability. People who are clearly eligible with very significant functional impairment should not need a brand-new assessment where the system already holds the records, or where a dietetic record shows persistent nutritional compromise despite treatment.

When designing access decision-making processes, existing evidence and assessment information should be used wherever possible, with any gaps addressed with the individual rather than requiring a complete evidence base before support can commence.

For example, if a child assessed for Thriving Kids appears to have needs above the program threshold, existing evidence and information should flow effectively into the NDIS access assessment. Likewise, a person who does not meet NDIS access should not have to start from zero to access Foundational Supports.

From 1 January 2028, current participants will be reassessed over a three-year transition period.¹ People with established dietetic supports, such as enteral feeding or a mealtime management plan, face safety risks if those supports lapse during reassessment. Reassessment should draw first on existing plans and provider evidence, supports should continue unchanged until a decision is made, and any proposed reduction should be reviewed by the individual and an assessor with relevant clinical expertise before it takes effect.

When designing access decision-making processes, an integrated assessment and reassessment approach with appropriate referral pathways across the NDIS, Thriving Kids and Foundational Supports would reduce administrative burden, support continuity of care and enable timely referral to the most appropriate form of support, particularly for people whose needs sit near or across program thresholds.

- 5. *What should be considered to ensure the access decision-making process, as well as referral pathways, works well for all disability cohorts including people with communication, cultural, cognitive, degenerative, fluctuating, episodic or complex support needs?***

Recommendation

- **Introduce accessible communication protocols for NDIS access assessments, including flexible formats, communication aids, options for reassessment, and sufficient time for participants to communicate support needs.**

People with disability may experience communication differences that affect their ability to describe their functional capacity and support needs, particularly through standardised or time-limited questioning. Some cohorts may also not respond well to a standardised assessment conducted by an assessor with whom they have no established therapeutic relationship. Some cohorts, including First Nations and culturally and linguistically diverse participants may need interpreters or cultural support during assessment. Assessors should be trained to use accessible communication protocols, disability-appropriate questioning, and avoid relying on broad self-report questions where these may not accurately capture a person's functional needs. Without consideration, this may affect the accuracy and representativeness of the assessment and may underestimate the person's support needs, resulting in inequitable access decisions. This is particularly relevant to food, nutrition and hydration, where assessment considers foundational needs. Functional difficulties may not be adequately captured through broad questions about whether a person can undertake an activity, such as consuming food or fluids.

In progressive conditions such as Parkinson's disease, dysphagia is associated with longer disease duration and more advanced swallowing and nutritional complications.¹² Additionally, a de-identified case study published by Dietitians Australia describes a woman with advanced Huntington's disease, progressive dysphagia and significant unintentional weight loss over time.¹³ Assessment should anticipate the trajectory of need and draw on treating clinical evidence, rather than a single point of assessment.

Where feeding and hydration needs recur around illness, medication change or stress, assessment should consider fluctuating need over time, including frequency and consequences of episodes, to ensure assessment does not understate need.

To ensure the access decision-making process, as well as referral pathways, work well for all disability cohorts, the TAG should ensure introduction of accessible communication protocols for NDIS access assessments, including flexible formats, communication aids, options for reassessment, and sufficient time for participants to communicate support needs.

6. *What factors and evidence should be considered when determining whether an impairment is permanent or likely permanent, including whether appropriate treatment is likely to improve the functional impact of an impairment?*

Recommendation

- **Ensure evidence guidance on permanence distinguishes treatment that can remedy an impairment from ongoing support that maintains function, consistent with Note 2 to subsection 24(5) of the Act, so that a person's response to ongoing nutrition support is not treated as evidence that the impairment is not permanent.**

Under subsection 24(5) of the National Disability Insurance Scheme Act 2026, an impairment is not permanent, or likely to be permanent, unless "the person has undertaken all appropriate treatment for the impairment or impairments (if any)" and "the impairment or impairments are likely to persist for the person's lifetime". Section 25A defines appropriate treatment as treatment that is evidence-based, can reliably be expected to materially improve, reverse or alleviate the impact of the impairment, and is regularly undertaken or performed in Australia. Note 2 to subsection 24(5) states: "A person may require ongoing treatment for some permanent impairments in order to maintain functional capacity in relation to an activity, even if the person has undertaken all appropriate treatments for the impairment."

When determining whether an impairment is permanent or likely permanent, evidence considered should distinguish between improvements in functional capacity and resolution of the underlying impairment. Treatment or disability-specific supports may enable a person to develop or maintain functional capacity without removing the underlying impairment or eliminating their ongoing need for support.

Texture-modified food and thickened fluids for persistent dysphagia, and enteral feeding, are examples of ongoing support that maintains function while the impairment persists. Texture modification that is progressed as swallowing recovers, and enteral feeding after surgery or critical illness, are examples of treatment where function is expected to recover.

Accredited Practising Dietitians provide specialised clinical support to people whose disability, or impairment affects their ability to eat, drink, maintain adequate nutrition or prepare food independently and safely. Dietetic intervention can support the development and maintenance of functional capacity, promote independence, and enable and participation in education, employment, social and family life, and the community.

For people with complex conditions or ongoing nutritional needs, evidence of the person's ongoing functional limitations, nutritional risks, support needs, and response to dietetic intervention over time should be considered. Sustained access to dietetic care may be necessary to maintain adequate nutrient intake, prevent deterioration in nutritional status and reduce associated health complications.

The fact that an individual's functional capacity improves with appropriate intervention should not, in isolation, be interpreted as evidence that the underlying impairment is no longer permanent or that ongoing disability-specific support is no longer required. Assessment should consider whether the person's functional capacity can be maintained without ongoing support, and the likely consequences of withdrawing or reducing that support.

References

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