



Cat

Via email to: [foi+request-12136-1a2c8538@righttoknow.org.au](mailto:foi+request-12136-1a2c8538@righttoknow.org.au)

Dear Cat

### Freedom of Information Request LEX 51816 – Decision on access

I refer to the *Freedom of Information Act 1982 (FOI Act)* request to the Department of Social Services (**Department**) on 3 October 2024. The request, which has been revised by agreement, seeks access to:

- 1. The first draft of the "Transitional rule for certain pre-commencement plans" provision, including the associated draft explanatory statement.*
- 2. The first draft of the list of eligible supports in the "Replacement supports determination" provision, including the associated draft explanatory statement.*
- 3. All draft versions of the list of eligible replacement supports and explanatory statements provided to the NDIA between 15th August 2024 and 1st October 2024.*
- 4. All draft versions of the list of eligible replacement supports prepared for consultation with stakeholders external to DSS and the NDIA between 15th August 2024 and 1st October 2024.*
- 5. Any revisions or feedback received from the NDIA to any draft version of the "Impact on reviews in the Administrative Appeals Tribunal" fact sheet published on the DSS website.*
- 6. All draft versions of the full NDIS Supports Transitional Rules instrument and Explanatory Statement prepared between 12th September 2024 and 1st October 2024.*

I am authorised to make decisions in respect of FOI requests under subsection 23(1) of the FOI Act.

### Decision

I have decided to refuse access to the documents sought by the request in full as they consist] entirely of material that is exempt under section 42 (legal professional privilege) of the FOI Act.

The documents and my decision in relation to each are set out in the Schedule of Documents at **Attachment A (the Schedule)**.

The reasons for my decision are set out in the Statement of Reasons at **Attachment B**.

### Review rights and complaints

Information concerning how you may seek a review of this decision or make a complaint about the handling of this request is at **Attachment C**.

**Contact**

If you would like to discuss any aspect of my decision, please contact me at [foi@dss.gov.au](mailto:foi@dss.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sarah B', written in a cursive style.

Sarah B

Authorised FOI Decision Maker

19 November 2024

**Attachments**

A – Schedule of Documents

B – Statement of Reasons

C – Review rights

## SCHEDULE OF DOCUMENTS

Doc No	Description of document	Decision
1	<i>Draft</i> National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
2	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 - National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
3	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 - National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
4	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 - National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
5	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 - National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
6	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 - National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
7	<i>Email</i> Subject: RESPONSE: URGENT To discuss application of NDIS Act Transitional Rules in AAT Date: 4 October 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
7a	<i>Attachment to Document 7</i> Draft DSS Questions (Final Version)	<i>Exempt in full</i> Section 42 – legal professional privilege

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8	<i>Draft</i> Explanatory Statement - National Disability Insurance Scheme Act 2013 National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024	<i>Exempt in full</i> Section 42 – legal professional privilege
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**STATEMENT OF REASONS****Material on which the decision is based**

1. I relied on the following material in coming to this decision:
  - the terms of the FOI request;
  - the documents subject to the FOI request;
  - advice from subject matter experts within the Department regarding the nature and sensitivity of the documents subject to the request;
  - the FOI Act; and
  - the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

**Section 42 – Legal Professional Privilege**

2. Section 42 of the provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
3. The documents subject to the request (as identified in the Schedule) consist of legal advice or communication with legal advisors. I am satisfied that privilege over this material has not been waived, and accordingly that it is exempt under section 42 of the FOI Act.

## INFORMATION ON REVIEW RIGHTS

You may seek review of this decision via:

- (a) an internal review; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

### Internal review

If you apply for internal review, a fresh decision will be made by a different decision-maker within the Department. An application for internal review must be:

- (a) made in writing;
- (b) made within 30 days of receiving this letter; and
- (c) sent to [foi@dss.gov.au](mailto:foi@dss.gov.au).

The application should also include the reasons why you think this decision should be reviewed.

If the internal review decision results in you not being provided access to all of the documents to which you have requested access, you have the right to seek a further review by the Information Commissioner.

### Information Commissioner review

You can apply for the Information Commissioner to review this decision either immediately or following an internal review decision. You must apply to the Information Commissioner within 60 days of the receipt of this decision letter.

Further details on this process can be found on the Information Commissioner's website at <https://www.oaic.gov.au/>.

## COMPLAINTS TO THE INFORMATION COMMISSIONER

You may also make a complaint to the Information Commissioner concerning actions taken by the Department while exercising its powers or performing its functions under the FOI Act.

Further details on this process can be found on the Information Commissioner's website at <https://www.oaic.gov.au/>.