18 April 2017

The National Disability Insurance Agency (NDIA) has carefully considered the Federal Court decision handed down on 28 March 2017 in relation to the case of Mr Liam McGarrigle.

Because this is effectively a test case with implications for the long-term financial sustainability of the National Disability Insurance Scheme (NDIS), the NDIA has decided to appeal the Federal Court decision to the Full Court and has lodged an appeal today.

While the NDIS was set up to be able to contribute to some of a participant's transport costs, the NDIS Act specifically requires the NDIA to fund reasonable and necessary supports that "take into account what is reasonable to expect families, carers, informal networks and the community to provide."

Chief Executive of the NDIA, David Bowen said: "This issue goes to the long-term sustainability of the NDIS.

"The appeal is an important test case which arises from a set of circumstances in the trial phase of the NDIS. It could affect the future of the whole NDIS.

"We need a Scheme that is sustainable in the long term for many thousands of participants and for the whole community – for all of us.

"We have, therefore, decided to ask the court for the fullest clarity, given the serious implications for the future sustainability of the Scheme for many thousands of present and future participants," Mr Bowen said.

"We are very mindful that Mr McGarrigle and his family are involved in a case which has implications beyond their individual situation. Given it is a test case, the NDIA will agree to pay the reasonable legal costs of the appeal regardless of the outcome," Mr Bowen said.

To deliver the NDIS to the 460,000 Australians expected to enter the Scheme by 2020, the NDIS must deliver funding in a way that supports people with disability to achieve their goals, while ensuring the Scheme is financially sustainable and in place to benefit all those who are eligible. This is particularly important given that the cost is anticipated to be $22 billion per annum at full Scheme.

Maintaining the financial sustainability of the NDIS is, therefore, central to delivering the Scheme to all of those who need it now and in the years to come.

As the matter is before the court it is not and will not be appropriate to comment on the specifics of the case.

Update: On 21 August 2017, the Full Court of the Federal Court dismissed the application for appeal made by the NDIA.

For more information (external)

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