

National Disability Insurance Scheme

Independent Review of the Operation of the National Disability Insurance Scheme Act 2013

Vision 2020 Australia

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General comments

Vision 2020 Australia welcomes the opportunity to provide comment to the independent review of the National Disability Insurance Scheme (NDIS) Act 2013. Vision 2020 Australia commends the Australian Government for their commitment to one of the most significant single reforms in disability policy in Australia's history. The NDIS has the potential to empower people who are blind or vision impaired, as well as people with disability more generally, on a scale like never before by providing the freedom of choice and control over the services and supports they need to fully participate in the community as equal citizens.

Vision 2020 Australia broadly supports the submissions put forward by our member organisations, namely Blind Citizens Australia and sector partner Guide Dogs Australia. The eye health and vision care sector strongly supports the philosophy of the NDIS and applauds the Australian Government for their intent to transition to a culture that actively promotes independence, choice, and control; and intends to build on individual strength and capacity. For eligible consumers, including those who are blind or vision impaired, the NDIS will be essential to maintaining a high quality of life, independence and participation within the community.

Vision 2020 Australia

Vision 2020 Australia represents around 50 member organisations involved in: local and global eye care; health promotion; low vision support; vision rehabilitation; eye research; professional assistance and community support.

This submission has been developed in collaboration with the Vision 2020 Australia Independence and Participation Committee (the Committee). The Committee brings together a diverse group of members providing services and supports to people who are blind or vision impaired across Australia; enabling an unique platform for stakeholders to collaborate, foster consensus and develop a shared understanding on matters of significance affecting member organisations and consumers. It draws on the knowledge, experience, and resources of the membership and applies itself to Vision 2020 Australia's strategic goal for people who are blind or vision impaired to participate in the community. Through broad and inclusive representation, the Committee is central to supporting one of Vision 2020 Australia's key roles as an effective conduit to government, offering a unified and consistent voice.

Contact

Brandon Ah Tong
Director of Policy and Advocacy
Vision 2020 Australia
Bahtong@vision2020australia.org.au
Ph. 03 9656 2020

Jodie Bell
Policy and Advocacy Coordinator
Vision 2020 Australia
JBell@Vision2020Australia.org.au
Ph. 03 9656 2020

Haylea Fitzsimmons
Policy and Advocacy Coordinator
Vision 2020 Australia
Hfitzsimmons@vision2020australia.org.au
Ph. 03 9656 2020

1 Summary of recommendations

Vision 2020 Australia makes the following recommendations not listed in order of importance:

Recommendation 1: Monitoring and reporting mechanism, Part 5 s.172.2

That Part 5 s.172 be amended to include an explicit provision requiring the Board of the NDIA to monitor and report against obligations under the Convention on the Rights of Persons with Disabilities on an annual basis.

Recommendation 2: Addition of non-discrimination principle, s.4

That s.4 be amended to include a principle in the NDIS Act stating that people with disability will be supported regardless of age or other status such as sex, race and religion.

Recommendation 3a: Regulation of s.21.2(b)

That the NDIS Rules for Becoming a Participant be amended to make regulatory provision for the implementation of clause 21.2 (b) of the Act.

Recommendation 3b: Programs provided for under s.21.2(b)(iii)

That the Rules in relation to eligible programs under s.21.2 (b)(iii) of the Act clearly include specialist disability services and supports accessed by people who are blind or vision impaired.

Recommendation 3c: Timeframe for program access under s.21.2 (b)(ii)

That a rule regulating the timeframe for access to a program under s.21.2 (b)(ii) be no less than three years from the time of application.

Recommendation 3d: Sunset clause of 12 months, s.21.2(b)

That the Act under clause 21.2 (b) be amended to provide for a sunset clause of 12 months to apply from the time an applicant is able to make use of this provision.

Recommendation 4: Age requirements, s.22

That the Australian Government modify s.22 of the Act, so that people aged 65 years or over are eligible for the NDIS, or have guaranteed equitable access to publically funded support and services.

Recommendation 5: Disability requirements, s.24

That Rule 5.4 and 5.6 in relation to s.24 of the Act should be amended to include an exemption when there is demonstrable evidence of a presenting functional need and where treatment is likely to exceed 6 months.

Recommendation 6: Early intervention requirements, s.25.1(c)

That s.25.1(c) of the Act and part 6.2 (c) of the Rules be amended to state that the CEO is satisfied that the provision of early intervention supports of the person: is likely to benefit the person through continuous skills development, above and beyond basic skills acquisition.

Recommendation 7: Reasonable and necessary supports, s.34 and s.35

That consumers who are blind or vision impaired have access to a holistic specialist assessment and/or a peer support mentor both at the time of determining an individual's eligibility and in determining an individual's support plan.

Recommendation 8: Time frames for decision making, s.204

That s.204 of the Act and part 3 of the Rules is amended to state that the CEO will endeavour to take action to approve a participants plan within 21 days after an individual is deemed eligible.

Recommendation 9: Value for money, s.34.1

That s.34.1 of the Act is amended to include the provision that the support best meets the need of the individual, secondary to cost.

Recommendation 10: Independent quality evaluations, s.69

That s.69 of the Act is amended to include a provision for independent quality evaluations to be mandatory for providers of higher risk services.

Recommendation 11: Choice limited for higher risk services

That Part 4 of the Rules for Registered Providers of Supports be amended to include a provision for a list to be made of approved providers of high risk supports that NDIS participants will be required to choose from.

Recommendation 12: Regulatory mechanism

That Part 4 the Rules for Registered Providers of Supports be amended to include a regulatory mechanism to ensure organisations can be audited and improved if not performing adequately.

Recommendation 13: Independent pathway for review of decisions and complaint resolution

That Chapter 4 Part 6 of the Act be amended to include a pathway for review of decisions and resolution of complaints that is independent of the NDIA and affords reasonable ease of access.

Recommendation 14: Complaint and decision review, Chapter 3 Division 4

That Chapter 3 Division 4 of the Act be amended to clearly define and explain the separate complaint and decision review mechanisms.

Recommendation 15: Independent Advisory Council, s.147.5(c)

That the Australian Government include in s.147.5 (C) of the NDIS Act a stipulation that at least one member of the Independent Advisory Council has a lived experience of blindness or vision impairment.

Recommendation 16: Amend s.127.2

That the Australian Government include in s. 127(2) of the NDIS Act a stipulation that at least one Board member must be a person with disability.

Recommendation 17: Definitions, Amend s.9

That the Act include the term 'lived experience' defined as an individual's personal experience living with disability or of a person living day-to-day and supporting a person with disability within s.9 of the Act.

2 Objects and Principles

Do the Objects and Principles of the NDIS Act provide a sufficient basis for giving effect to Australia’s obligations under the Convention on the Rights of Persons with Disabilities?

NDIS Act Chapter 7 Other Matters

Vision 2020 Australia notes that the NDIS Act engages a number of human rights obligations of the *Convention on the Rights of Persons with Disabilities (CRPD)*. This is explicitly outlined in the Statement of Compatibility that accompanied the NDIS Bill.

Vision 2020 Australia welcomes the consumer directed care approach that is reflected in the guiding principles of the NDIS Act and is firmly based in human rights. People with disability, their families and carers must be actively engaged in the work of the NDIS including in its development, implementation and monitoring, to ensure that the NDIS is accurately targeted, comprehensive and responsive to needs.

The Statement of Compatibility with Human Rights that accompanied the NDIS Bill¹ states that placing the CRPD as the first of a number of objectives in the NDIS is ‘designed to promote the status of the CRPD and emphasise its critical nature in the interpretation of the legislation.’ However, bearing in mind the adage that ‘what gets measured gets done,’ the centrality of the CRPD principles to the NDIS Act is undermined by the absence of a monitoring mechanism to track progress against Australia’s obligations under the CRPD. This means a weak foundation for accountability against the convention.

In order to ensure that the NDIS is able to give effect to Australia’s obligations under the CRPD it is essential that there are appropriate monitoring and reporting mechanisms in place to guarantee mutual accountability and transparency. Part 5, s.172 of the Act explicitly requires that the Board of the NDIA report annually to the Minister under *section 46 of the Public Governance, Performance and Accountability Act 2013*. Further, s.172.2 (b) sanctions that the annual report include details of information including statistics on participants and funding or provision of supports by the Agency. It is therefore the position of Vision 2020 Australia that s.172 of the Act be amended to specify that the Board of the NDIA be required to monitor and report against obligations under the CRPD.

Recommendation 1	Monitoring and reporting mechanism, Part 5 s.172.2
	That Part 5 s.172 be amended to include an explicit provision requiring the Board of the NDIA to monitor and report against obligations under the Convention on the Rights of Persons with Disabilities on an annual basis.

Section 4 General principles guiding actions under this Act

Vision 2020 Australia and our members are concerned at the age restrictions that require NDIS applicants to be under 65 years.

Clause p of the preamble and Article 1 of the CRPD expressly notes concern that people with disabilities can be subject to multiple forms of discrimination on the basis of a range of factors including age, and recognises the need to protect the human rights of all persons with disabilities, including those who require more intensive support. Vision 2020 Australia and our members hold that the age restriction that requires NDIS applicants to be under 65 years undermines the rights of persons with disabilities to lead a life free from discrimination. For example, a person who is blind or vision impaired and denied access to the NDIS on the basis of

¹ Commonwealth of Australia Explanatory Memoranda: National Disability Insurance Scheme Bill 2012. Available Online at http://www.austlii.edu.au/au/legis/cth/bill_em/ndisb2012351/memo_0.html

their age, may be unable to access skills training in alternative literacy methods; and by extension without the ability to read and write in a manner comparable to their sighted peers, may be restricted in their ability to fully participate in the civil, political, economic, social and cultural rights of the community. Vision 2020 Australia remains deeply concerned that an arbitrary age limit of 65 years will deny the basic rights of people with disabilities to lead a full and independent life of their choosing. It is the position of Vision 2020 Australia that people who are blind or vision impaired should be able to enjoy equal enjoyment of all human rights and fundamental freedoms, regardless of their age.

Therefore, in line with the CRPD concern with mitigating discrimination, Vision 2020 Australia holds that a principle should be added to the NDIS Act under s.4 that states that people with disability will be supported regardless of age or other status such as sex, race and religion.

Recommendation 2	Addition of non-discrimination principle, s.4
	That s.4 be amended to include a principle in the NDIS Act stating that people with disability will be supported regardless of age or other status such as sex, race and religion.

3 Becoming a participant

How well do the access criteria enable government to further the objects and principles of the NDIS Act?

Vision 2020 Australia congratulates the Australian Government for its commitment to a scheme which has the potential to empower and enrich the lives of people who are blind or vision impaired. Vision 2020 Australia strongly supports the objects and principles of the NDIS Act, particularly the intention to ensure that participants are given the same rights as other members of the community, to realise their potential and participate in social and economic life fully and independently.

That being said, Vision 2020 Australia is concerned that there is a lack of clear indication about how Australians who are blind or vision impaired will have access to services through the NDIS. There are a number of barriers embedded within the access criteria with the potential to disadvantage and restrict the availability of quality supports and services through the NDIS. Vision 2020 Australia therefore provides comment to the Australian Government to indicate how the legislative framework may be adjusted to ensure people who are blind or vision impaired do not fall between the cracks.

What amendments could be made to the legislative framework to enhance the clarity and effectiveness of the access criteria?

Section 21: When a person meets the access criteria

As a first principle, Vision 2020 Australia has strongly argued that no individual who is blind or has a vision impairment with a demonstrable functional need, or any person with a disability for that matter, should be denied access to government funded disability services and supports solely on the basis of their age. This being said, it is most certainly the case that an individual who meets the residency and disability or early intervention criteria, has a history of accessing disability services and would otherwise be eligible to be an NDIS participant but for their age, ought to be afforded at least some opportunity to be an NDIS participant. Vision 2020 Australia is therefore strongly in favour of the need for a limited grandfathering provision as an alternative measure to there being no restriction on the basis of age.

Under subclause 21.2 (b) the Act specifies that if the CEO is not satisfied as mentioned in subsection (1), the person meets the access criteria if the CEO is satisfied that the person:

- (i) was receiving supports at the time of considering the request or, if another time is prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph, at that other time; and
- (ii) received the supports throughout the period (if any) prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph; and
- (iii) received the supports under a program prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph;

The provision of 21.2 (b) recognises that it is unreasonable to create a barrier to access for people with a history of disability service and support solely on the basis of their age. The provision emphasises the importance for an individual to continue to receive supports where they have had a demonstrable functional need, where that need is ongoing and where the rollout of the NDIS would have applied to that individual should the NDIS been in place at an earlier time. Vision 2020 Australia contends that the letter of the law and the intent of this provision is clear; however both the Rules and Operational Guidelines of the NDIS are silent on this issue. The regulatory framework provides no further clarification on how an individual who has a history of disability service and falls outside the age requirements may meet the access criteria, despite the clear provision within the Act.

To further demonstrate the intent of provision 21.2 (b), Vision 2020 Australia draws attention to the Commonwealth Draft Rules released for consultation in March 2013. Under Part 7, *Rules for Becoming a Participant: Alternative way to meet the access criteria*, the rules specified that an individual who does not meet the age requirements can nevertheless meet the access criteria if the CEO is satisfied of all of the following:

- (a) the person meets the qualifying residence requirement and the ongoing residence requirement in Part 4;
- (b) the person received supports under a program listed in the table below (which may be a component of a broader program);
- (c) the person received those supports at the time set out in the table below in relation to the relevant program;
- (d) the person received the supports throughout the period set out in the table below in relation to the relevant program;
- (e) if the person becomes a participant, the person would not be entitled to receive the supports under the relevant program listed below, or equivalent supports.

It should be noted that the table specified above was provided, but not populated at the time.

Vision 2020 Australia would like to make plain that the original draft rules under part 7 clearly attempted to regulate the implementation of clause 21.2 (b) of the Act in a manner consistent with our reading, and that the current Rules and NDIS Operational Guidelines, have fallen completely silent on this provision.

It is the position of Vision 2020 Australia that from an equity perspective people who are blind or vision impaired who currently access disability specialist services should continue to access the same or comparative services through the NDIS. We seek to ensure that the legislation maximises the principle of fairness and reasonableness through the administration of subclause 21.2 (b) of the Act and that this is reflected clearly within the subsequent Rules.

Vision 2020 Australia therefore strongly recommends that the NDIS Rules for Becoming a Participant be amended to make regulatory provision for the implementation of clause 21.2 (b) in accordance with the intention and letter of the law as stated in the Act.

Recommendation 3a	Regulation of s.21.2(b)
	That the NDIS Rules for Becoming a Participant be amended to make regulatory provision for the implementation of clause 21.2 (b) of the Act.

Additionally, Vision 2020 Australia contends that the supports and services in relation to s.21.2 (b)(iii) to be materially provided for in the rules as recommended here, should not be narrowly applied to government funded programs alone.

Many of the services and supports provided by Vision 2020 Australia member organisations are funded through alternative means, such as philanthropy support and bequests. While it is not the intension of the NDIS or Vision 2020 Australia to replace long standing community support for people with disability through public giving, it is the case that the fundamental basis of the NDIS is to remove the fragmentation, inequity and inefficiency of the existing system creating drag on the economy and undermining productivity.

Therefore Vision 2020 Australia recommends that the rule provision under s.21.2 (b)(iii) as it refers to types of programs, include the longstanding programs and services provided by specialist disability support services and community groups accessed by people who are blind or vision impaired.

Recommendation 3b	Programs provided for under s.21.2(b)(iii)
	That the Rules in relation to eligible programs under s.21.2 (b)(iii) of the Act clearly include specialist disability services and supports accessed by people who are blind or vision impaired.

Furthermore, people who are blind or vision impaired are known to access services infrequently, often instigated by changes to their environment, conditions or during key life transition points. The frequency and intensity of support is dependent on a range of factors. For instance a person with low vision may access services intermittently to learn how to use a new piece of assistive technology. While other clients may have a constant need for services, such as people with degenerative eye conditions who may need to constantly adjust to changing conditions. Vision 2020 Australia advocates that this profile of infrequent service access should not be inferred to mean that people who are blind or have low vision have a lesser need for support.

It is therefore imperative that a rule provision under s.21.2 (b)(ii) stipulating a timeframe for recognition of previous program access to disability related services, is long enough to ensure the inclusion of people who have not accessed a disability specific service recently. Vision 2020 Australia member organisations advise that it is not uncommon for clients to come in and out of contact over a three year period.

At minimum, Vision 2020 Australia therefore recommends that a rule in relation to subclause 21.2 (b)(ii) include a timeframe of no less than three years from the time an applicant makes an application to account for episodic access to services and supports by people who are blind or vision impaired. Given that an individual will still need to meet all other eligibility requirements at the time of application, this is not an unreasonable concession to make.

Recommendation 3c	Timeframe for program access under s.21.2 (b)(ii)
	That a rule regulating the timeframe for access to a program under s.21.2 (b)(ii) be no less than three years from the time of application.

Finally notwithstanding our first principle noted above with regards to the existing age barrier, Vision 2020 Australia recognises that it is not practicable for a grandfathering provision of this nature to be open indefinitely. Vision 2020 Australia therefore recommends that a sunset clause of 12 months should apply to applicants seeking to make a request under subclause 21.2 (b) of

the Act and subsequent rules, which would apply from the time the NDIS becomes available for an applicant to make use of this provision. This 12 month period allows for a reasonable amount of time for an individual to apply to become a participant under this special provision, while being mindful of the medium to long term financial sustainability of the NDIS under the existing arrangements.

Recommendation 3d	Sunset clause of 12 months, s.21.2(b)
	That the Act under clause 21.2 (b) be amended to provide for a sunset clause of 12 months to apply from the time an applicant is able to make use of this provision.

Section 22: Age requirements

As mentioned several times above and notwithstanding comments against recommendations 3a-3d, Vision 2020 Australia and our members remain concerned at the implications of an entrance age requirement of 65 years. Figures from the Australian Bureau of Statistics 2012 *Survey of Disability, Ageing and Carers* (SDAC) indicate that prevalence of disability increases with age, as does a person's need for formal assistance. The findings uncovered higher rates of unmet need amongst those with sensory and speech disabilities at 50.2 per cent.² Further, figures from *Clear Focus: The Economic Impact of Vision Loss in Australia in 2010* indicate that over 70 per cent of people who currently experience vision loss are aged 70 and above, with macular degeneration the leading cause of blindness and vision impairment.³ An artificial age barrier of 65 years will mean that people who are blind or who have functional vision loss will fall through the cracks.

Comparable services may be delivered through the recently reformed aged care system. However, Vision 2020 Australia is concerned that there is a lack of clear indication about how Australians who are blind or vision impaired and aged 65 years and older, will have access to services through the aged care system. The primary eligibility criteria of 'frailty' in the new aged care system creates a substantial barrier for people who are blind or vision impaired to access the new scheme. An individual seeking services for blindness or vision impairment in order to maintain an active lifestyle would not necessarily be 'frail.'

Even under the present aged care reforms, Vision 2020 Australia remains concerned that the aged care system does not have the capacity to cater for those with blindness or severe vision loss, as it is not geared to provide necessary supports and services such as assistive technology and mobility training to maintain independence and high quality of life. With an estimate of over 575,000 people living with blindness or vision impairment across Australia, with the majority aged over 65 years and with an increasing trajectory as the population ages, ensuring that the NDIS and the aged care system is formulated to cater for the needs of this growing group of Australians is critical.

Vision 2020 Australia therefore recommends that the Australian Government modify s.22 of the Act, so that people aged 65 years or over are eligible for the NDIS, or have guaranteed equitable access to publically funded support and services.

Recommendation 4	Age requirements, s.22
	That the Australian Government modify s.22 of the Act, so that people aged 65 years or over are eligible for the NDIS, or have guaranteed equitable access to publically funded support and services.

² Australian Bureau Disability, *Ageing and Carers, Australia: Summary of Findings, 2012* of Statistics, available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

³ Vision 2020 Australia by Access Economics Pty Limited, *Clear Focus: The Economic Impact of Vision Loss in Australia in 2009*, June 2010.

Section 24: Disability requirements

The Acts high level statements in s.24 of the Act are an encouraging indication that legal blindness will not be the only determinant for participation and that functional vision loss (low vision) will be included in the NDIS.

However, Vision 2020 Australia is concerned about Rule 5.4, ‘An impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment and Rule 5.6 ‘the impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated.’ Whilst a majority of eye conditions are permanent by nature, there are a number of conditions which may fluctuate in severity and which may improve over time through surgical intervention.

Vision 2020 Australia is apprehensive that clause 5.4 and 5.6 of the Rules in their current form, do not adequately provide coverage for conditions such as cataract, retinal detachment and diabetic retinopathy. Whilst these conditions may result in significant vision loss, treatment and further assessment has the potential to take up to two years before a final determination can be made regarding the permanency of the condition.

For example, a person with cataracts, while medically treatable in the longer term, may experience significant vision impairment to the point of legal blindness whilst on a waiting list for surgery, sometimes for periods of years. This waiting period may impact on an individual’s ability to undertake regular activities and participate in social and economic activities. Access to the relevant supports and services during this period will be crucial in ensuring that a person with cataracts is able to lead a full and independent life of their choosing. Such functional impacts may also be experienced with cases of retinal detachment.

Furthermore, vision loss attributed to diabetic retinopathy may fluctuate in severity. While the damage to the retina is permanent, the functional impact may vary, dependant on a range of physiological and environmental factors. Thus, an initial medical assessment may not be sufficient to determine the functional impairment and permanency of the condition.

It is the position of Vision 2020 Australia that an individual seeking to access services through the NDIS should not be obligated to wait for their condition to progress to the point of permanency before having access to the relevant services and supports. The legislation should make special provision to accommodate for the existing functional impact of vision related impairment.

Vision 2020 Australia recommends that Rule 5.4 and 5.6 in relation to s.24 of the Act should be amended to include an exemption when there is demonstrable evidence of a presenting functional need and where treatment is likely to exceed 6 months.

Recommendation 5	Disability requirements, s.24
	That Rule 5.4 and 5.6 in relation to s.24 of the Act should be amended to include an exemption when there is demonstrable evidence of a presenting functional need and where treatment is likely to exceed 6 months.

Section 25: Early intervention requirements

Vision 2020 Australia, in principle, supports the definition of early intervention in reference to eye health and vision care, particularly in relation to early intervention that mitigates, alleviates or prevents deterioration of functional capacity. For our members working with people who are blind or vision impaired, early intervention is a critical element. For example, children who undertake early childhood development, skills training and peer support will maximise their long term social and economic opportunities across their lifetime. Additionally, an early expert assessment and anticipation of reasonable functional impact of diagnosed conditions, such as macular degeneration, prior to the age of 65 and registration as a potential participant has the potential to provide a clearer pathway of support to individuals outside of the arbitrary age limit. This may also provide clearer data for future cost modelling of the NDIS, such as clearer identification of unmet need. However, Vision 2020 Australia would like to make clear that it is important to guarantee ongoing support for those people for whom early intervention does not completely resolve the disability.

S.25 of the Act stipulates the criteria for determining whether a person meets the early intervention requirements. Subclause 25.1(c) states that a person meets this criteria if the CEO is satisfied that the provision of early intervention supports will benefit the individual through mitigating or alleviating the impact of a person's impairment upon the functional capacity of the person to undertake regular activities. Vision 2020 Australia believes that s.25.1 should take into consideration whether an early intervention support will benefit the individual through delivering rehabilitative (back to good health) or habilitative (increased ability) outcomes. For example, habilitative care will be crucial to congenital vision impairment.

Furthermore, consideration should also be given to whether the service delivers and builds transferrable skills or outputs that an individual can use to ameliorate the effect of their disability on their ability. This includes skill attainment at the time of service delivery and also into the future, so that an individual can perform functions such as moving around the community safely, maintain their employment or undertake activities of daily living to their desired level of independence, and also problem-solve through functional challenges in the future without necessarily requiring support from a specialist agency.

It is therefore the position of Vision 2020 Australia that s.25.1(c) of the Act and Part 6.2 (c) of the rules be amended to state that the CEO is satisfied that the provision of early intervention supports of the person: is likely to benefit the person through continuous skills development, above and beyond basic skills acquisition.

Recommendation 6	Early intervention requirements, s.25.1(c)
	That s.25.1(c) of the Act and part 6.2 (c) of the Rules be amended to state that the CEO is satisfied that the provision of early intervention supports of the person: is likely to benefit the person through continuous skills development, above and beyond basic skills acquisition.

4 Participant plans

How well does the legislative framework's definition of what constitutes 'reasonable and necessary supports' support the independence and social and economic participation of people with disability?

Vision 2020 Australia, in principle, supports the definition of reasonable and necessary supports as stipulated under s.34 of the Act. In particular, Vision 2020 Australia is pleased that planning for eligible participants takes into consideration the goals and aspirations of the individual person. That being said, Vision 2020 Australia advocates that participant planning must take a holistic view of the person with specialist expertise in blindness and vision impairment. This will

lead to a more accurate assessment of current and functional needs and appropriate expenditure.

What amendments could be made to the legislative framework to improve the effectiveness and/or efficiency of the participant planning and assessment process?

Section 34 and 35: Reasonable and necessary supports

Vision 2020 Australia is encouraged that the legislation specifies that the CEO is to take into account and if necessary seek, expert opinion in determining reasonable and necessary supports (Rule 3.2 and 3.3: effective and beneficial and current good practice). Vision 2020 Australia believes that expert advisers, such as accredited professions like orientation and mobility instructors, have the potential to play a significant role in matching a participant's need with the most appropriate supports. An independent third party with specialist knowledge of the participant's disability and relevant supports should be available to provide guidance on what supports will be reasonable and necessary to achieve the participant's goals. In order to achieve this, experts should take a holistic approach, with attention to all aspects of the persons need and circumstances.

To this end, Vision 2020 Australia's position on holistic specialist assessment is instructive here. Vision 2020 Australia considers it is critical for consumers who are blind or vision impaired seeking support through the NDIS, to have access to a holistic specialist assessment both at the time of application and during support planning.

Holistic specialist assessment means a general assessment undertaken by a trained professional or team of professionals with specialist expertise in blindness and vision impairment, with a view to the holistic person and their goals and aspirations across a broad spectrum of clinical and functional outcome areas. A holistic specialist assessment may occur in conjunction with or in addition to a specialist assessment undertaken in response to a specific clinical or functional need or other general assessment. Reports provided by holistic specialist assessors should be considered in determining an individual's eligibility to NDIS and in determining an individual's support plan for reasonable and necessary supports.

Additionally, Vision 2020 Australia considers it critical that people who are blind or vision impaired have the option of access to a peer support mentor, with a lived experience of accessing supports. A number of Vision 2020 Australia's member organisations possess specialist expertise which is often provided on a non-fee basis and at no gain to the organisations. This expertise support to individuals and their families during support planning will assist individuals to better understand their choices for reasonable and necessary supports. Essential to the success of a peer support system will be the implementation of appropriate monitoring and safeguards to ensure best practice.

Vision 2020 Australia therefore recommends that the legislation, s.34 and s.35 of the Act, be amended to state that consumers who are blind or vision impaired have access to a holistic specialist assessment and/or a peer support mentor both at the time of determining an individual's eligibility and in determining an individual's support plan.

Recommendation 7	Reasonable and necessary supports, s.34 and s.35
	That consumers who are blind or vision impaired have access to a holistic specialist assessment and/or a peer support mentor both at the time of determining an individual's eligibility and in determining an individual's support plan.

Section 204: Time frames for decision making

Section 204 of the Act, Part 3 of the Rules, *timeframes for making decisions*, stipulates that in all circumstances the CEO of the NDIA will take action to ensure that an individual's claim is processed within a specific timeframe of receiving an access request. However, Vision 2020 Australia is concerned that there is no timeframe stipulated in the legislation between when an individual is deemed eligible and their participant plan is approved.

The Operational Guidelines, Planning and Assessment Overview state that 'The NDIA must commence facilitating a plan for each participant in accordance with the Facilitating the Preparation of Participants' Plans Rules, or if these do not set a timeframe, as soon as reasonably practicable.' Vision 2020 Australia members have reported that some NDIS participants experience unreasonable delays in receiving completed plans after they have been deemed eligible. It is therefore the position of Vision 2020 Australia that the NDIS Rules should provide clearer guidance on the length of time between a participant being confirmed eligible and the plan being created.

Vision 2020 Australia therefore recommends that s.204 of the Act and Part 3 of the Rules is amended to include specific timeframes in which the CEO must make decisions to ensure that an individual's plan is processed within a reasonable span of time.

Vision 2020 Australia believes that the CEO should endeavour to take such an action within 21 days after an individual is deemed eligible.

Recommendation 8	Time frames for decision making, s.204
	That s.204 of the Act and part 3 of the Rules is amended to state that the CEO will endeavour to take action to approve a participants plan within 21 days after an individual is deemed eligible.

What amendments could be made to the legislative framework (if any) to ensure the NDIA has the required capacity to control costs in relation to participant plans?

Section 34 and Section 35: Value for money

Vision 2020 Australia recognises the importance of implementing a scheme which is sustainable in the long term. However, what is deemed to be 'value for money' needs to be driven by the best interests of each individual person. The term 'reasonable and necessary' must not be applied in a prejudicial manner, particularly that it must not be used as an economic argument against providing goods or services in a package. Vision 2020 Australia is mindful to emphasise that support needs cannot be secondary to cost. The intensity, frequency and cost of services should be not be inferred to mean a lesser or more need for the individual.

Vision 2020 Australia recognises that most people with significant vision impairment utilise assistive technology to varying degrees in order to maintain their independence and lead fulfilling lives. For an individual living with blindness or vision impairment, having access to technology which is both appropriate and specific to their needs is essential to maintaining a high quality of life, mobility, independence and participation. Assistive technology can, however be far more costly than other mainstream disability services or supports.

For example, while braille is an essential tool for developing literacy and can significantly increase employment prospects, the production of hard copy braille material is expensive to produce and the electronic refreshable braille displays are more expensive than say the cost of screen reading software licences or audio format materials. Vision 2020 Australia believes it is crucial that an individual has the ability to choose the format that will best meet their needs so as not to unnecessarily restrict the choice that has been inherently promoted as the selling point of the NDIS.

While supports such as braille and dog guides can be costly, it is clear that the economic cost of people with blindness and vision impairment not receiving such supports, and thereby not participating in the economic and social life of their communities, is far greater. Furthermore,

the value of specialist assessment has been demonstrated in review of plans in determining more cost effective (and appropriate) plans for participants. Vision 2020 Australia urges the Australian Government to consider the longer term economic and social benefits to be gained from NDIS investments in assistive technology and supports.

Vision 2020 Australia therefore recommends amending s.34.1 of the Act to include the provision that the support best meets the need of the individual, secondary to cost.

Recommendation 9	Value for money, s.34.1
	That s.34.1 of the Act is amended to include the provision that the support best meets the need of the individual, secondary to cost.

5 Registered providers of supports

How well does the legislative framework (including, but not limited to, the provider registration requirements) enable government to promote innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports to people with disability?

Section 69 Application to be a registered provider of supports

In response to the Quality and Safeguarding Framework Consultation in April 2015 Vision 2020 Australia supported the implementation of mandated independent quality evaluations for certain providers of supports, with the proviso that the only providers subject to the more rigorous scrutiny of an independent evaluation would be those who deliver high risk services. Providers of these high risk supports, which are considered integral to wellbeing and daily living requirements, should be required to meet a higher standard than providers of a service that is considered low risk. Vision 2020 Australia holds that it is important to provide a legislative safeguard that mandates independent quality evaluations for providers of higher risk services whilst maintaining the flexibility on who can be a registered provider that is intended by the design of the NDIS Act.

Recommendation 10	Independent quality evaluations, s.69
	That s.69 of the Act is amended to include a provision for independent quality evaluations to be mandatory for providers of higher risk services.

Do the registration requirements strike the right balance between supporting principles of choice and control, including in relation to taking reasonable risks and the rights of people with a disability to freedom from abuse, neglect and exploitation?

NDIS Rules for Registered Providers of Supports 2013, Part 3

In January 2013, COAG put forward four market options in a Regulation Impact Statement (RIS) with various impacts and regulatory repercussions for disability service consumers and providers. Vision 2020 Australia supported the third option put forward, asking for ‘choice limited only in higher risk circumstances.’ This option was intended to ensure that individuals are able to purchase low risk disability services from any provider (including mainstream services), whether or not these meet minimum quality assurance and service standards. However, for higher risk support more critical to well-being and daily living requirements there would be additional quality and safety requirements for providers. This option was preferred because it facilitated greater choice for individuals while still promoting competition and regulating higher risk

services. Vision 2020 Australia holds that this aim can be achieved by a legislative amendment to s.70 of the Act that would require a list to be made of approved service providers, from which NDIS participants would be required to choose. Vision 2020 Australia remains committed to supporting the dignity of NDIS participants by promoting consumer control and choice, while ensuring practices that carry a high level of risk are appropriately regulated with quality controls and safeguards.

Recommendation 11	Choice limited for higher risk services
	That Part 4 of the Rules for Registered Providers of Supports be amended to include a provision for a list to be made of approved providers of high risk supports that NDIS participants will be required to choose from.

How clearly defined is the NDIA’s role in the registration of providers?

NDIS Rules for Registered Providers of Supports 2013, Part 4

Under Part 4 of the *NDIS Rules for Registered Providers of Supports*, registered providers are required to notify the Agency of events such as complaints received, being subject to adverse actions or failure to comply with applicable health and safety laws. Under Part 5 *Revocation*, the NDIA CEO may revoke the approval of a person or entity as a registered provider of supports. The language in this section indicates that revocation is a discretionary measure and this does not provide clarity about the likely outcomes of issues arising with registered providers.

Vision 2020 Australia recommends that a regulatory mechanism should be implemented to ensure organisations can be audited and improved if not performing adequately. For example, this mechanism may be triggered by a certain number of complaints about a provider, or by the occurrence of a serious issue that needs to be investigated. This would ensure that the sector can be confident that participants are directed to service providers that are adhering to guidelines and regulations.

Recommendation 12	Regulatory mechanism
	That Part 4 the Rules for Registered Providers of Supports be amended to include a regulatory mechanism to ensure organisations can be audited and improved if not performing adequately.

6 Reviewable decisions

What amendments could be made to the legislative framework (if any) to enhance the effectiveness and/or efficiency of the merit review process?

Chapter 4 Part 6 - Review of decisions Section 100 and appeals Section 103

Vision 2020 Australia holds that the internal review process of s.100 is not a transparent review mechanism that holds sufficient independence to provide assurance to persons seeking a review of decisions. The proposed next step in s.103 of going to the Administrative Appeals Tribunal (AAT) does not provide reasonable ease of access without undue burden on complainants. For example, Vision 2020 Australia notes that the 28 day period for requesting review of decisions can present a significant barrier to people with blindness and vision impairment, who may need to wait for assistance in reading correspondence and completing forms.

Vision 2020 Australia believes a review body completely independent from the funding agency is essential. A middle path is not without precedent (for example the Victorian Disability Services Commissioner) and may provide a faster and more efficient review mechanism that is less

arduous on complainants and as it would be disability service specific for the NDIS, would provide assurance that decisions would give due consideration to disability specific issues.

The National Disability and Carer Alliance conducted a series of consultations involving over 2,000 people with disabilities, families and carers and service providers in the second half of 2012. A summary report was provided outlining the issues raised and a section on Reviews and Complaints outlined that the reviews and complaints system must focus on individual issues, needs and outcomes.⁴ Further, the review process should:

- Consist of a review body completely independent from the funding agency.
- Address issues in a timely manner.
- Allow the opportunity to involve independent support persons, perhaps including a system of lay advocates.
- Have the ability to enforce its rulings.
- At no cost, without lawyers, be welcoming with a variety of venues for hearings. The process and results need to be widely publicised.
- Require a defined framework including: *how to use it* and *what to expect*.
- Include a process to ensure systems modification based on feedback for all parties from reviews and complaints data.

Vision 2020 Australia recommends consideration of an independent middle path (such as a Disability Services Commission) to review decisions and resolve complaints in a way that is truly independent and accessible.

Recommendation 13	Independent pathway for review of decisions and complaint resolution
	That Chapter 4 Part 6 of the Act be amended to include a pathway for review of decisions and resolution of complaints that is independent of the NDIA and affords reasonable ease of access.

Furthermore, Vision 2020 Australia notes feedback from our members that NDIS participants may not clearly understand the difference between the decision review and complaints processes. Participants may wrongly believe that a decision review will be triggered by the submission of a complaint.

It is therefore the position of Vision 2020 Australia that the legislation be amended to clearly define and explain the separate complaint and decision review mechanisms.

Recommendation 14	Complaint and decision review, Chapter 3 Division 4
	That Chapter 3 Division 4 of the Act be amended to clearly define and explain the separate complaint and decision review mechanisms.

⁴ National Disability and Carer Alliance (2013), *Summary Report-Key Issues Raised in the Alliance NDIS Community Engagement Project*

7 Governance

How well do the governance arrangements enable government to further the objects and principles of the NDIS Act?

Independent Advisory Council Section 147.5

Vision 2020 Australia supports the established governance structure of the NDIS. In particular the Independent Advisory Council (IAC) is considered to be a positive aspect of the governance arrangement due to its independent nature and its composition. Vision 2020 Australia commends the Australian Government for legislating under Section 147 that the majority of IAC members are people with disability. However, it is the position of Vision 2020 Australia that the IAC must include at least one person with the lived experience of blindness or vision impairment, as specialist needs of this specific part of the disability sector are often considered subsequent to priorities of those with a physical disability.

Recommendation 15	Independent Advisory Council, s.147.5(c)
	That the Australian Government include in s.147.5 (C) of the NDIS Act a stipulation that at least one member of the Independent Advisory Council has a lived experience of blindness or vision impairment.

Appointment of Board members Section 127.2

Vision 2020 Australia contends that the legislated composition requirements for the NDIS Board should be amended to explicitly require membership by at least one person with a disability. It is critical to fully involve people with disabilities at all levels of the NDIS to ensure they have genuine input into the developments that affect their lives.

The absence of clearly legislated criteria for including a person with disability on the Board undermines the object of the NDIS Act to ‘enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports.’ Rather than limiting this choice and control to a passive role of NDIS participants, this choice and control must be understood as happening at all levels through the governance structure and as a way to actively empower people with disability. This legislative amendment would bring the NDIS Act into closer alignment with the CRPD, in which Article 29b enjoins State Parties to actively promote environments where persons with disabilities can effectively and fully participate in the conduct of public affairs.

Recommendation 16	Amend s.127.2
	That the Australian Government include in s. 127(2) of the NDIS Act a stipulation that at least one Board member must be a person with disability.

8 Other matters

The review of the NDIS Act presents ample opportunity for the definition of ‘lived experience’ to be considered and defined somewhat. It is the position of Vision 2020 Australia that the legislation should overtly reflect the lived experience of people with a disability throughout. Vision 2020 Australia defines the term ‘lived experience’ as an individual’s personal experience living with disability or of a person living day-to-day and supporting a person with disability. A tighter definition of the term ‘lived experience’ should ensure that the practical application of the NDIS will take into account the day-to-day issues encountered by people with disabilities

Vision 2020 Australia therefore recommends that the Act should be amended to use the term ‘lived experience’ as previously defined. Vision 2020 Australia recommends that Part 4, s.9 of the Act, Definitions, should be amended to include the term ‘lived experience.’

Recommendation 17	Definitions, amend s.9
	That the Act include the term ‘lived experience’ defined as an individual’s personal experience living with disability or of a person living day-to-day and supporting a person with disability within s.9 of the Act.

9 Conclusion

Vision 2020 Australia is concerned that there are a number of barriers embedded within the legislation with the potential to disadvantage and restrict the availability of quality supports and services for people who are blind or vision impaired. Vision 2020 Australia seeks reassurance that the legislative framework will be adjusted to adequately ensure that people who are blind or vision impaired are not denied access to government funded disability services and supports solely on the basis of their age.

Vision 2020 Australia thanks the Australian Government for the opportunity to comment on this important issue, and welcomes any further participation and discussion on what is an important matter for people who are blind or vision impaired.