



National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026

ACTU submission on provisions relating to workers' compensation

ACTU Submission, 1 June 2026
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Contents

About the Australian Council of Trade Unions.....	1
Introduction	1
Current interaction between workers' compensation and NDIS	2
Proposed exclusion of work-related impairments from NDIS access.....	3
Concerns about how the new provisions may operate.....	4
Recommendation.....	5
Conclusion.....	5

About the Australian Council of Trade Unions

The Australian Council of Trade Unions (ACTU) is Australia's sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 35 ACTU affiliates, which together have nearly 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors. As the collective voice of Australian workers, the ACTU plays a central role in shaping national policy and advocating for improved rights, conditions, and protections at work.

The ACTU is committed to advancing work health and safety for all Australian workers through a rights-based, participatory approach. The ACTU has two member positions for SafeWork Australia, representing the interests of workers and ensuring that the voices and experiences of working people are central to national WHS policy and regulatory development.

The ACTU's strategy is focused on supporting unions to actively organise workers around healthy and safe work. This includes winning and embedding new health and safety rights at work and building the capacity of unions to use both new and existing rights to organise. By empowering unions and their members to take collective action, the ACTU seeks to ensure that work health and safety is not just a matter of compliance, but a fundamental right that is actively realised in every workplace.

The ACTU has had a longstanding role in advocating for effective workers' compensation systems that provide fair, timely and adequate support to workers injured in the course of their employment.

The ACTU acknowledges the Traditional Owners of Country throughout Australia and recognises their continuing connection to land, waters, and community. We pay our respects to Elders past and present. The ACTU's office in Melbourne is located on the lands of the Wurundjeri people of the Kulin Nation. We honour their custodianship and acknowledge that sovereignty was never ceded.

Introduction

The ACTU's submission focuses on the impact of the proposed amendments on injured workers who, following a disputed workers' compensation claim or the exhaustion of their workers' compensation entitlements, continue to require ongoing treatment, rehabilitation, medical care and other supports.

The ACTU recognises the importance of ensuring that public support systems operate coherently and that overlapping benefits are avoided. Where workers are actively receiving compensation and benefits through workers' compensation schemes, it is appropriate to avoid duplication of support through the National Disability Insurance Scheme (NDIS).

The explanatory memorandum states that the proposed amendments pursue the legitimate public policy objectives of avoiding duplication of benefits and ensuring public resources are allocated efficiently.¹ However, the ACTU notes that the NDIS legislative framework already includes mechanisms that address these objectives, including provisions that take account of workers' compensation benefits and statutory lump sum payments when determining NDIS support.

The ACTU is concerned that the proposed amendments in the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generation) Bill 2026 may result in gaps in coverage where workers are not receiving workers' compensation, or where entitlement to compensation is disputed, but permanent impairments and ongoing support needs remain. In these circumstances, workers must be able to access an alternative system of support.

Legislative frameworks should ensure that injured workers are supported by either workers' compensation or the NDIS, and that no individual is left without access to necessary supports due to the interaction between the two schemes.

Current interaction between workers' compensation and NDIS

The current legislative framework includes mechanisms to manage overlap between systems, including provisions that take account of workers' compensation benefits and statutory lump sum payments when determining NDIS entitlements.² These mechanisms are designed to ensure that support is coordinated where multiple schemes may be relevant.

There are two key scenarios in which workers may seek access to the NDIS:

First, where a workers' compensation claim is under dispute.

The current framework does not prevent workers from seeking access to the NDIS when their workers' compensation claim is disputed, and they continue to have ongoing support needs. In practice, the NDIS may serve as a source of support when workers are not receiving benefits through workers' compensation due to unresolved liability.

The following case study illustrates how this interaction currently operates.

¹ Explanatory Memorandum, *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026* (Cth), 159.

² See sections 104-107 of the *National Disability Insurance Scheme Act 2013*.

Sheryl is a 52-year-old nurse who has worked for more than 25 years in an aged care facility in Victoria. Throughout her career, her work has involved constant, repetitive lifting and bending, prolonged standing, and physically demanding patient care tasks.

Over time, Sheryl develops chronic and debilitating neck and back pain, resulting in permanent functional impairment and reduced capacity to work. She lodges a workers' compensation claim on the basis that her condition was caused, or materially contributed to, by the cumulative physical demands of her work.

The claim is disputed by the insurer, which argues that Sheryl's condition is degenerative and age-related rather than work-related. Liability is denied, and the matter proceeds through medical assessments and legal processes to determine whether the condition arose out of, or in the course of, her employment.

While liability remains unresolved, which may be for several years, Sheryl receives no workers' compensation benefits but continues to require ongoing medical treatment, pain management and allied health support. She seeks access to the NDIS to meet her ongoing support needs while the workers' compensation dispute is ongoing.

Second, where entitlements or benefits under a workers' compensation scheme have ceased.

Workers whose entitlements have ended, such as when statutory time limits are reached, may also turn to the NDIS for ongoing support. For example, in Queensland, access to certain benefits is capped at five years, while in Victoria, most workers stop receiving weekly payments at 130 weeks and medical and like expenses cease 52 weeks later. Once cut off, workers may apply for NDIS support if they continue to require support and services.

Proposed exclusion of work-related impairments from NDIS access

The ACTU is concerned about amendments in Schedule 1, Part 9 of the *National Disability Insurance Scheme Act 2013* (NDIS Act), which would introduce new requirements that may exclude workers, like Sheryl, with work-related injuries from accessing the NDIS.

Item 96 proposes to amend s 21(1) of the NDIS Act to include the following (indicated in **bold**):

21 When a person meets the access criteria

1. A person ***meets the access criteria*** if:

- a. *the CEO is satisfied that the person meets the age requirements (see section 22);*
and
- b. *the CEO is satisfied that, at the time of considering the request, the person meets the residence requirements (see section 23); and*
- c. *the CEO is satisfied that, at the time of considering the request:*

- i. *the person meets the disability requirements (see section 24); or*
- ii. *the person meets the early intervention requirements (see section 25); and*
- d. *the CEO is satisfied that, at the time of considering the request, the person meets the alternative support requirements (see section 25B).*

Item 97 proposes to insert a new s 25B (Alternative support requirements), which excludes, at subsection 25B(3), impairments if:

- a) the impairment was caused by a work-related injury; and
- b) a workers' compensation law provides for compensation, or other benefits, for or in respect to the impairment.

Concerns about how the new provisions may operate

The ACTU has two primary concerns with the operation of the proposed exclusion in section 25B.

First, uncertainty regarding when the exclusion applies.

It is unclear whether the exclusion at subsection 25B(3) is intended to operate where a workers' compensation scheme *can* or *may* provide compensation or other benefits, or only where a claim has in fact been accepted, and benefits are being provided. This distinction is critical. As drafted, the provision risks excluding individuals whose workers' compensation claims are under dispute, or whose entitlements have ceased, despite the absence of any active support being provided through a workers' compensation scheme.

Second, concerns regarding the CEO's determination.

The proposed amendments introduce a provision allowing the CEO to determine that an impairment is excluded from NDIS access on the basis that it is work-related (the alternative support requirement). This approach will be problematic, particularly in situations where there is no accepted workers' compensation claim or where liability has not yet been established. In such cases, individuals could be excluded from the NDIS based on a presumed or contested connection to work, despite not receiving workers' compensation benefits and having no clear avenue for support. In short – and alarmingly - a worker will be worse off in these situations simply because their impairment was work-related.

These concerns, combined with uncertainty about when the exclusion applies, significantly increase the risk that individuals with genuine and ongoing support needs may be left without access to either system, or inadequate access, due to unresolved questions of liability and gaps in coverage.

In the Impact Assessment for the Explanatory Memorandum to the Bill the Government states that this “option is intended to prevent people with disability concurrently accessing the NDIS

and other highly similar services or funding.”³ The proposed legislative solution however goes well beyond this intention – it excludes all people eligible for workers compensation from accessing the NDIS, even after they’ve exhausted their entitlements under workers compensation.

Recommendation

Recommendation 1 – Maintain the current framework

The ACTU recommends maintaining the current legislative framework governing the interaction between workers’ compensation schemes and the NDIS. Existing provisions already enable the NDIS to take account of workers’ compensation benefits and statutory lump sum payments when determining support and provide a mechanism to manage overlap between schemes without excluding individuals with ongoing support needs.

Maintaining the status quo would continue to allow duplication of funding to be addressed through existing offset and recovery mechanisms, while ensuring that workers who are not actively receiving workers’ compensation, or whose entitlement is disputed, are not left without access to necessary supports.

Recommendation 2- Articulate the policy problem and consult

Should the Government believe there is a genuine policy problem that cannot be addressed under the current framework, it should first clearly articulate the nature and extent of any identified duplication between the NDIS and workers’ compensation schemes, and why the current legislative provisions are failing to address it.

The ACTU further recommends targeted consultation with unions, injured workers, people living with a disability, scheme administrators and other relevant stakeholders to develop a solution that avoids unintended consequences and ensures no individual with ongoing support needs falls outside of both systems.

Conclusion

The ACTU is concerned that the proposed exclusion has not adequately considered its practical consequences and will disadvantage injured workers with ongoing support needs. It is a matter of fairness, workers who acquire a disability through work should not be treated less favourably

³ Page 219

than others. At a minimum, access to the NDIS must be available where workers' compensation claims are under dispute, or workers exit compensation schemes with permanent impairments and ongoing needs.

Without this, the amendments create a clear gap, leaving some injured workers with no support, no workers' compensation and no NDIS.

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