

SUBMISSION IN CHIEF

To: The Chair and Members of the Senate Community Affairs Legislation Committee

From: Third Place Community Inc.

Date: 22 May 2026

1. PRELIMINARY STATEMENT & CONSTITUTIONAL MANDATE

1.1 This Submission is formally tabled before the Senate Community Affairs Legislation Committee by Third Place Community Inc. to address severe, structural, and constitutional flaws within the *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* (the Bill).

1.2 Adopting a rigorous, investigative posture akin to a Royal Commission, this submission argues that the Bill as drafted represents an unconstitutional overreach of executive authority, an impermissible abdication of parliamentary oversight, and a direct threat to the substantive legal rights of vulnerable Australian citizens.

1.3 It is the position of Third Place Community Inc. that this Bill must not be passed in its current form. It requires wholesale legislative amendment or absolute rejection by Parliament to safeguard the integrity of the Commonwealth's statutory commitments.

2. CONSTITUTIONAL INVALIDITY & OVERREACH (THE SECTION 51 EXTRACTION)

2.1 The Plenary Power Limitation: The Commonwealth's legislative authority to enact and amend the *National Disability Insurance Scheme Act 2013* resides primarily within the narrow scope of Section 51(xxiiiA) (the provision of medical and dental services) and the external affairs power under Section 51(xxix) of the Australian Constitution, giving effect to the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD).

2.2 Breach of International Obligations: By weaponising statutory instruments to delegate unconstrained fiscal rationing mechanisms directly to executive rules—most acutely via the budget manipulation methods permitted under Schedule 4—the Bill actively violates the non-retrogression principle implicit in Australia's international treaty obligations. Proposed Section 34A (inserted by Schedule 1, Part 4) creates a sweeping executive mechanism enabling the Minister to unilaterally reduce funding components for specified groups of supports by legislative determination. Under constitutional jurisprudence, for a law to remain valid under Section 51(xxix), it must display a proportionate and rational conformity to the

treaty it purports to execute (*Victoria v Commonwealth* [1996] HCA 56). This Bill abandons that conformity in favour of blunt, executive fiscal rationing.

3. THE "HENRY VIII" DELEGATION CRISIS: SCHEDULE 5 TRANSITIONAL RULES

3.1 The Subversion of Parliament: Schedule 5 of the Bill contains an extraordinary expansion of executive overreach by empowering the Minister to make transitional rules that override primary legislation. This mechanism functions as a classic "Henry VIII clause," enabling the Executive to bypass the standard, transparent legislative scrutiny of both Houses of Parliament.

3.2 The Separation of Powers: While the High Court of Australia has historically permitted broad delegations of legislative power (*Victorian Stevedoring and General Contracting Co Pty Ltd v Dignan* [1931] HCA 34), it has consistently maintained that the Executive cannot be given a blank check to alter the core administrative architecture of a statutory scheme without Parliamentary accountability. The scope of Schedule 5 effectively insulates major structural adjustments from real-time parliamentary disallowance, setting a highly dangerous constitutional precedent.

4. RADICAL IMPAIRMENT CONTRACTION & ADMINISTRATIVE OPACITY

4.1 Third Place Community Inc. identifies severe legal vulnerabilities across the following core statutory amendments:

- The Compression of "Functional Capacity" (Schedule 1, Part 1): While proposed Section 9B inserts a baseline definition, subsections 9B(2) and 9B(3) shift the core power to determine threshold criteria, classifications, and measurement tools entirely to subordinate NDIS Rules. Stripping the primary Act of these essential parameters constitutes an impermissible delegation of fundamental statutory boundaries to executive caprice.
- The Restriction of Unscheduled Plan Reassessments (Schedule 1, Part 2): By inserting proposed Section 48A, the Bill strictly limits participant-requested reassessments to cases of "significant and ongoing" alterations. This insulation of the National Disability Insurance Agency (NDIA) denies administrative natural justice to participants whose degenerative conditions fluctuate rapidly, locking them out of lawful merits review. Compounding this harm, Proposed Section 48(3) extends the statutory timeframe for the CEO to decide on a valid reassessment request from 21 days to an unconscionable 90 days.

- The Treatment Obligation Criteria (Schedule 1, Part 8): Forcing individuals to undergo "all appropriate treatments" to prove the permanence of an impairment fundamentally alters the tortious and common-law principles of bodily autonomy. It effectively codifies a medical-coercion framework as a prerequisite for statutory support, risking constitutional invalidity under the Section 51(xxiiiA) prohibition against civil conscription.

5. SYSTEMIC REGULATORY RECONSTRUCTION

5.1 Mandatory Registration and Panel Procurement: The Bill's push toward mandatory registration and the structural replacement of the open market with a commissioned plan management panel from 1 October 2027 operates as an anti-competitive restraint of trade. This intervention will decimate local, specialised, and peer-led disability service ecosystems.

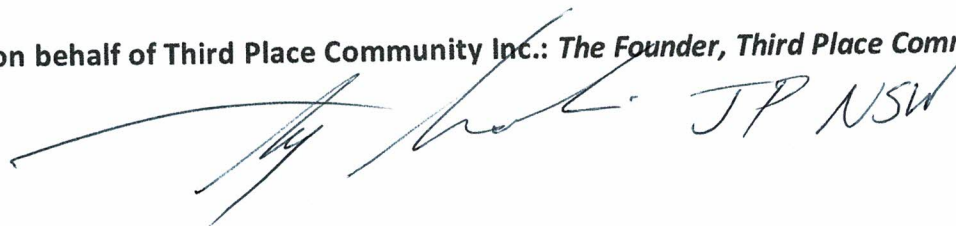
5.2 Reversal of the Onus on Records: The introduction of strict 90-day claim limits and severe civil penalties for failure to retain contemporaneous records shifts an unconscionable legal burden onto individual participants and self-managed nominees. It exposes everyday citizens to criminalised administrative errors without requiring the Crown or Agency to prove a threshold of fraudulent intent (*mens rea*).

6. ORDERS AND REMEDIES SOUGHT BY THIRD PLACE COMMUNITY INC.

To remedy these profound deficiencies, this Submission demands that the Senate Committee table the following recommendations to the Parliament:

- Striking Out Schedule 5: Completely excise the transitional rule-making powers from Schedule 5, forcing all regulatory adjustments to pass through standard Parliamentary amendment and disallowance procedures.
- Statutory Preservation of Funding: Delete proposed Section 34A to strip the Minister of the power to arbitrarily reduce funding components by executive determination without an individual, independent, merits-based assessment.
- Preservation of Merits Review: Amend Schedule 1 to explicitly protect a participant's right to request an unscheduled plan reassessment under the rules of administrative natural justice, maintaining full access to the Administrative Review Tribunal (ART) and striking down the 90-day statutory delay.

Signed on behalf of Third Place Community Inc.: *The Founder, Third Place Community Inc.*



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