

Notice of access refusal decision (s 26)

Dear Mr Lakshman

Freedom of information request no 13/14-001

This notice is to provide you with the decision on your request under the *Freedom of Information Act 1982* (FOI Act).

Summary

I, Michael Sassella, Special Counsel, DisabilityCare Australia, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

On 17 August 2013, you requested access to a copy of the assessment tool being used by DisabilityCare Australia to assist in deciding on a participant's reasonable and necessary supports. Specifically you sought access to:

"... a copy of the assessment tool being used by DisabilityCare Australia in the DisabilityCare Australia trial sites to assess disabled persons support needs and other needs that will be provided to disabled people by DisabilityCare Australia."

Your request was acknowledged on 30 August 2013.

I identified two documents which fell within the scope of your request. I did this by consulting with the relevant officers within DisabilityCare Australia who may be able to assist with the location of the documents.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to refuse access to the documents.

More information, including my reasons for decision, are set out below.

DECISION AND REASONS FOR DECISION

With regard to the documents identified in the attached schedule, I have decided:

to refuse access to document 1 under section 47E of the FOI Act (*Public interest conditional exemptions – certain operations of agencies*) as providing access would be contrary to the public interest; and

to refuse access to document 2 under section 47E of the FOI Act (*Public interest conditional exemptions – certain operations of agencies*) as providing access would be contrary to the public interest

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the FOI Act (specifically sections 3, 11A, 11B and 47E);
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- the *National Disability Insurance Scheme Act 2013*;
- *Ascic and Australian Federal Police* [1986] AATA 108;
- *Re Crawley and Centrelink* [2006] AATA 572; and
- the Productivity Commission's Report, *Disability Care and Support – Productivity Commission Inquiry Report Overview and Recommendations* (No 54, 31 July 2011)

The schedule indicates each document to which access is refused. My reasons for refusing access are given below.

Public interest conditional exemption – certain operations of agencies

The documents that fall within the scope of this request are the tools used by DisabilityCare Australia to assess support needs for people with disability.

DisabilityCare Australia uses two (2) tools for assessing the support needs of people with disability. One of the assessment tools is used for adults and the other is used for children.

Under section 47E of the FOI Act:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- ...
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency*

The assessment tools contain material that, if released, would or could prejudice the effectiveness of procedures or methods for the conduct of assessments by an agency, prejudice the attainment of the objects of particular tests, examinations or audits conducted by an agency and have a substantial adverse effect on the proper and efficient conduct of the operations of the agency. The conditional exemption applies to both documents in the attached schedule (i.e.: the adult and child assessment tools).

The assessment tools are used to determine the type of reasonable and necessary supports a participant may receive under the National Disability Insurance Scheme. They are not a 'question and answer' document that participants go through with DisabilityCare Australia planners. Rather, each is a document that planners complete as part of a detailed planning discussion, enabling the agency to work with its actuary to identify an appropriate reference package which dictates the level of delegate within the agency who must consider the approval or rejection of a proposed package of funded care for a participant.

The widespread release or publication of the assessment tools could lead to inaccurate assessment results being obtained. For example, participants could be coached to pre-prepare their responses to questions that could compromise the integrity of the assessment process and skew the results in ways inconsistent with the purposes of, and policy behind, the legislation. Additionally, disclosure of the assessment processes may encourage fraudulent conduct where participants provide misleading responses to DisabilityCare Australia planners to obtain unjustified supports which would erroneously be described as reasonable and necessary supports.

The conditional exemption in section 47E(b) refers to attainment of the objects of particular tests conducted by an agency. Section 3 of the *National Disability Insurance Scheme Act 2013* (the Act) sets out the objects of the Act and includes (amongst others) to provide reasonable and necessary supports for participants in the National Disability Insurance Scheme launch. Section 3(3) of the Act provides that in giving effect to the objects of the Act, regard is to be had to the need to ensure the financial sustainability of the National Disability Insurance Scheme. As noted already, if the assessment tools are released, it may lead to participants constructing their answers to the agency's questions to receive unjustified supports. Providing unnecessary supports to participants could prejudice the need for a financially sustainable national disability insurance scheme over the medium term.

Section 47E(d) provides that a document may be conditionally exempt if its release would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. I consider that disclosing the assessment tools would have a substantial adverse effect on the proper and efficient conduct of the operations of DisabilityCare Australia. In particular, there is a considerable risk that disclosing the assessment tools will cause unavoidable expense and may require the agency to devise alternative assessment tools to redress the situation.

Accordingly, I am satisfied that disclosure of the documents falls within the scope of the conditional exemption for certain operations of agencies (section 47E). Under the FOI Act, access to a document covered by a conditional exemption must be provided unless it would be contrary to the public interest. My consideration of the factors favouring disclosure as against those leaning against disclosure follows.

As already discussed, I consider that a significant risk of real harm to DisabilityCare Australia's administration of the scheme could reasonably be expected from disclosure of the documents. Disclosure of the assessment tools is likely to prejudice the effectiveness, and the objects, of the assessment process and could have a substantial adverse effect on the operations of the agency. To deal with the risks it is conceivable that the agency may have to spend undue time and cost in maintaining several versions of the assessment tools to ensure gaming of the assessment process does not occur.

I recognise that a factor favouring disclosure is that the release of the assessment tools would help to inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in an important area of activity in its dealings with members of the community. This is important, particularly in the context of the objects of the FOI Act.

However, in my view, the factors against disclosure of the document outweigh the factors in favour of disclosure. The overwhelming public interest is in maintaining the confidentiality of the material in order to preserve the effectiveness of the assessment and the assessment process. The Productivity Commission's Report, *Disability Care and Support – Productivity Commission Inquiry Report Overview and Recommendations (No 54, 31 July 2011)* which recommended a national disability insurance scheme, noted in its recommendations that the assessment tools should be valid and reliable, relatively easy to administer and exhibit low susceptibility to gaming (see page 70 and page 317 of the full Report). The Productivity Commission noted that those making an assessment would need to be properly trained in the use of the assessment tools and would need to be appointed by DisabilityCare Australia for the purpose of conducting the assessments (see page 20). Finally, the Productivity Commission also considered that an assessment tool does not need to be in the public domain (see page 319 of the full Report).

Accordingly, I am satisfied that the document is conditionally exempt under section 47E of the FOI Act and that disclosure would, on balance, be contrary to the public interest.

I recognise that you may be disappointed by this decision. However, I am enclosing for your information other agency material that you may find of interest relating to the assessment process. This information is at Annexure 3 to this letter.

Your review rights

If you are dissatisfied with my decision, you can apply for internal review or review by the Information Commissioner of the decision. If you wish to seek review we encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to DisabilityCare Australia for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach the reasons why you believe the decision is incorrect. The internal review will be carried out by a more senior officer who has had no involvement in this decision and should be completed within 30 days.

If you are dissatisfied with my decision, you may instead apply for review by the Information Commissioner.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.australia.gov.au/forms/oaic/foi-review/>

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Questions about this decision

If you wish to discuss this decision, please contact me on (02) 6146 4161 or by email to michael.sassella@disabilitycareaustralia.gov.au

Yours sincerely



Michael Sassella
Special Counsel
DisabilityCare Australia

13 September 2013

Annexures

- Annexure 1: Schedule of documents
- Annexure 2: Extracts from the FOI Act
- Annexure 3: Further information from DisabilityCare Australia on the assessment process

Annexure 1: Schedule of documents

Document no.	Date	Size	Description	Decision on access	Exemption
1	Date document created: May 2013	176 pages	Adult Assessment Tool - DisabilityCare Australia	Access is refused on the basis of one or more specific exemptions	Section 47E – Certain Operations of Agencies and Section 11- Contrary to the public interest
2	Date document created: May 2013	178 pages	Child Assessment Tool - DisabilityCare Australia	Access is refused on the basis of one or more specific exemptions	Section 47E – Certain Operations of Agencies and Section 11 – Contrary to the public interest

Annexure 2: Sections of the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth...by;
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right to access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision making
 - (a) increasing scrutiny, discussion, comment and review of the Government's activities.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

Annexure 3: Further information from DisabilityCare Australia on the assessment process

The determination of the supports that will be funded for participants by DisabilityCare Australia is a multifaceted process that is not governed or dominated by any one assessment tool and it is useful to explain the context of how support needs are determined.

Once a person becomes a participant in the NDIS, they develop a plan with DisabilityCare Australia. The plan comprises two parts:

- the **participant's statement of goals and aspirations**, which is prepared by the participant and specifies their goals, objectives, aspirations and context; and
- the **statement of participant supports**, which is prepared with the participant and approved by the Agency, and sets out, among other matters, the supports that will be funded by the NDIS.

The participant's statement of goals and aspirations is central to the planning conversation with DisabilityCare Australia. Knowing what a person would like to work towards in life is the most important first step in preparing their plan and working out what supports might help them to achieve those goals. The operational guideline, Planning and assessment – Facilitating the Participant's Statement of Goals and Aspirations at Attachment 1 outlines the process adopted by the Agency.

In summary, the Participant's statement of goals and aspirations is designed to provide DisabilityCare Australia with the context in which any supports will be based and is considered equally important to the Agency in understanding the nature and importance of any supports that are needed. Individuals are encouraged to consider current arrangements or changes they would like to see in relation to:

- living arrangements
- regular activities, in particular social activities, study and work
- current informal, community and government-funded supports and importantly,
- what is working well in their life or not working so well.

We also ask participants to think about:

- **aspirations:** how would they like their life to be in a few years from now?
- **goals:** what are the most important things they would like to change or achieve during the next few years?
- **objectives:** working towards those goals, what specific things would they like to change or achieve in the next year?

The second aspect in determining supports that might be needed is understanding the impact of the person's disability on their day to day life. The statement of participant supports is finalised through the DisabilityCare Australia planning and assessment process that is explained in Operational Guideline - Assessment of Participants' Needs (Attachment 2).

In summary, this process is designed to help the agency understand what a participant can do and what they might need support with to undertake daily activities.

To make things easier and quicker for participants, the DisabilityCare Australia planner will first review existing assessment information that the participant has and try not to ask for further information that is already available.

At a minimum, this will require the DisabilityCare Australia planner to assess the person's access request form, their completed *My Access Checker*, and any other assessment information they have provided or consented the agency to access. This might include:

- existing assessment reports from doctors or specialists
- assessment information the person or their carer have provided to Australian Government agencies such as Centrelink (for example, for the Carer Allowance, Carer Payment or Disability Support Pension)
- assessment information provided to state or territory government agencies or prepared by their existing service providers or
- other assessment-related information the person may consider is relevant and useful in describing their support needs.

The DisabilityCare Australian Planning and Assessment Toolkit is an excel based data gathering tool used to guide the conversation with a person about their strengths and their goals and any supports they may need to enable them to progress their goals. The planner is able to collect information on the support needs of a person against the activities of daily living , namely;

- self-care and special health care needs (for example, showering or bathing, dressing, eating, toileting)
- mobility (for example, getting in or out of bed or a chair, and moving around in your home and community)
- domestic life activities (for example, preparing meals, cleaning, housekeeping and home maintenance)
- communication (for example, being understood and understanding other people)
- general tasks and routines (for example, daily tasks, managing daily routine, solving problems, making decisions)
- learning and applying knowledge (for example, understanding and remembering information, learning new things, practicing and using new skills and ideas)
- interpersonal interactions and relationships (for example, making and keeping friends and relationships, coping with feelings and emotions)

- community, social and civic life (for example, community activities, recreation and leisure) and
- education, training and employment.

There is a child version of this toolkit which includes the same structure as the adult version with questions that are relevant to a child's context and developmental needs, including any developmental delay in areas such as motor and speech development. There are age appropriate questions for all support needs.

The goal-based planning conversation will be informal and tailored to the specific needs of the person. Discussion will range from general things, such as how the person usually manages daily activities, to more specific questions about how much support the person needs for certain tasks. The approach is very flexible allowing the person and the DisabilityCare Australia planner to focus on what is relevant to the person.

The planner does not undertake any diagnostic or impairment assessment as part of this conversation. DisabilityCare Australia does not diagnose medical conditions or disability, nor does the agency rely solely on the existence of any such diagnosis to determine support needs.

Indeed, the aim of the planning and assessment conversation is to build on the information the person has provided to us to enable DisabilityCare Australia to:

- understand the person's strengths, abilities and opportunities for development;
- confirm or develop their goals and aspirations; and
- talk in detail about what the person can manage and what they need support with for a range of important daily activities.

During this conversation the planner will also:

- determine whether certain assessments might help us to understand the person's needs better -
 - If this is the case, DisabilityCare Australia will refer the person to a specialist and will pay costs associated with this referral.
- identify the kind of assistive technologies, supports or services the person might need to pursue their goals
- discuss what is needed to maintain the informal support (including family and carer support needs)
- identify risks or urgent needs that are a priority and support decision making capacity
- discuss options to manage the person's plan.

When the type of support a person needs is identified the planner will then consider these in the context of their goals and aspirations and working closely with the participant identify the types of supports that would assist the participant to achieve their goals.

The toolkits do not determine a score for the person nor determine resource allocation or funding levels.

Finally, in determining supports that a person will be provided, the agency must also ensure that supports are reasonable and necessary including the degree to which:

- the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
- the support will assist the participant to undertake activities, so as to facilitate the participant's social or economic participation;
- the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
- the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
- the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
- the support is most appropriately funded or provided through the NDIS, and is not more appropriately funded or provided through other service systems

The process adopted by the agency is explained in Attachment 3.

When combined, this planning and assessment approach is designed to ensure that each and every individual who is eligible for the scheme is provided the opportunity to access targeted, individualised general and funded supports that will help them progress their goals.

The process is not constrained by limits to funding based on diagnostic assessments or functional impairment scores. Supports that are provided are those that meet the reasonable and necessary provisions of the legislation to ensure that people with a disability are able to live a good life.

Implementation of this approach to date has generated a positive response from participants to date. The agency will use feedback over time to refine this process. The agency is also required to report to the Ministerial Council on the planning and assessment process in December 2013 and this is likely to lead to further refinement.

Planning and assessment – Facilitating the Participant’s Statement of Goals and Aspirations

Legislation

1. Read ss.6, 17A and 33 of the NDIS Act 2013.

Approach

2. DisabilityCare Australia understands the importance of the participant’s statement of goals and aspirations. It is to be the participant’s statement and is critical to the development of a successful statement of participant supports. Choice and control are to be maximised, communication is to be supported and assistance is to be provided to help participants plan. Planners are to adopt a relationship-based approach to the planning process.

See operational guidelines on General Conduct – Communicating with Participants and Others and
General Conduct – Assistance and Support.

Principles

3. Planner’s actions during the planning process are to be in accordance with the principles set out in the NDIS Act. In particular:
 - a. People with disability are assumed, so far as is reasonable in the circumstances, to have capacity to determine their own best interests and make decisions that affect their own lives.
 - b. People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.
 - c. People with disability should be supported in all their dealings and communications with DisabilityCare Australia so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.

See ss.17A and 4(8) of the NDIS Act.

Provide support during the planning process

4. If a participant wishes, planners are to facilitate support to help them prepare their statement of goals and aspirations. This can include arranging support from a LAC, planner or other DisabilityCare Australia resource. It may also include support from the participant’s family or other natural supports. Where a participant requires significant support DisabilityCare Australia may purchase that assistance externally.

See s.6 of the NDIS Act.

Adopt a relationship-based approach

5. Planners should adopt a relationship-based approach to the planning process with the aim of building a sustainable, supportive relationship between DisabilityCare Australia staff, participants and their supporters. This recognises that this process is not a simple or single conversation but will be one that evolves and matures as the participant progresses towards their agreed goals.

6. Planners are to tailor this approach to the individual recognising the diversity of participants and to build capacity in those that need support to plan and participate in the process.

The participant's statement of goals and aspirations

7. The participant's statement of goals and aspirations is the crucial first step in preparing the participant's plan and provides the foundation for the subsequent selection of supports. DisabilityCare Australia provides a 'planning kit,' including a suggested template, to all participants ready to enter the planning stages. DisabilityCare Australia staff are to provide assistance and guidance where requested.
8. A participant's statement of goals and aspirations is required by the NDIS Act to specify:
 - a. the goals, objectives and aspirations of the participant; and
 - b. the environmental and personal context of the participant, including the participant's:
 - i. living arrangements; and
 - ii. informal community supports and other community supports; and
 - iii. social and economic participation.

See s.33(1) of the NDIS Act.

9. The participant's statement of goals and aspirations can be in any form the participant wishes. If the participant has an existing statement of goals and aspirations that covers the information required by the NDIS Act this statement can be used for DisabilityCare Australia.

Statements do not have to be in writing

10. A participant's statement of goals and aspirations does not have to be prepared by the participant in writing. If a participant provided a statement that is not in writing but in some other form, the planner is required to write the statements down and confirm with the participant that their statement that is written down is true and accurate.

See ss. 7(2) 33(8) and 38 of the NDIS Act.

Strengths based planning

11. A strengths based approach is to be adopted by planners in supporting the participant to create their statement of goals and aspirations. Strengths-based approaches focus on the untapped gifts, positive attributes and underdeveloped capabilities of people who have been in some way compromised in their abilities. Strengths-based approaches actively find, direct and amplify a client's capabilities and potential for positive functioning.
12. For some existing clients of Commonwealth, State or Territory disability support programs, this approach may be confronting and challenging and planners should not attempt to force the scope and pace of this approach. The decision on how far to pursue these ideals always remains with the participant.

Apply a strengths based approach to the planning principles

13. Planners should apply a strengths based approach as they apply the principles for planning set out in the Act. As far as reasonably practicable the plan should:
 - a. be individualised; and

- b. be directed by the participant; and
- c. where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant; and
- d. where possible, strengthen and build capacity of families and carers to support participants who are children; and
- e. if the participant and the participant's carers agree— strengthen and build the capacity of families and carers to support the participant in adult life; and
- f. consider the availability to the participant of informal support and other support services generally available to any person in the community; and
- g. support communities to respond to the individual goals and needs of participants; and
- h. be underpinned by the right of the participant to exercise control over his or her own life; and
- i. advance the inclusion and participation in the community of the participant with the aim of achieving his or her individual aspirations; and
- j. maximise the choice and independence of the participant; and
- k. facilitate tailored and flexible responses to the individual goals and needs of the participant; and
- l. provide the context for the provision of disability services to the participant and, where appropriate, coordinate the delivery of disability services where there is more than one disability service provider.

See s.31 of the NDIS Act.

Planning and Assessment - Assessment of Participants' Needs

Legislation

1. Read ss.17A, 31, and 33 - 34 of the NDIS Act 2013 and Part 4 of the NDIS (Support for Participants) Rules 2013.

Assessment of a participant's needs

2. In assessing needs the planner must work in partnership with the participant and those around them. The conversation must take account of the goals to enable greater participation and enable daily life. Planners must also take into account the sustainability of natural supports and the opportunity to also build the capacity in natural supports.

DisabilityCare Australia Planning and Assessment Toolkit

3. The CEO has approved the DisabilityCare Australia Adult Planning and Assessment Toolkit and the DisabilityCare Australia Child Planning and Assessment Toolkit to be used to help assist in making decisions about a participant's supports by determining a participant's support needs.

See s.209(2A) of the NDIS Act 2013 and r.4.4 of the NDIS (Supports for Participants) Rules 2013.

4. In deciding whether to approve a statement of participant's supports the delegate is required to use the Assessment Tool and must consider all relevant assessments available for the participant.

See s. 33(5)(b) of the NDIS Act.

5. A participant may choose not to engage in a detailed planning conversation and instead provide existing assessments of need. The planner should be guided by the participant in how in depth the conversation is (and whether it takes place in person) and record this preference in the participant record.

See operational guidelines on Planning and Assessment – The Planning Conversation and Planning and Assessment – Facilitating the Participant's Statement of Goals and Aspirations.

6. In addition to using the DisabilityCare Australia Planning and Assessment Toolkit delegates may also consider it necessary to obtain a specialist needs assessment for very complex needs.

Preparing for the later decision

7. The goal based planning conversation and needs assessment are part of the process which leads to a delegate making a decision under s. 33(2) to approve a plan. During the needs assessment delegates are to keep in mind the criteria in the legislation that they will have to apply later when making the plan decision. These criteria are:
 - a. The things that must be specified in a plan (set out above - see s.33(1) and (2)); and
 - b. The things that must be done when deciding whether to approve a statement of participant's supports. These are set out below and in s.33(5) of the NDIS Act and r. 4.1 of the NDIS (Supports for Participants) Rules 2013.

The Assessment Tool

8. The Assessment Tool involves the planner using a strength based approach to identify support needs necessary to make progress on goals and aspirations. These questions are designed to guide the conversation. They evaluate the areas, and nature of support needed across ten domains. The Assessment Tool is structured in a way that allows a more detailed consideration of need where any one of the 10 domains or core areas of functional capacity is significantly and permanently impaired and identified by the participant as presenting specific challenges that would need to be addressed to enable them to achieve their goals and aspirations.
9. The 10 domains capture a range of important life functions including:
 - a. Learning and applying knowledge (e.g. understanding and remembering information, learning new things, practicing and using new skills and ideas).
 - b. General tasks and demands (e.g. doing daily tasks, managing daily routine, handling problems, making decisions)
 - c. Communication (e.g. being understood and understanding other people).
 - d. Mobility (e.g. getting in or out of bed or a chair and moving around in your home and community)
 - e. Self-care and special health care needs (e.g. showering/bathing, dressing, eating, toileting)
 - f. Domestic life activities (e.g. preparing meals, cleaning, housekeeping and home maintenance)
 - g. Interpersonal interactions and relationships (e.g. making and keeping friends and relationships, coping with feelings and emotions)
 - h. Community, social and civic life (e.g. community activities, recreation and leisure)
 - i. Education and training;
 - j. Employment.
10. The Assessment Tool is designed to be used flexibly. The sections can be completed in an order which best suits the participant and the progress of the conversation, enabling the planner to ask questions only about areas where the participant needs support and those supports needed to make progress on goals. The introductory section is used to stimulate discussion and each section has initial 'screening' questions to assist the planner in determining whether more detailed questions need to be asked. The planner uses the tabs to move around the toolkit sections without breaking the flow of the conversation with the participant. Supports may include funded supports and identify natural and community supports and linkages to supports and services available from other systems.
11. Planners are expected to use their professional judgement in determining the depth of the discussion and the pace of this discussion. Planners are to
 - a. Consider information provided by the participant about existing functional needs, use this to populate the assessment tool and confirm the understanding of this existing assessment with the participant
 - b. Conduct a brief assessment of all functional needs in relation to activities of daily living and participation restrictions across all 10 domains.

- c. Determine that no questions are required in any specific domain if not relevant to the individual
 - d. Explore specific domains in more detail if and where indicated by the brief assessment or requested by the participant
12. In undertaking the assessment, the planner must pay particular attention to vulnerabilities and safeguards and supports required to sustain informal care.
13. At the completion of the assessment conversation, the planner should be confident that they can draw together the person's needs and preferences for supports and services to meet their goals and summarise key strengths and abilities.

Existing information and assessments

14. Where possible, and where the participant consents to DisabilityCare accessing existing information and assessments, existing information and assessments should be used to prepopulate the appropriate DisabilityCare Australia Planning and Assessment Toolkit prior to the conversation and guide what further information is required. This consent may have been obtained at the time the Access Request Form was submitted.
15. Planners should seek to minimise the number of times a participant (or their supporters) need to provide information already available and reduce the overall assessment burden for the individual. This should be balanced with the fact that older assessments may not accurately reflect the participant's current support needs.
16. This existing assessment information may be in the form of:
- a. Pre-existing assessment reports from specialist clinicians
 - b. Assessment information provided by the participant and/or the participant's carer to Australian Government agencies such as Centrelink (e.g. for the purposes of Carer Allowance, Carer Payment or Disability Support Pension)
 - c. Assessment information provided to state/territory government agencies
 - d. Assessment information provided to or prepared by participants' existing service providers
 - e. Other assessment-related information the participant considers is relevant and useful in describing their support needs.

Requesting a specialist needs assessment

17. Delegates can make a decision to request that a participant undergo a specialist assessment for the purposes of preparing a statement of participant supports. The request can be that a participant do either, or both, of the following:
- a. Undergo an assessment and provide to the delegate the report, in the approved form, of the person who conducts the assessment;
 - b. Undergo, whether or not at a particular place, a medical, psychiatric, psychological or other examination, conducted by an appropriately qualified person, and provide to the delegate the report, in the approved form, of the person who conducts the examination.

See s.36 of the NDIS Act 2013.

18. All requests to require a participant to undergo an assessment or examination are to be made by at least a Director of Service Delivery and in accordance with all DisabilityCare Australia requirements.

Deciding that a specialist needs assessment is required

19. In determining whether an additional specialist assessment is required for the purposes of preparing or approving a statement of participant supports, the planner can consider:
- a. How the specialist assessment will assist in preparing and/or approving a statement of participant supports, including the outcomes and nature of information expected from the specialist assessment
 - b. The costs and benefits of referral for specialist assessment. For example, the cost to DisabilityCare Australia and the time and incidental costs for the participant and any carers. The benefits such as resolving gaps or inconsistencies in assessment information, clarifying support needs where these are not obvious or readily identifiable or recommending the types and amounts of interventions that may be of most benefit for the participant
 - c. The type of specialist assessment that is most appropriate and relevant for the participant
 - d. Independence and objectivity of the specialist assessment. For example, avoiding conflicts of interest in the selection of a specialist assessor for the participant
 - e. The format of report or specific information to be requested from the specialist conducting the assessment
 - f. The practical aspects of arranging the specialist assessment. For example, which specialist or agency will conduct the assessment, what is the expected waiting time, what assistance does the participant and carers need to attend the specialist assessment
 - g. Whether elements of the statement of participant supports will be prepared and/or approved before the specialist assessment report is received.

Remember the obligations to explain and work in writing and other modes of communication

20. The legislation requires that the contents of any notice, approved form or information given under the NDIS Act or the NDIS Rules to a person with disability must be explained by the DisabilityCare Australia staff member to the maximum extent possible in the language, mode of communication and terms which that person is most likely to understand. Wherever reasonably practical, the explanation must be provided orally as well as in writing.

See s.7 of the NDIS Act and
operational guideline on General Conduct – Communicating with Participants and Others

Planning and Assessment – Supports in the Plan

Legislation

1. Read ss. 4, 13 and 34 of the NDIS Act 2013, the NDIS (Supports for Participants) Rules 2013 and Part 6 of the NDIS (Plan Management) Rules 2013.

Principles

2. Reasonable and necessary supports for people with disability should:
 - a. support people with disability to pursue their goals and maximise their independence; and
 - b. support people with disability to live independently and to be included in the community as fully participating citizens; and
 - c. develop and support the capacity of people with disability to undertake activities that enable them to participate in the mainstream community and in employment.
3. People with disability should be supported to receive supports outside the DisabilityCare Australia and be assisted to coordinate these supports with the supports provided under DisabilityCare Australia.

See s.4(11) of the NDIS Act.

See s. 4(14) of the NDIS Act 2013.

Provide support during the planning process

4. If a participant wishes, planners are to provide support and assistance, to participants to help them prepare the plan. This will support participants to exercise choice and control.

See s.6 of the NDIS Act.

The statement includes general and reasonable and necessary supports

5. The plan must include a statement of participant supports that specifies the general supports that will be **provided** to, or in relation to, a participant and the reasonable and necessary supports that will be **funded**.

See s. 33(2) of the NDIS Act.

Before including any support the delegate must apply a test to that support

6. Before specifying any general support, or reasonable and necessary support, in a participant's plan **the delegate must be satisfied of all of the following** in relation to each support:
 - a. the support will assist the participant to pursue the goals objectives and aspirations included in the participant's statement of goals and aspirations;
 - b. the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
 - c. the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;

- d. the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
- e. the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
- f. the support is most appropriately funded or provided through DisabilityCare Australia, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
 - i. as part of a universal service obligation; or
 - ii. in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability;
- g. the support is not a support mentioned in Part 5 of the Rules as a support that will not be funded or provided by DisabilityCare Australia.

See s.34 of the NDIS Act 2013 and Part 5 of the NDIS (Supports for Participants) Rules 2013.

7. Each of these criteria is considered in further detail below.

Participants with an existing package of supports

- 8. When considering the criteria from s.34 of the NDIS Act in relation to each support delegates are to also consider the context for participants who have existing supports and how they will transition to the DisabilityCare Australia scheme.
- 9. A participant, who is currently receiving a package of supports under a State, Territory or Commonwealth disability support programs may not wish to vary their current supports. In this circumstance, delegates are to note that the participant has indicated this preference. DisabilityCare Australia expects that, in almost all cases, these will form the basis of the statement of participant supports.
- 10. Although the existing package will form the basis of the statement of participant supports in most cases delegates also need to recognise that the support needs of participants will change over time. Delegates are to also consider whether over time a different composition of supports would better suit the participant and to discuss with participants the possibility of transitioning to new supports, or a new arrangement of supports, at an appropriate time (potentially over the course of several DisabilityCare Australia plans).
- 11. In discussing the transition from an existing package of support, planners should seek to minimise disruption to the participant and the supports a participant receives. For example, by timing any changes at natural transition points such as a life transition or at the end of a contract. Planners should be mindful of the dependence some participant may have developed in relation to their current supports and consider that dependence when developing or reviewing a plan.

Supports that will not be provided or funded under the scheme

- 12. Under the Rules, a support is not to be provided or funded by DisabilityCare Australia if the delegate is satisfied that:
 - a. it is likely to cause harm to the participant or pose a risk to others; or
 - b. it is not related to the participant's disability; or

- c. it duplicates other supports delivered under alternative funding through DisabilityCare Australia; or
 - d. it relates to day-to-day living costs (for example, rent, groceries and utility fees) that are not attributable to a participant's disability support needs
13. Although most day-to-day living costs are not to be funded the Rules allow some day-to-day living costs to be funded. Day-to-day living costs can be funded only if they relate to reasonable and necessary supports **and** are:
- a. additional living costs that are incurred by a participant solely and directly as a result of their disability support needs; - e.g. specialised food that relates specifically to a person's disability and that is not available to the general population
 - b. costs that are ancillary to another support that is funded or provided under the participant's plan, and which the participant would not otherwise incur.

See s.34(g) of the NDIS Act and rr.5.1 and 5.2 of the NDIS (Supports for Participants) Rules 2013.

14. Under the Rules the following supports are also not to be provided or funded if the delegate is satisfied that:
- a. a support, the provision of which would be contrary to:
 - i. a law of the Commonwealth; or
 - ii. a law of the State or Territory in which the support would be provided;
 - b. a support that consists of income replacement.

See r.5.3 of the NDIS (Supports for Participants) Rules 2013.

Supports must assist goals, objectives, aspirations and activities

15. Before a support is added to a plan the delegate must be satisfied that it will:
- a. assist the participant to pursue the goals objectives and aspirations included in the participant's statement of goals and aspirations; and
 - b. the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation.

See ss.34(a) and 34(b) of the NDIS Act 2013.

16. There are no provisions in the Rules that apply to these two paragraphs of s.34 of the NDIS Act.

See s.4(8) of the NDIS Act 2013.

Value for money

17. Before a support is added to a plan the delegate must be satisfied that it represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support.

See s.34(c) of the NDIS Act 2013.

18. In deciding whether the support represents value for money, the Rules require delegates to consider each of the following:
- a. whether there are comparable supports which would achieve the same outcome at a substantially lower cost;

- b. whether there is evidence that the support will substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;
- c. whether funding or provision of the support is likely to reduce the cost of the funding of supports for the participant in the long term (for example, some early intervention supports may be value for money given their potential to avoid or delay reliance on more costly supports);
- d. for supports that involve the provision of equipment or modifications:
 - i. the comparative cost of purchasing or leasing the equipment or modifications; and
 - ii. whether there are any expected changes in technology or the participant's circumstances in the short term that would make it inappropriate to fund the equipment or modifications;
- e. whether the cost of the support is comparable to the cost of supports of the same kind that are provided in the area in which the participant resides;
- f. whether the support will increase the participant's independence and reduce the participant's need for other kinds of supports (for example, some home modifications may reduce a participant's need for home care).

See r.3.1 of the NDIS (Supports for Participants) Rules 2013.

Effective and beneficial for the participant

19. Before a support is added to a plan the delegate must be satisfied that the support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice.

See s.34(d) of the NDIS Act 2013.

20. In deciding whether the support will be, or is likely to be, effective and beneficial for a participant the delegate is to consider the available evidence of the effectiveness of the support for other people in like circumstances. That evidence may include:
- a. published and refereed literature and any consensus of expert opinion;
 - b. the lived experience of the participant or their carers; or
 - c. anything DisabilityCare Australia has learnt through delivery of the scheme.
21. Rules also require the delegate to take into account, and if necessary seek, expert opinion.

See rr.3.2 and 3.3 of the NDIS (Supports for Participants) Rules 2013.

Reasonable family, carer and other support

22. Before a support is added to a plan the delegate must be satisfied that the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide.

See s.34(e) of the NDIS Act 2013.

23. In deciding whether funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide, the delegate is to consider the following matters:
- a. for a participant who is a child:

- i. that it is normal for parents to provide substantial care and support for children; and
 - ii. whether, because of the child's disability, the child's care needs are substantially greater than those of other children of a similar age; and
 - iii. the extent of any risks to the wellbeing of the participant's family members or carer or carers; and
 - iv. whether the funding or provision of the support for a family would improve the child's capacity or future capacity, or would reduce any risk to the child's wellbeing;
- b. for other participants:
- i. the extent of any risks to the wellbeing of the participant arising from the participant's reliance on the support of family members, carers, informal networks and the community; and
 - ii. the suitability of family members, carers, informal networks and the community to provide the supports that the participant requires, including such factors as:
 - iii. the age and capacity of the participant's family members and carers, including the extent to which family and community supports are available to sustain them in their caring role; and
 - iv. the intensity and type of support that is required and whether it is age and gender appropriate for a particular family member or carer to be providing that care; and
 - v. the extent of any risks to the long term wellbeing of any of the family members or carers (for example, a child should not be expected to provide care for their parents, siblings or other relatives or be required to limit their educational opportunities); and
 - vi. the extent to which informal supports contribute to or reduce a participant's level of independence and other outcomes;
- c. for all participants—the desirability of supporting and developing the potential contributions of informal supports and networks within their communities.

See r.3.4 of the NDIS (Supports for Participants) Rules 2013.

The support is most appropriately provided or funded through the scheme

24. Before a support is added to a plan the delegate must be satisfied that the support is most appropriately funded or provided through the scheme, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
- a. as part of a universal service obligation; or
 - b. in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability

See s.34(f) of the NDIS Act 2013.

25. In deciding whether the support is most appropriately provided or funded through the scheme the delegate must consider each of the matters set out in Schedule 1 of the

Rules. The matters to have regard to are set out under the following headings in the Schedule:

- a. Health (excluding mental health);
- b. Mental health;
- c. Child protection and family support;
- d. Early childhood development;
- e. School education;
- f. Higher education and vocational education and training;
- g. Employment;
- h. Housing and community infrastructure;
- i. Transport;
- j. Justice.

See rr.3.5 and 3.6 of the NDIS (Supports for Participants) Rules 2013.

Flexibility in describing supports

26. Delegates have a high degree of flexibility around how they describe the supports in the plan. The supports can be described by specifically identifying them in the plan or the plan can describe them generally. For example, by a general reference to the purpose of the support.

See s.33(3) of the NDIS Act 2013.

27. Delegates may choose to describe a support generally in cases where it is intended to give a participant a high degree of flexibility over the implementation of the support. Delegates may choose to put a specific description of a support in the plan where that is intended to have less flexibility. For example, a support that is described in the plan with detail of how it is to be purchased or implemented.
28. When deciding whether to describe a support generally or specifically, the Rules require the delegate to have regard to each of the following:
- a. the cost of the support;
 - b. any expected return or saving in costs from providing the support;
 - c. any risks associated with the supply of the support such as the need for the support to conform to State or Territory laws;
 - d. whether achievement of other goals in the plan or the effectiveness of other supports is contingent on a particular support being procured or used;
 - e. whether a participant's disability requires a specialist, evidence-informed support provided by a qualified person or a particular delivery mode;
 - f. whether the participant accessed the NDIS by satisfying the early intervention requirements.

See rr.6.1 – 6.4 of the NDIS (Plan Management) Rules 2013 and operational guideline on Planning and Assessment – Risks and Safeguards.

The plan must identify supports that are more cost-effectively provided by DisabilityCare Australia

29. If a delegate considers that it is more cost-effective for the support to be provided directly by DisabilityCare Australia (for example, using bulk purchasing of goods), the plan must specify that the support will be provided by DisabilityCare Australia.

See r.6.5 of the NDIS (Plan Management) Rules 2013.

The plan must identify supports to be provided by a particular provider

30. If a delegate is considering a support and:
- i. DisabilityCare Australia has entered into a funding arrangement with a provider to provide that support; and
 - ii. the CEO considers that the support is most efficiently and effectively provided to the participant by that provider;
- the plan must specify that the support will be provided by that provider.

See r.6.6 of the NDIS (Plan Management) Rules 2013.

The plan must identify supports to be provided by a particular qualified person or delivery mode

31. If :
- i. the CEO considers that a participant's disability requires:
 - a. specialist, evidence-informed support provided by a qualified person; or
 - b. a support to be provided in a certain delivery mode; and
 - ii. the CEO considers that the support is most efficiently and effectively provided to the participant by a particular person or through a particular delivery mode;
- the plan is to specify that the support will be provided by that qualified person or that delivery mode.

See r.6.7 of the NDIS (Plan Management) Rules 2013.

The plan must identify supports previously provided by the Commonwealth, a State or a Territory

32. If the support was previously provided to the participant by the Commonwealth, or by a State or a Territory, and there is a funding agreement that relates to the support that is in force, the plan must specify that the support will be provided in accordance with the funding agreement and not by DisabilityCare Australia.

See r.6.8 of NDIS (Plan Management) Rules 2013.

The plan must be tested against the Reference package and where relevant the Lifetime cost Estimator

33. In finalising the plan and the supports to be provided, the planner is required to check the plan against the relevant Reference Packages and Lifetime Cost Estimator. These tools serve as Agency decision support tools in relation to:
- a. whether a participant's annual plan funding is comparable with the expected funding level for the Participant (based on key characteristics); and
 - b. the Scheme's annual and lifetime costs.
34. The tools indicate the level of delegation to apply for approval of expenditure associated with the plan.

- a. Where the recommended funded support is outside the boundaries of the expected level of support, a further consideration will need to be given by a more senior delegate.
- b. The senior delegate will ask the planner to explain the logic of the variance against the expected level of funding and ensure that the decision to fund at that level is in keeping with the NDIS Act and documented thoroughly.

General Supports

35. The paragraphs of this operational guideline above apply to both the provision of general supports and the funding of reasonable and necessary supports. The following paragraphs are to assist delegates in relation to general supports.
36. The term “general support” is defined in the NDIS Act to mean a service provided by DisabilityCare Australia to a person, or an activity engaged in by DisabilityCare Australia in relation to a person, that is in the nature of a coordination, strategic or referral service or activity. It includes a locally provided coordination, strategic or referral service or activity.

See s.13(2) of the NDIS Act 2013.

37. If a participant would like assistance to identify suitable supports and community resources, allocation of a Local Area Coordinator (**LAC**) may be appropriate as a general support in the plan. In this way, the support a LAC can provide a participant is very similar to the support they provide non-participants.

See operational guideline on Gateway – Local Area Coordinators.

38. A key general support for participants will be referral to other sources of supports. In arranging a referral, DisabilityCare Australia or LAC staff should ensure the referral reflects the participant's choice and obtain informed consent to provide information about the participant to the provider. DisabilityCare Australia staff or LAC should describe the information that will be exchanged, and how and when the support will be implemented.
39. The referral should only contain information related to the provision of the support requested. If there is a risk to the service provider, the planner or LAC is to ensure that the service provider is appropriately informed without breaching the participant's privacy.
40. Where possible, DisabilityCare Australia staff or LAC should check that the referral has been accepted and the support implemented.
41. Where the participant is not able to access these supports due to waitlists or unavailability of services in their local community, DisabilityCare Australia staff or LAC will work with the participant to access alternative supports.

See s.34 of the NDIS Act.

General Considerations for Planners

42. In administering the Scheme and in approving each plan, the delegate must have regard to objects and principles of the NDIS Act including the need to ensure the financial sustainability of the NDIS and the principles relating to plans.
43. The Planner should utilise available evidence concerning the effectiveness of the support, and if necessary, seek expert opinion.