



# **National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024**

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I, Bill Shorten, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2024

Bill Shorten  
Minister for the National Disability Insurance Scheme

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under item 138 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

### 4 Definitions

- (1) In this instrument:

**amending Act** means the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

**cultural activity** means a cultural activity for a participant or prospective participant person who is an Indigenous person, and includes practices, ways of understanding the world, and methods of expression such as language, celebrations, and events. For this purpose, it is noted that:

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- (a) individual Aboriginal and Torres Strait Islander cultures have specific spiritualities and lore, and therefore obligations or responsibilities, that are connected to Country and community; and
- (b) this Connection to Country, Lore and Spirituality is a way of understanding life, identity and connection with others, or kinship.

**eligible assistance animal** means a dog or other animal that is:

- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or
- (b) accredited by an animal training organisation prescribed in regulations made under section 132 of the *Disability Discrimination Act 1992* for the purposes of paragraph 9(2)(b) of that Act; or
- (c) accredited by a registered NDIS provider who is registered to provide assistance animals under section 73E of the NDIS Act; or
- (d) trained to assist a person with a disability to alleviate the effect of the disability and to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

**Hearing Services Program** means the program under which hearing services (within the meaning of the *Hearing Services Administration Act 1997*) are provided by:

- (a) contracted service providers in accordance with agreements entered into under Part 3 of that Act; or
- (b) without limiting paragraph (a)—Australian Hearing Services under the *Australian Hearing Services Act 1991*.

**high intensity daily personal activities** mean the following activities:

- (a) complex bowel care;
- (b) enteral feeding and management;
- (c) severe dysphagia management;
- (d) tracheostomy management;
- (e) urinary catheter management;
- (f) ventilator management;
- (g) subcutaneous injections;
- (h) complex wound management.

Note: Information about high intensity daily personal activities could in 2024 be viewed on the Commission's website ([www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)).

**NDIS Act** means the *National Disability Insurance Scheme Act 2013*.

**replacement support determination** means a determination under subsection 10(6) of the NDIS Act.

**specialised vehicle driving instructor** in relation to driver training means a person who:

- (a) is registered or licensed as a driving instructor in the State or Territory in which the driver training is to occur; and

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(b) has experience and training in providing driving instruction to people with disability.

*standard item* for a participant or prospective participant means an item that is not modified or adapted to address the functional impairments of the participant or prospective participant.

(2) An expression that is defined for the purposes of the NDIS Act has the same meaning when used in this instrument as it has in that Act.

## Part 2—What supports are NDIS supports

### 5 What supports are NDIS supports—general rule

#### *Supports that are NDIS supports unless otherwise provided*

- (1) For the purposes of subsection 10(1) of the NDIS Act, a support covered by column 2 of an item in the table in clause 1 of Schedule 1 to this instrument is an NDIS support (subject to subsections 10(4) and (9) of the NDIS Act and subsection (2) of this section) for:
- (a) participants specified in column 3 of the item who have old framework plans; and
  - (b) prospective participants specified in column 3 of the item, other than prospective participants who, if they were participants, would be required to be given notice under subsection 32B(2) of the NDIS Act (participants that are to have new framework plans).

Note 1: Subsection 10(4) of the NDIS Act allows supports to be declared to not be NDIS supports for participants or prospective participants. Those supports are declared under subsection (2) of this section.

Note 2: Subsection 10(9) of the NDIS Act provides that a support is not an NDIS support for a participant or prospective participant if the support consists of the provision of:

- (a) sexual services; or
- (b) alcohol; or
- (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

#### *Supports that generally are not NDIS supports*

- (2) For the purposes of subsection 10(4) of the NDIS Act, a support covered by column 2 of an item in the table in clause 1 of Schedule 2 to this instrument is not an NDIS support for any participant (subject to subsection 10(6) of the NDIS Act) or prospective participant.

Note 1: Subsection 10(6) of the NDIS Act allows the CEO, on application by a participant, to determine that a support is taken to not be declared under subsection 10(4) of that Act in relation to the participant if, among other things, the CEO is satisfied that the support would replace one or more other supports that are NDIS supports for the participant.

Note 2: Determinations under subsection 10(6) of the NDIS Act are referred to in this instrument as replacement support determinations. For additional rules about replacement support determinations, see section 7 of this instrument.

#### *Interpretive provision*

- (3) A reference in this section to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the amending Act.

Note: That item provides that, until the first National Disability Insurance Scheme rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 of that Act has effect as if a reference in that section to the National Disability Insurance Scheme rules were a reference to rules made under item 138 of Schedule 1 to the amending Act.



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**6 Transitional rule for certain pre-commencement plans**

- (1) This section applies in relation to a participant if the plan that is in effect for the participant includes a statement of participant supports approved by the CEO before the commencement of Schedule 1 to the amending Act.
- (2) A support specified in the statement as a reasonable and necessary support for the participant for the purposes of paragraph 33(2)(b) of the NDIS Act is taken to be an NDIS support for the participant if:
  - (a) the support is expressed in the statement to be a stated support; or
  - (b) the Administrative Appeals Tribunal, in making any of the following decisions before the commencement of Schedule 1 to the amending Act:
    - (i) a decision to vary the statement;
    - (ii) a decision to approve the statement, having set aside the approval of a different statement of participant supports for the participant;
    - (iii) a decision to remit the approval of a statement of participant supports for the participant for reconsideration by the CEO;  
made a decision to the effect that that particular support should be specified in, or funded under, the plan as a reasonable and necessary support.
- (3) For the purposes of subparagraph (2)(b)(iii), it does not matter:
  - (a) whether the Tribunal remitted the approval of the statement in accordance with any directions or recommendations of the Tribunal; or
  - (b) whether the Tribunal also set aside the approval of the statement.
- (4) Subsection (2) applies:
  - (a) despite subsection 10(4) of the NDIS Act and subsection 5(2) of this instrument; but
  - (b) subject to subsection 10(9) of the NDIS Act.

Note 1: Subsection 10(4) of the NDIS Act allows supports to be declared to not be NDIS supports for participants or prospective participants. Those supports are declared under subsection 5(2) of this instrument.

Note 2: Subsection 10(9) of the NDIS Act provides that a support is not an NDIS support for a participant if the support consists of the provision of:

- (a) sexual services; or
- (b) alcohol; or
- (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

## Part 3—Replacement support determinations

### 7 Replacement support determinations

*Supports for which determinations may be made*

- (1) For the purposes of paragraph 10(6)(a) of the NDIS Act, the CEO may make a replacement support determination in relation to a support covered by column 1 of an item in the table in subsection (3) of this section.
- (2) For the purposes of subparagraph 10(6)(d)(iv) of the NDIS Act, the CEO must be satisfied that the conditions set out in column 2 of an item in the table in subsection (3) are met before making a replacement support determination in relation to a support covered by column 1 of the item.
- (3) The table is as follows:

Replacement support determinations		
	Column 1	Column 2
Item	Supports	Conditions
1	Standard commercially available household items	The support must: <ol style="list-style-type: none"><li>(a) be necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements; and</li><li>(b) increase whole task independence; and</li><li>(c) reduce or eliminate the need for a support worker or disability specific assistive technology.</li></ol>
2	The following: <ol style="list-style-type: none"><li>(a) smart watches;</li><li>(b) tablets;</li><li>(c) smartphones;</li><li>(d) an app used for accessibility or communication purposes</li></ol>	The support must be necessary to address communication or accessibility needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements.

*Circumstances in which application for determination may not be made*

- (4) For the purposes of paragraph 10(7)(c) of the NDIS Act, an application for a replacement support determination for one or more supports may not be made if the application would result in the participant making more than one such application for any of those supports:
  - (a) if the reassessment date of the participant's plan is less than 12 months after the plan came into effect—while the plan is in effect; or

(b) otherwise—during any 12-month period starting while the plan is in effect.

*Interpretive provision*

- (5) A reference in this section to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the amending Act.

Note: That item provides that, until the first National Disability Insurance Scheme rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 of that Act has effect as if a reference in that section to the National Disability Insurance Scheme rules were a reference to rules made under item 138 of Schedule 1 to the amending Act.

## Schedule 1—Supports that are NDIS supports unless otherwise provided

Note: See subsection 5(1)

### 1 Supports that are NDIS supports unless otherwise provided

The following table sets out supports that are NDIS supports for participants and prospective participants (subject to subsections 10(4) and (9) of the NDIS Act and subsection 5(2) of this instrument):

<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
1	Accommodation assistance or tenancy assistance	<p>Supports that build capacity, guide, prompt, or assist a participant to do activities for finding or keeping appropriate accommodation.</p> <p>This includes the following:</p> <p>(a) supports that help a participant apply for a rental tenancy or to take part in tenancy obligations in line with their tenancy agreement;</p> <p>(b) medium term accommodation where a participant cannot move into long term accommodation due to that accommodation or other supports not being ready and current accommodation is not suitable.</p>	<p>The following:</p> <p>(a) for supports covered by paragraph (b) in column 2— participants who have the support stated in their plan;</p> <p>(b) for all other supports in this category— participants or prospective participants generally.</p>
2	Assistance animals	<p>Support provided by an eligible assistance animal.</p> <p>This includes the following:</p> <p>(a) assessment, matching and provision of an eligible assistance animal;</p> <p>(b) dietary needs;</p> <p>(c) grooming;</p> <p>(d) veterinary services including flea and worm treatments, medication, and vaccinations;</p> <p>(e) yearly reviews to maintain accreditation.</p>	<p>Participants who have the support stated in their plan and prospective participants who are likely to have this support stated in their plan</p>
3	Assistance in coordinating or managing life stages, transitions and supports	<p>Supports provided on a short-term basis that provide assistance to manage life transitions.</p> <p>This includes the following:</p> <p>(a) transition from or to new educational or employment settings;</p>	<p>Participants or prospective participants generally</p>

<b>Supports that are NDIS supports unless otherwise provided</b>			
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>	<b>Column 3 Participants and prospective participants</b>
		<ul style="list-style-type: none"> <li>(b) transition to new living arrangements;</li> <li>(c) support before and immediately following hospital discharge where there has been a change to a participant's disability support needs prior to hospital admission;</li> <li>(d) transition out of a mental health setting;</li> <li>(e) transition out of a custodial setting.</li> </ul>	
4	Assistance to access and maintain employment or higher education	<p>Supports that build a participant's capacity to successfully prepare for, find or keep employment in the open labour market (including self-employment and micro-enterprise) or the supported labour market.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) employment preparation complementary to that delivered while at school and when leaving school;</li> <li>(b) assistance for a participant to transition to employment;</li> <li>(c) further education and training.</li> </ul>	Participants or prospective participants generally
5	Assistance with daily life tasks in a group or shared living arrangement	<p>Supports that provide assistance with or supervision of daily living tasks to participants in a shared living environment.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) supports provided on a temporary or ongoing basis;</li> <li>(b) supports for short term accommodation and respite;</li> <li>(c) supports provided to participants living in residential aged care facilities.</li> </ul>	Participants or prospective participants generally
6	Assistance with travel or transport arrangements	<p>Supports that provide transport assistance to participants that cannot travel or use public transport independently.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) transport for the purposes of participants undertaking community-based activities;</li> <li>(b) transport for the purposes of participants attending school or other educational facilities;</li> <li>(c) provider travel costs;</li> <li>(d) costs associated with the use of taxis or</li> </ul>	Participants or prospective participants generally

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**Supports that are NDIS supports unless otherwise provided**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
		private transport; (e) in-kind specialist school transport; (f) travel training to build a participant's confidence and skills to use public transport safety and independently.	
7	Assistive equipment for recreation	The provision of assistive products used in sports or other recreational activities. This includes the following: (a) personal recreation equipment modification and sporting equipment modification; (b) services to assess and prescribe, deliver, adjust and train a participant in successful use of an assistive product; (c) maintenance, spare parts and consumable items specific to an assistive product.	Participants or prospective participants generally
8	Assistive products for household tasks	The provision of assistive products that support a participant to carry out domestic and everyday actions and tasks within a participant's home. This includes the following: (a) assistive products for the preparation of food and drink; (b) assistive products to facilitate house cleaning, gardening or laundry; (c) additional costs to upgrade or modify standard household items to household items that include accessibility features that address a participant's support needs; (d) services to assess and prescribe, deliver, adjust and train a participant in successful use of an assistive product; (e) maintenance, spare parts and consumable items specific to an assistive product.	Participants or prospective participants generally
9	Assistive products for personal care and safety	Provision of assistive products for self-care activities and participation in self-care. This includes the following: (a) modified foods, including for the purposes of percutaneous endoscopic gastrostomy feeding; (b) products to facilitate washing and drying the participant's body, caring for the participant's body and body parts,	Participants or prospective participants generally

<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
		<p>dressing and protecting the participant's body;</p> <p>(c) modified or adaptive clothing;</p> <p>(d) modified or adaptive products to manage menstruation including applicators and period underwear;</p> <p>(e) products to manage incontinence;</p> <p>(f) furniture and other products that are adapted or specifically made to be placed in or added to a participant's home (including indoor and outdoor areas) to help with movement, positioning and other safety needs, including entry and exit of the environment;</p> <p>(g) services to assess and prescribe, deliver, adjust and train a participant in successful use of an assistive product;</p> <p>(h) maintenance, spare parts and consumable items specific to an assistive product;</p> <p>(i) visual and tactile alerting systems.</p>	
10	Specialist positive behaviour support	<p>Supports that are provided by professionals with specialist skills in positive behaviour support.</p> <p>This includes the following:</p> <p>(a) assessment, development and delivery of a comprehensive plan that aims to reduce and manage behaviours of concern;</p> <p>(b) training and ongoing monitoring of staff in implementation of a behaviour support plan;</p> <p>(c) training and capacity building for a participant's informal supports in the use of positive behaviour support;</p> <p>(d) development and delivery of interim or transitional plans.</p>	Participants who have the support stated in their plan and prospective participants who are likely to have this support stated in their plan
11	Communication and information equipment	<p>The provision of assistive products to support communication and information management.</p> <p>This includes the following:</p> <p>(a) products that help a participant to receive, send, produce and/or process information in different forms;</p> <p>(b) products that facilitate a participant</p>	Participants or prospective participants generally

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	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
		<p>communicating by language, signs and symbols, receiving and producing messages, having conversations and using communication devices and techniques;</p> <p>(c) services to assess and prescribe, deliver, adjust and train a participant in successful use of an assistive product;</p> <p>(d) maintenance, spare parts and consumable items specific to an assistive product.</p>	
12	Community nursing care	<p>Supports that provide disability-related nursing care for participants with high care needs (not including high intensity daily personal activities), requiring a high level of clinical skill.</p> <p>This includes the following:</p> <p>(a) catheter care;</p> <p>(b) skin integrity checks;</p> <p>(c) tracheostomy care;</p> <p>(d) medication management;</p> <p>(e) intramuscular injections;</p> <p>(f) training of support workers to respond to a participant’s complex needs.</p>	Participants or prospective participants generally
13	Prostheses and orthoses	<p>Assistive products externally applied to replace, wholly or in part an absent or deficient body segment which assists participant control and functioning of their neuromuscular skeletal systems.</p> <p>This includes the following:</p> <p>(a) design, manufacture and fit of customised functional prosthetics and orthotics;</p> <p>(b) assessment and specification (prescription) of a product by a professionally qualified prosthetist, orthotist, pedorthotist, podiatrist, or occupational therapist trained in provision of that product;</p> <p>(c) osseo-integrated, external products;</p> <p>(d) services to train a participant in successful use of an assistive product;</p> <p>(e) maintenance, spare parts and consumable items specific to an assistive product.</p>	Participants or prospective participants generally
14	Daily personal	Supports that provide supervision or	Participants or



<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
	activities	<p>assistance with personal daily living tasks to help a participant to live as independently as possible in their own home and in the community.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) assistance with eating and drinking, dressing and toileting;</li> <li>(d) maintaining personal hygiene, including showering, bathing, hair washing and drying, fingernail and toenail cutting and cleaning;</li> <li>(e) moving and positioning;</li> <li>(f) in-kind personal care in school.</li> </ul>	prospective participants generally
15	Development of daily care and life skills	<p>Supports that provide training and development activities for participants or carers to increase a participant’s ability to live as independently as possible (including as part of psychosocial recovery supports).</p> <p>This includes increasing the participant’s ability to independently undertake the following activities:</p> <ul style="list-style-type: none"> <li>(a) shopping;</li> <li>(b) meal preparation;</li> <li>(c) managing finances;</li> <li>(d) managing a participant’s own personal care;</li> <li>(e) travel and use public transport;</li> <li>(f) engage in social activities;</li> <li>(g) improve relationship and social skills.</li> </ul>	Participants or prospective participants generally
16	Disability-related health supports	<p>Health supports that relate to the functional impact of a participant’s disability.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) supports, services and assistive products to manage dysphagia, diabetes, continence, wound and pressure care, respiration, nutrition, podiatry and foot care, and seizures;</li> <li>(b) supports for people with complex communication access needs or behaviours when accessing health or mental health services, including hospitals and in-patient facilities;</li> <li>(c) specialist allied health services and</li> </ul>	Participants or prospective participants generally

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	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
		<p>supports that facilitate enhanced functioning and community re-integration of people with recently acquired severe conditions including newly acquired spinal cord and severe acquired brain injury;</p> <p>(d) training support workers, family and friends to perform roles where appropriate.</p>	
17	Early intervention supports for early childhood	<p>Supports that are evidence-based early childhood intervention supports for children 0-9 years (including children aged 0-6 with developmental delay) and their families to achieve better long-term outcomes for the child.</p> <p>This includes the following:</p> <p>(a) therapy provided by allied health professionals including speech pathologists and occupational therapists;</p> <p>(b) a key worker for a child's family.</p>	Participants or prospective participants generally
18	Exercise physiology and personal well-being activities	<p>Supports that maintain or increase physical mobility or well-being through personal training or exercise physiology to address the functional impact of the participant's disability.</p> <p>This includes the following:</p> <p>(a) accessing services from an appropriately qualified professional;</p> <p>(b) assessment and development of a personalised exercise program which aims to increase or maintain a participant's functional capacity;</p> <p>(c) maintenance of muscle strength, range of motion, balance and mobility.</p>	Participants or prospective participants generally
19	Group and centre based activities	Supports for participants to access and participate in community, social, cultural and recreational activities that are provided in a group setting, either in the community or in a centre.	Participants or prospective participants generally
20	Hearing equipment	The provision of hearing equipment directly related to a participant's permanent hearing impairment that is not provided through the Hearing Services Program for the participant.	Participants or prospective participants generally
21	High intensity daily	Supports that assist a participant with	Participants who have

<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
	personal activities	<p>complex to undertake high intensity daily personal activities.</p> <p>These supports must be provided by a worker with additional qualifications and experience relevant to the participant’s complex or psychosocial needs.</p> <p>This includes the following:</p> <p>(a) a suitably qualified worker undertaking the activities;</p> <p>(b) a suitably qualified worker supervising the participant or another person in the participant’s support network undertaking the activities.</p>	the support stated in their plan and prospective participants that are likely to have this support stated in their plan
22	Home modification design and construction	<p>Supports that design, change or modify a participant’s home to help the participant live as independently as possible and to live safely at home.</p> <p>This includes the following:</p> <p>(a) installing equipment or changing a building’s structure, fixture or fittings;</p> <p>(b) internal and external building modifications to remedy damage arising exclusively from disability-related behaviours or use of NDIS funded assistive technology or equipment;</p> <p>(c) regulatory certification requirements for works.</p>	Participants who have the support stated in their plan and prospective participants that are likely to have this support stated in their plan
23	Household tasks	<p>Supports that provide assistance with essential household tasks that a participant is not able to do themselves because of their disability.</p> <p>This includes the following:</p> <p>(a) meal preparation and delivery;</p> <p>(b) house or yard maintenance;</p> <p>(c) cleaning and laundry.</p>	Participants or prospective participants generally
24	Innovative community participation	<p>Supports that are tailored for individual participants with extraordinary support needs to assist them to participate in the community.</p> <p>Extraordinary support needs arise due to a participant’s specific situational and personal circumstances.</p>	Participants who have the support stated in their plan and prospective participants that are likely to have this support stated in their plan
25	Interpreting and	Supports that assist a participant with	Participants or

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<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
	translation	independent communication in personal, social, cultural or community activities where translation and interpretation is needed as a result of their disability.	prospective participants generally
26	Management of funding for supports	Supports provided by a registered plan management provider to manage the funding of supports under a participant's plan.	Participants who have the support stated in their plan
27	Participation in community, social and civic activities	Supports that assist a participant to take part in community, social, cultural and civic activities.  This includes the following: (a) supporting participants during relevant activities; (b) working with participants to develop their ability to partake in these activities.	Participants or prospective participants generally
28	Personal mobility equipment	The provision of personal mobility equipment that supports or replaces a participant's capacity to move indoors and outdoors and to transfer from one place to another.  This includes the following: (a) assistive products for walking; (b) wheelchairs and motorised mobility devices; (c) transfer devices and hoists; (d) services to train a participant in successful use of equipment provided; (e) maintenance, spare parts and consumable items specific to equipment provided.	Participants or prospective participants generally
29	Specialist disability accommodation	The provision of specialist disability accommodation which is accommodation for a participant who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs.	Participants who have the support stated in their plan and prospective participants that are likely to have this support stated in their plan
30	Specialised driver training	Supports that provide driver training with a specialised vehicle driving instructor.  Supports that provide training on the use of adapted equipment or vehicle modifications.	Participants who have the support stated in their plan and prospective participants that are likely to have this support stated in their plan
31	Specialised hearing	Specialist audiological services provided by	Participants or

<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
	services	<p>an allied health professional for participants with complex needs.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) assessing hearing impairment;</li> <li>(b) prescription of audiological aids and equipment.</li> </ul>	prospective participants generally
32	Specialised supported employment	Supports that provide a participant with assistance to prepare for, find and retain a job in the participant's employment setting of choice.	Participants or prospective participants generally
33	Support coordination	<p>Supports that assist participants to connect with informal community and funded supports (including as part of psychosocial recovery supports).</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) building a participant's capacity to connect with supports;</li> <li>(b) assisting participants to understand and utilise their plan;</li> <li>(c) connecting with providers and mainstream services;</li> <li>(d) addressing barriers and reducing complexity in the support environment.</li> </ul>	Participants who have the support stated in their plan
34	Therapeutic supports	<p>Supports that provide evidence-based therapy to help participants improve or maintain their functional capacity in areas such as language and communication, personal care, mobility and movement, interpersonal interactions, functioning (including psychosocial functioning) and community living.</p> <p>This includes an assessment by allied health professionals for support planning and review as required.</p>	Participants or prospective participants generally
35	Vehicle modifications	<p>The provision of assistive products that can be added to vehicles or modifications made to vehicles that help a participant to operate, enter, exit or ride in the vehicle safely.</p> <p>This includes the following:</p> <ul style="list-style-type: none"> <li>(a) passenger and wheelchair hoists;</li> <li>(b) modified controls;</li> <li>(c) modified restraints and modified car</li> </ul>	Participants or prospective participants generally

**Schedule 1** Supports that are NDIS supports unless otherwise provided

Clause 1

<b>Supports that are NDIS supports unless otherwise provided</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Category</b>	<b>Supports</b>	<b>Participants and prospective participants</b>
		seats; (d) certification costs for registration and additional vehicle insurance premium costs as a direct result of a modification; (e) services to assess and prescribe, deliver, adjust and train a participant in successful use of an assistive product or modification; (f) maintenance, spare parts and consumable items specific to an assistive product or modification.  This support does not include the purchase of a vehicle.	
36	Vision equipment	The provision of products for navigation, orientation, braille, magnifiers and note taking equipment.	Participants or prospective participants generally

## Schedule 2—Supports that generally are not NDIS supports

Note: See subsection 5(2)

### 1 Supports that generally are not NDIS supports

The following table sets out supports that are not NDIS supports for:

- (a) a participant (unless a replacement support determination covering the support is in force for the participant); or
- (b) a prospective participant.

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
1	Day-to-day living costs— accommodation and household	The following: <ul style="list-style-type: none"> <li>(a) rent, rental bonds, home and property deposits, stamp duty, mortgage repayments, and strata fees;</li> <li>(b) purchase of land, or house and land packages;</li> <li>(c) standard home security and maintenance costs, fencing, gates, and building repairs;</li> <li>(d) pools, pool heating and maintenance, spa baths, saunas, and steam rooms;</li> <li>(e) standard home repairs, home improvements, standard renovations and maintenance;</li> <li>(f) water, gas and electricity bills, council rates, land taxes and levies;</li> <li>(g) water filters, purifiers, or aerators;</li> <li>(h) electricity generators, solar panels, home batteries for power storage, hot water and gas systems;</li> <li>(i) standard household (including garden) items, appliances, tools and products;</li> <li>(j) standard furniture, fixtures or fittings.</li> </ul>
2	Day-to-day living costs— finance and payments	The following: <ul style="list-style-type: none"> <li>(a) donations, tithes, gifts, and political contributions;</li> <li>(b) fines, penalties, and court-ordered amounts;</li> <li>(c) travel insurance, life insurance, income protection insurance, home and contents insurance, car insurance and excess insurance for novated vehicles;</li> <li>(d) health insurance, ambulance membership, gap payments for Medicare-funded services and private health insurance claims;</li> <li>(e) superannuation for the participant, or a member of a self managed superannuation fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) of which the participant is a member;</li> </ul>

**Schedule 2** Supports that generally are not NDIS supports

Clause 1

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		<ul style="list-style-type: none"> <li>(f) fringe benefits for staff or contractors;</li> <li>(g) education and tuition fees including fees for school, vocational education and training and higher education;</li> <li>(h) legal costs;</li> <li>(i) child support fees and debt repayments;</li> <li>(j) gift cards;</li> <li>(k) business development costs and business skills development costs, including company registration, book-keeping, accounting services or software;</li> <li>(l) debts, liabilities, loan repayments, buy now pay later payments, and taxes.</li> </ul>
3	Day-to-day living costs— food and groceries	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) groceries including all food, beverage, cleaning, household and health products;</li> <li>(b) fast food services, takeaway food and food delivery platforms.</li> </ul> <p>Meal delivery platforms where the food and ingredient component can be separately identified from the meal preparation and delivery components are not included in paragraph (b).</p>
4	Day-to-day living costs— lifestyle	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) cigarettes, vapes and smoking paraphernalia, and legal cannabis;</li> <li>(b) smoking cessation devices such nicotine replacement items;</li> <li>(c) gambling;</li> <li>(d) internet devices (such as modems and routers), land line phones, mobile phones (including smart phones), mobile phone accessories, tablets and sim cards;</li> <li>(e) internet, landline and mobile phone plans and data;</li> <li>(f) standard computers, standard computer accessories, consoles and games, and subscriptions for streaming services;</li> <li>(g) standard recreational equipment and tools, including toys, balls and racquets;</li> <li>(h) costs associated with recreational sports and activities, including membership costs, venue hire fees, uniforms and footwear;</li> <li>(i) costs associated with elite or professional sports and activities, including equipment and modifications to equipment and related travel costs;</li> <li>(j) dating or relationship services, including virtual reality, match makers or apps;</li> <li>(k) costs associated with weddings, honeymoons, funerals, and other social, business, private, public, formal or</li> </ul>



<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		informal events; (l) musical instruments, music production and social media production; (m) tickets to theme parks, tourism and entertainment operators; (n) tickets to music, theatre, cinema or sporting events, and conference fees or entrance fees; (o) accommodation to attend or participate in work, study, music, theatre, cinema, sporting events or conferences, or any other social, business, private, public, formal or informal event; (p) standard indoor or outdoor play equipment; (q) general health, fitness, social or recreational activity costs or services; (r) membership and entry to a recreational club and standard gym equipment; (s) non-prescription medicines, sunscreens, weight loss products, vitamins, sport or athletic supplements, and homeopathic medicines.
5	Day-to-day living costs— clothing and beauty	The following: (a) jewellery and watches (including smart watches); (b) makeup, cosmetic treatments, cosmetics, and cosmetic accessories; (c) standard clothing and footwear; (d) hair treatments, cutting, dying, styling, extensions, threading, weaving, hair replacements and transplants and wigs; (e) manicures, pedicures, false nail application or removal of any kind, nail painting and removal, nail decorations, nail piercings, hand or foot massage or treatments; (f) body art including body piercings, tattoo services, and henna.
6	Day-to-day living costs— travel and transport	The following: (a) cruises, holiday packages, holiday accommodation, and airfares, including interstate and overseas travel, and passports, visas, activities and meals included in travel; (b) vehicles, including motor vehicles, motorbikes, watercraft, all-terrain vehicles, standard bikes and scooters, and other recreational vehicles; (c) vehicles, devices, modifications or products that are not legal for use in the relevant state or territory; (d) mechanical repairs (except for repairs to vehicle modifications funded under any plan for the participant), automotive tools; (e) vehicle registration;

**Schedule 2** Supports that generally are not NDIS supports

Clause 1

**Supports that generally are not NDIS supports**

<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		(f) personal mobility devices, including e-scooters, electric bikes and skateboards; (g) transport for children as part of their reasonable care and support provided by families or carers; (h) petrol, diesel and gas.
7	Day-to-day living costs— pets	The following: (a) animals, including pets and companion animals (other than eligible assistance animals); (b) pet food for animals (other than eligible assistance animals included in a participant’s plan); (c) veterinarian costs, pet boarding, pet grooming for animals (other than eligible assistance animals included in a participant’s plan); (d) pet insurance; (e) taxidermy and pet cremations, burials or funerals.
8	Day-to-day living costs— reproductive health and family related	Surrogacy and fertility treatments.
9	Not evidenced based— alternative and complementary therapies	The following: (a) crystal therapy; (b) tarot card reading, psychics, mediums, and clairvoyants; (c) cuddle therapy; (d) reflexology; (e) aromatherapy; (f) sound therapy; (g) yoga therapy; (h) wilderness therapy; (i) animal therapy, including puppy therapy and goat therapy; (j) hair therapy; (k) alternative or complementary medicine.
10	Not evidenced based— wellness and coaching	The following: (a) massage that is not provided by an allied health professional for disability related purposes; (b) sports or athletic supplements; (c) life coaches, wellness coaches, career coaches, or cultural coaches; (d) hypnotherapy; (e) neurofeedback; (f) gaming therapy; (g) mastermind coaching, including apps and software; (h) somatic therapy (i) kinesiology.

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
11	Not evidenced based— energy and healing practices related	The following: (a) reiki (including intuitive reiki); (b) scalar lounge; (c) frequency healing and energy balanced massage; (d) deep energy clearing; (e) spinal flow technique; (f) shamanic healing.
12	Health	The following: (a) the diagnosis, early intervention and clinical treatment of health and dental health conditions, including ongoing or chronic health conditions; (b) diagnostic assessments and screening services; (c) time-limited, recovery-oriented services and therapies: (i) where the predominant purpose is treatment directly related to the person's health status; or (ii) that are provided after a recent medical or surgical event, with the aim of improving the person's functional status, including post-acute rehabilitation or post-acute care; (d) pharmaceuticals (including prescription medicines and non-prescription medicines), biological medicines, vaccines, sunscreens, weight loss products, vitamins, sport and athletic supplements, and homeopathic medicines; (e) equipment or assistive products prescribed or issued as a result of clinical care, treatment or management from a medical practitioner and then delivered in the clinical setting, unrelated to the person's disability; (f) surgical services or procedures related to aids and equipment; (g) acute, subacute, emergency, and outpatient clinical services delivered through public or private hospitals; (h) prescription spectacles or contact lenses; (i) nursing services (where related to treatment of a health event); (j) ambulance services (k) health transport services; (l) hospital in the home services; (m) sleep consultant services; (n) health retreats; (o) new-born follow-up provided in the health system, including child and maternal health services; (p) hearing services or supports provided by the Hearing Services Program;

**Schedule 2** Supports that generally are not NDIS supports

Clause 1

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		<p>(q) surgical services for hearing;</p> <p>(r) sub-acute palliative care, including in-patient and out-patient services delivered in the person's home or clinical setting.</p> <p>NDIS supports for the participant that may continue to be provided at the same time as sub-acute or palliative care services are not included in paragraph (r).</p>
13	Mental health	<p>The following:</p> <p>(a) pharmaceuticals (including prescription medicines and non-prescription medicines);</p> <p>(b) treatment, including for drug and alcohol dependency, gambling, and other addictions or disorders;</p> <p>(c) acute, subacute, emergency and outpatient clinical services delivered through public and private hospital mental health services;</p> <p>(d) supports related to mental health that are clinical in nature, including acute, ambulatory or continuing care or rehabilitation;</p> <p>(e) residential care where the primary purpose is for inpatient or outpatient treatment or clinical rehabilitation.</p>
14	Child protection and family support	<p>The following:</p> <p>(a) travel or accommodation for parents visiting their children that are in out-of-home care;</p> <p>(b) guardianship services for children and adults;</p> <p>(c) general family therapy;</p> <p>(d) parenting programs;</p> <p>(e) babysitting, nannying services, and au pairs;</p> <p>(f) marriage and relationship counselling;</p> <p>(g) child protection services required by families who have entered, or are at risk of entering, the relevant State or Territory statutory child protection system;</p> <p>(h) general parenting programs, counselling or other supports for families, which are provided to families at risk of child protection intervention and to the broader community, including making them accessible and appropriate for families of people with disability;</p> <p>(i) out-of-home care or support to carers of children in out-of-home care where these supports are not additional to the needs of children of similar age in similar out-of-home care arrangements.</p>
15	Early childhood development	<p>The following:</p> <p>(a) early childhood supports or therapies to support the general child development needs of a child;</p> <p>(b) childcare fees (including fees associated with specialist or segregated childcare service models), long day care,</p>

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		<p>family day care or informal care arrangements, including costs associated with reasonable adjustments that childcare services are required to make to accommodate a child with developmental delay or disability;</p> <p>(c) teaching aids or supports related to educational attainment;</p> <p>(d) building modifications for early childhood educational and care settings;</p> <p>(e) meeting the early childhood education and care needs of a child.</p>
16	School education	<p>The following:</p> <p>(a) fees or payments for outside school hours care, including before school, after school, student free days, vacation care and school holiday programs;</p> <p>(b) education and tuition fees across all education settings;</p> <p>(c) standard school uniforms, shoes, lunchboxes, drink bottles or other school equipment;</p> <p>(d) personalised learning or supports for students that primarily relate to their educational attainment;</p> <p>(e) aids and equipment for educational purposes, including modified computer hardware, education software, and braille textbooks;</p> <p>(f) assistive products which are fixed or non-transportable in schools that enable a student access to education, including hoists and specially adapted furniture;</p> <p>(g) reasonable adjustments to education campuses, including capital works, including ramps, lifts, and hearing loops;</p> <p>(h) services from a person employed by the participant's school or the relevant authority or Department of State for a State or Territory with responsibility for school education;</p> <p>(i) textbooks and teaching aids, including in alternative formats;</p> <p>(j) tutors and scribes;</p> <p>(k) educational supports associated with home schooling;</p> <p>(l) school refusal programs;</p> <p>(m) school camp, incursion or excursion fees;</p> <p>(n) transport between school activities, including excursions and sporting carnivals;</p> <p>(o) work experience generally provided as part of a school program.</p>
17	Higher education and vocational education and training	<p>The following:</p> <p>(a) education or tuition fees across all higher education and vocational education training (VET) settings;</p> <p>(b) supports (including assistive products) for students that</p>

**Schedule 2** Supports that generally are not NDIS supports

Clause 1

**Supports that generally are not NDIS supports**

<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		<p>primarily relate to their education and training;</p> <p>(c) building modifications to higher education and VET settings;</p> <p>(d) services from a person employed for educational purposes by the participant’s higher education or VET provider;</p> <p>(e) personalised learning or supports for students that primarily relate to their educational attainment;</p> <p>(f) assistive products which are fixed or non-transportable in higher education or VET settings that enable a student or trainee to access to education or training, including hoists and specially adapted furniture;</p> <p>(g) textbooks and teaching aids, including in alternative formats such as braille or Easy English;</p> <p>(h) education and training to facilitate transition to employment generally provided in higher education and VET settings.</p>
18	Employment	<p>The following:</p> <p>(a) government funded employment programs, including Disability Employment Services and Workforce Australia;</p> <p>(b) work-specific aids and equipment required to perform a job, including modified hardware and software;</p> <p>(c) reasonable adjustments (including assistive products and workplace modifications) to access a workplace;</p> <p>(d) employer responsibilities, including recruitment processes, work arrangements, transport for work activities;</p> <p>(e) employer compliance with employment laws, including those dealing with discrimination on the basis of disability;</p> <p>(f) employment programs, including both disability-targeted and open employment services, to provide advice and support to job seekers with disability who are largely independent once placed in employment to find and retain a job;</p> <p>(g) employment programs to encourage and assist employers to have recruitment policies and practices to hire and be inclusive of people with disability in the workplace. This includes support, training and resources, funding assistance to help employers make reasonable adjustments, and incentives for hiring people with disability, such as wage subsidies.</p>
19	Housing and community infrastructure	<p>The following:</p> <p>(a) direct costs of compliance with a person’s tenancy agreement, including bond, pest control, exit cleaning and general damage repairs;</p> <p>(b) housing for people with disability, other than participants eligible for specialist disability accommodation;</p>

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		<ul style="list-style-type: none"> <li>(c) design and subsequent changes or modifications to state and territory owned residential facilities (including aged care facilities, transitional and boarding accommodation and rehabilitation facilities), public buildings and boarding schools to make buildings accessible for people with disability to a reasonable adjustment standard;</li> <li>(d) design and subsequent changes or modifications to specialist disability accommodation;</li> <li>(e) reasonable adjustments to social housing to make buildings accessible for people with disability;</li> <li>(f) providing new publicly funded housing stock that meet accessibility standards and guidelines that apply in the location in which the housing is located;</li> <li>(g) homelessness-specific services including homelessness outreach and emergency accommodation;</li> <li>(h) the improvement of community infrastructure, including improving accessibility of the built and natural environment;</li> <li>(i) postal services;</li> <li>(j) housing subsidies, including rental bonds, mortgage relief and assistance with buying a home;</li> <li>(k) crisis housing;</li> <li>(l) mobile homes, caravans, campervans, tents.</li> </ul>
20	Transport	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) accessible public transport;</li> <li>(b) public transport fares;</li> <li>(c) concessions to facilitate use of public transport;</li> <li>(d) airline lounge memberships and access fees;</li> <li>(e) transport costs for animals, other than eligible assistance animals included in a participant's plan;</li> <li>(f) transport infrastructure, including road and footpath infrastructure;</li> <li>(g) community transport services;</li> <li>(h) modifications to public transport and taxis.</li> </ul>
21	Justice	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) supports in secure mental health facilities that are clinical in nature;</li> <li>(b) supervision and monitoring to prevent or observe offending behaviour or to monitor adherence to justice system-imposed conditions;</li> <li>(c) the day-to-day care and support needs of a person in custody (including in a secure mental health facility), including supervision, personal care and general supports;</li> <li>(d) pre-sentence psychological and psychiatric reports;</li> </ul>

**Schedule 2** Supports that generally are not NDIS supports

Clause 1

<b>Supports that generally are not NDIS supports</b>		
<b>Item</b>	<b>Column 1 Category</b>	<b>Column 2 Supports</b>
		(e) secure accommodation facilities where the purpose of this accommodation is to safeguard the community or prevent reoffending, including secure mental health facilities.
22	Aged care	<p>The following:</p> <p>(a) any of the following within the meaning of the <i>Aged Care Act 1997</i>:</p> <ul style="list-style-type: none"> <li>(i) basic daily care fees;</li> <li>(ii) refundable accommodation deposits;</li> <li>(iii) extra service fees;</li> </ul> <p>(b) any of the following services provided by a residential aged care service:</p> <ul style="list-style-type: none"> <li>(i) daily assistance with tasks such as cleaning, cooking and laundry;</li> <li>(ii) personal care supports including bathing, dressing and going to the toilet;</li> <li>(iii) access to health practitioner services, clinical care and therapies;</li> <li>(iv) social and emotional support services and entertainment.</li> </ul> <p>Supports for a participant that entered residential aged care before the age of 65 are not included in paragraph (b) if there is an agreement in place between the Agency and the Department of Health and Aged Care that those supports should be funded by the Agency.</p>
23	Unlawful goods and services	<p>The following:</p> <p>(a) supports the provision of which would be contrary to:</p> <ul style="list-style-type: none"> <li>(i) a law of the Commonwealth; or</li> <li>(ii) a law of the State or Territory in which the support would be provided;</li> </ul> <p>(b) assistive products, vehicle modifications, or home modifications that do not comply with Commonwealth, State or Territory laws, the National Construction Code, or mandated Australian standards for the location and purpose the participant requires them;</p> <p>(c) supports involving restrictive practices that are prohibited in the participant's State or Territory of residence;</p> <p>(d) consumable products that are against the law;</p> <p>(e) firearms and weapons;</p> <p>(f) seclusion rooms.</p>
24	Income replacement	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) income support payments;</li> <li>(b) rent subsidy;</li> <li>(c) income supplementation.</li> </ul>
	Note:	<p>Subsection 10(9) of the NDIS Act provides that a support is not an NDIS support for a participant if the support consists of the provision of:</p> <ul style="list-style-type: none"> <li>(a) sexual services; or</li> </ul>



- (b) alcohol; or
- (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.



## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the National Disability Insurance Scheme

*National Disability Insurance Scheme Act 2013*

*National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1)  
(NDIS Supports) Transitional Rules 2024*

### **Purpose**

This *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (the Instrument) provides a transitional definition of 'NDIS support' which is a key concept inserted into the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The definition of NDIS support clarifies what supports are provided through the National Disability Insurance Scheme (NDIS, Scheme) in a manner that is consistent with the original intention of the Scheme. It also reinforces the constitutional basis for the supports that are funded and provided under the Scheme, which is necessary as the NDIS transitions to a new budget-based planning framework.

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act and will only remain in place until permanent NDIS rules are made under section 209 of the NDIS Act.

Unless otherwise stated, a reference in this explanatory statement to a provision of the NDIS Act should be read as a reference to that provision as amended by the Amending Act (if applicable).

### **Background**

#### **The Amending Act**

On Tuesday 18 October 2022, the Government announced there would be an independent review into the NDIS to improve the wellbeing of Australians with disability and the Scheme's sustainability (NDIS Review). The Terms of Reference for the NDIS Review provided 3 overarching objectives:

- put people with disability and their families back at the centre of the NDIS to create a more personal experience
- restore trust and confidence
- ensure the long-term sustainability of the NDIS.

The NDIS Review, which was co-chaired by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM, delivered its final report 'Working together to deliver the NDIS' in December 2023. It included 26 recommendations with 139 integrated actions which were intended to provide a blueprint to renew the promise of the NDIS and deliver a more accessible and inclusive Australia.

The Amending Act addressed priority recommendations from the NDIS Review and represented the first tranche of amendments to the NDIS Act to improve participant experience. It followed agreement by National Cabinet that the Commonwealth would work with State and Territory governments to implement legislative and other changes to return the NDIS to its original intent of supporting people with permanent and significant disability, within a broader ecosystem of supports.

These changes made by the Amending Act are critical to improving the experience of people with disability participating in the Scheme while ensuring the long-term sustainability of the NDIS, so that it is available to support Australians with disability for many years to come.

One of the key NDIS Review recommendations implemented by the Amending Act was a move towards a more flexible budget-based planning framework. With the move away from the current planning approach, which includes an assessment of individual 'reasonable and necessary supports' (that must by their nature be supports of a particular kind that are appropriately funded or provided by the NDIS), it is necessary to include a legislative definition of the supports capable of being funded by the NDIS. The definition of NDIS support will guide participants on how they may spend their flexible budget.

#### Purpose of NDIS supports

As noted above, one of the key changes made by the Amending Act was to insert a new concept of 'NDIS support' into the NDIS Act. This concept of NDIS support appears in numerous places throughout the Amending Act and is central to the operation of the future of the NDIS in a number of ways.

The definition will provide greater clarity around the supports that can be funded by the NDIS and those that cannot. This approach is consistent with the original intention of the Scheme to provide supports to people with significant and permanent disability and people who are in need of early intervention supports. It is also consistent with the recommendations of the NDIS Review in that it focuses on the needs of a participant, rather than a diagnosis.

For the sake of consistency and simplicity across the entirety of the NDIS Act, the concept has been adopted in key areas, particularly where references to supports being appropriately funded by the NDIS already existed. Most critically, these include:

- section 34: This section deals with reasonable and necessary supports for old framework plans. A new requirement was inserted that a reasonable and necessary support must be an NDIS support.
- section 46: This section was repealed and replaced so that NDIS amounts can only be spent on supports that are NDIS supports.

Defining NDIS supports will make it easier for participants and other members of the disability community to identify what is appropriately funded by the NDIS, and what NDIS funding can be used to purchase.

The general descriptions of the kinds of supports that are NDIS supports in the Instrument and in participant's plans will continue to provide participants with choice

and control over how they spend their plan while also returning the NDIS to its original intent, consistent with the recommendations of the NDIS review.

In the current planning framework (now known as the 'old framework'), the definition of NDIS support clarifies the boundaries of what supports are reasonable and necessary under section 34 of the NDIS Act. This is an essential step to ensure that participants are able to continue receiving the supports they need as a result of their disability for many years to come.

In the new budget-based planning framework, reasonable and necessary supports will be replaced by reasonable and necessary budgets. This means the definition of NDIS supports has an even more important role in guiding participants to understand the supports that are able to be funded by the NDIS, as most supports will no longer be identified in participant's plans.

In addition to clarifying what is and is not appropriately funded by the NDIS, the concept of NDIS support reinforces the constitutional basis for the NDIS, which is necessary for new framework (budget based) plans. This includes by implementing Australia's obligations under the *Convention on the Rights of People with Disability* (CRPD).

#### Power to make the Instrument

Section 10 of the NDIS Act allows the Minister to make NDIS rules declaring what supports are, and are not, NDIS supports. These rules are Category A NDIS rules made under section 209 of the NDIS Act. Items 124 and 138 of Schedule 1 to the Amending Act allow the Minister to make a transitional rule for the purposes of section 10.

The Instrument is not an NDIS rule, but rather a transitional rule that will remain in place only until NDIS rules are made for the purposes of section 10 under section 209. It is necessary to have a transitional rule in place for a period of time to allow time to develop and agree the final NDIS rule.

Before making rules declaring what supports are NDIS supports, the Minister must be satisfied of the following:

- the support is appropriately funded by the NDIS, and
- the declaration of the support as an NDIS support implements Australia's obligations under the CRPD or another agreement with one or more countries, or the declaration of the support enables the provision of 'sickness benefits'.

Before making rules declaring what supports are not NDIS supports, the Minister must be satisfied that the support is not appropriately funded or provided through the NDIS.

In addition to declaring what is and is not an NDIS support, the Minister may also prescribe supports that are subject to a 'substitution process', which allows a participant to request that a support that is declared not to be an NDIS support be considered an NDIS support for them in specific circumstances.

## Outline of instrument

The Instrument sets out the supports that are declared to be NDIS supports, including whether they are NDIS supports for participants generally, or only when the support is specifically stated in a participant's plan. These supports are described generally to ensure that participants continue to have choice and control over how they use their plans.

It also includes transitional arrangements that ensure a support specifically stated in a participant's plan at the commencement of the Amending Act will continue to be an NDIS support for the duration of the participant's current plan. This ensures that participants will receive continuity of support. Similar transitional arrangements are in place for supports that the Administrative Appeals Tribunal (Tribunal) has found to be reasonable and necessary for a participant.

The Instrument also declares supports that are not NDIS supports. It is important to note that a support will not be an NDIS support if it is declared not to be, even if that support could otherwise fall within one of the categories of supports that are declared to be NDIS supports.

In addition to the supports that are declared not to be NDIS supports, subsection 10(9) of the NDIS Act provides that a support is not an NDIS support if the support consists of the provision of:

- sexual services
- alcohol
- drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Finally, the instrument prescribes the supports that are declared not to be NDIS supports but may be substituted for other supports that are in particular circumstances.

## **Commencement**

The Instrument commences on the later of the day after it is registered and the day that the Amending Act commences. The Amending Act commences on 3 October 2024.

## **Consultation**

The design of the Amending Act has been a collaborative exercise, relying heavily on substantial contributions made by the disability community through the NDIS Review.

The NDIS Review heard consistently, particularly from participants, that it is not always clear what NDIS funding can be spent on. The NDIS was always intended to only fund disability supports that are the responsibility of the NDIS. It was never intended to fund supports that are the responsibility of other service systems or that relate to day-to-day living costs unrelated to a participant's support needs.

The NDIS Review recommended providing more clarity to participants about what is and is not funded under the NDIS to help guide participants on how they can spend NDIS funding.

The National Disability Insurance Agency (NDIA) conducted a series of targeted engagements from August to September 2024 and heard from over 100 stakeholders including:

- Disability Representative and Carer Organisation members
- Independent Advisory Council members
- Participant Reference Group members
- Industry Chief Executive forum members
- Participant focus groups
- Self managers
- Child representatives
- Rural and remote
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group
- NDIA Board members

In early August 2024, the Department of Social Services released draft lists of NDIS supports for public consultation. Feedback was provided through survey responses and email submissions with over 7,000 responses received. The Government welcomes the significant engagement both from the disability community and the broader Australian community.

The public consultation process was undertaken from 4 August 2024 to 25 August 2024 via the Department's [DSS engage.dss.gov.au](https://engage.dss.gov.au) website. A discussion paper outlining the purpose of the Instrument and consultation process, as well as the draft lists of NDIS supports were published on the DSS Engage website.

The feedback from the disability community has been vital to help clarify the supports that can be funded by the NDIS and those that cannot.

A number of overarching themes were raised through the public consultation, consistent with written submissions received from peak and disability representative organisations including:

- Preference for a principles-based approach over a list-based approach
- The use of 'carve outs' created confusion and a lack of clarity
- The need for an exception process

- Concerns about prioritising specialised goods and service supports over generally commercially available goods and services
- fear about participants unknowingly purchasing something that NDIS funding cannot be used for resulting in debts being owed
- the need for time to understand what the new definition of NDIS Supports means for participants without the risk of incurring a debt.

A detailed consultation report outlining the views of the community on the draft lists of NDIS supports was prepared to inform the Schedules to the Instrument. The report has been published on the DSS Engage website and a summary report is at [Attachment A](#).

In addition to engagement with the disability community, there has been significant consultation with States and Territories from July through September 2024 utilising established governance arrangements under the Disability Reform Ministerial Council.

The Instrument is intended to reflect existing intergovernmental agreements and as such engagement across state and territory government on the development of the Schedules to the Instrument has been critical to ensuring that all services systems work together to meet the needs of participants. The effective shared governance of the Scheme is critical to achieving reform envisaged by the NDIS Review.

### **Regulation Impact Analysis (RIA)**

The Office of Impact Analysis has agreed to the use of the Final Report of the Independent Review of the NDIS delivered to Governments in December 2023 as an Impact Analysis Equivalent. A link to the report can be found on the NDIS Review website - [Working together to deliver the NDIS | NDIS Review](#) and an Executive Summary of the report is [Attachment B](#).



## **Explanation of the provisions**

### **Part 1 – Preliminary**

#### **Section 1 – Name**

This instrument is the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

#### **Section 2 – Commencement**

This instrument commences on the later of the day after the instrument is registered and the day on which Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amendment Act) commences. The Amendment Act commences on 3 October 2024

#### **Section 3 – Authority**

This instrument is made under item 138 of Schedule 1 to the Amending Act.

#### **Section 4 – Definitions**

The Instrument provides a number of definitions for terms used in the Instrument. The key definitions are as follows:

***eligible assistance animal*** means a dog or other animal that is:

- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or
- (b) accredited by an animal training organisation prescribed in regulations made under section 132 of the *Disability Discrimination Act 1992* for the purposes of paragraph 9(2)(b) of that Act; or
- (c) provided by an NDIS provider who is registered to provide assistance animals under section 73E of the NDIS Act; or
- (d) trained to assist a person with a disability to alleviate the effect of the disability and to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

Some participants use assistance animals (most commonly dog guides) as a disability support. These animals must have special training, and generally specific accreditation. This definition is consistent with the definition of assistance animal in the *Disability Discrimination Act 1992*, with the addition of an animals provided by certain registered NDIS providers.

In addition to meeting the eligibility requirements set out in the definition, an assistance animal must be trained to actively perform at least 3 tasks or behaviours which mitigate the effects of a participant's disability. The tasks are things that the animal wouldn't naturally do to help a participant manage their disability and mean that the participant needs less assistance or other funded supports. These requirements do not form part of the definition of an eligible assistance animal as they are specific to each individual participant. They will be matters are taken into consideration by the NDIA in determining whether to include funding for an assistance animal in a participant's plan.

**cultural activity** means a cultural activity for a participant or prospective participant person who is an Indigenous person, and includes practices, ways of understanding the world, and methods of expression such as language, celebrations, and events. For this purpose, it is noted that:

- (a) individual Aboriginal and Torres Strait Islander cultures have specific spiritualities and lore, and therefore obligations or responsibilities, that are connected to Country and community; and
- (b) this Connection to Country, Lore and Spirituality is a way of understanding life, identity and connection with others, or kinship.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) included 13 specific recommendations to improve services and supports for First Nations people with disability including the need to improve how the NDIS works for First Nations participants. The Royal Commission recognised that participation in cultural life is essential to social and emotional wellbeing for First Nations people with disability. In particular recommendation 9.7 recommended support to participate in cultural life.

To support the implementation of this recommendation, certain categories of NDIS supports provide participants with assistance to access and/or participant in cultural activities.

First Nations cultural activities are not only about preserving the past but actively revitalising, living and expressing culture in contemporary settings. They foster resilience, identity, and connection while supporting community well-being and the right to self-determination.

First Nations cultural activities include traditional practices, ways of understanding the world, and methods of expression such as language, celebrations, and events. Individual Aboriginal and Torres Strait Islander cultures have specific spiritualities, lore and therefore obligations or responsibilities that are connected to Country and community. Country refers to an area of land or sea on which First Nations people have a traditional or spiritual association. This Connection to Country, Lore and Spirituality is a way of understanding life, identity and connection with others, or kinship. Culture and spirituality can be expressed through many contemporary and traditional forms of activities including language, dress, kinship, social norms, stories, music, song, dance, visual art, literature, and film. Through these practices, culture can provide a sense of belonging and identity that contributes to individual, family and community wellbeing. Domains in which cultural activities can fall are Connection to Country, Beliefs and Knowledge, Language, Family, Kinship, and Community, Cultural Expression and Continuity, Self-determination, and Leadership.

Although the term 'First Nations' is generally used and understood, for consistency across the statute book, and with amendments made to the NDIS Act, reference is made to participants who are 'Indigenous persons'. The definition of an Indigenous person is a member of the Aboriginal race of Australia or a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**Hearing Services Program** means the program under which hearing services (within the meaning of the *Hearing Services Administration Act 1997*) are provided by:

- (a) contracted service providers in accordance with agreements entered into under Part 3 of that Act; or
- (b) without limiting paragraph (a)—Australian Hearing Services under the *Australian Hearing Services Act 1991*.

The Hearing Services Program is a Commonwealth funded program that funds service providers to provide hearing services – including assessments, rehabilitation and devices – to eligible Australians with hearing loss. The program's 2 components are the:

- voucher scheme – a network of more than 300 hearing providers who deliver services across 3,000 locations Australia-wide
- Community Service Obligations – Hearing Australia provides services for people who are aged under 26 years, eligible Aboriginal and Torres Strait Islanders and people who need specialist services or live in a remote area.

The NDIS does not fund hearing supports for participants who are eligible to receive services through the Hearing Services Program. The NDIS may provide additional supports not provided by the Hearing Services Program, such as complementary technology, payment of a maintenance agreement and other services. Further information about the Hearing Services Program can be found on the Department of Health and Aged Care's website (<https://www.health.gov.au>).

**high intensity daily personal activities** mean the following activities:

- (a) complex bowel care;
- (b) enteral feeding and management;
- (c) severe dysphagia management;
- (d) tracheostomy management;
- (e) urinary catheter management;
- (f) ventilator management;
- (g) subcutaneous injections;
- (h) complex wound management.

A note to the definition advises the reader that information about high intensity daily personal activities could in 2024 be viewed on the Commission's website ([www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)).

High intensity daily personal activities present some of the highest risks for participants. Many of these supports are intensely personal in nature and require workers to communicate and work closely with the participant to understand when and how to deliver supports safely in ways that meet the participants' preferences and daily routines. For most of the high intensity daily personal activity supports, worker training is delivered by an appropriately qualified health practitioner or a person with the relevant skills to carry out the activities.

**specialised vehicle driving instructor** in relation to driver training means a person who:

- (a) is registered or licensed as a driving instructor in the State or Territory in which the driver training is to occur; and
- (b) has experience and training in providing driving instruction to people with disability.

Specialised driver training provides driving lessons required due to the impact of a participant's disability and must be provided by a specialised vehicle driving instructor. The driver training is based on a driving training assessment by an occupational therapist who has completed specialist post graduate training in conducting driving assessments.

To meet the definition of specialised vehicle driving instructor, the instructor must be registered or licensed as a general driving instructor in the State or Territory where the driver training is to occur. They must also have particular training and experience in working with people with disability. The instructor must have also been involved in discussions with the occupational therapist who completed the driving training assessment. This aspect of the requirement is not included in the definition as how this will look and operate will be individual to each participant.

***standard item*** for a person means an item that is not modified or adapted to address the person's functional impairments.

There are a number of items that are declared not to be NDIS supports because they are 'standard', meaning that they will not be funded by the NDIS because they are not modified or adapted to address a participant's functional impairments. The NDIS does not fund standard products that are the responsibility of any person to purchase for themselves.

## **Part 2 – What supports are NDIS supports**

### **Section 5 – What supports are NDIS supports – general rule**

Section 5 provides a general rule for what supports are NDIS supports.

Subsection 5(1) declares supports for the purposes of subsection 10(1) of the NDIS Act, being supports that are NDIS supports. It provides that a support covered by column 2 of an item in the table in clause 1 of Schedule 1 is an NDIS support for:

- (a) participants specified in column 3 of the item who have old framework plans; and
- (b) prospective participants specified in column 3 of the item, other than prospective participants who, if they were participants, would be required to be given notice under subsection 32B(2) of the NDIS Act (participants that are to have new framework plans).

This means that all participants who have old framework plans, or prospective participants who will have an old framework plan, can identify what supports are NDIS supports for them by reviewing the table in Schedule 1 (and in particular columns 2 and 3). This table is discussed further below.

Subsection 5(1) is subject to subsections 10(4) and (9) of the NDIS Act and subsection 5(2) of the Instrument. This means that supports prescribed for the purpose of subsection 5(1) will not be NDIS supports if they are covered by subsection 10(4) or 10(9) of the NDIS Act or subsection 5(2) of the Instrument. Each of these provisions prescribes supports that are not NDIS supports.

To assist the reader in understanding how subsection 5(1) operates, there are two legislative notes at the end of subsection 5(1). Those notes remind the reader of:

- subsection 10(4) of the NDIS Act, which allows supports to be declared to not be NDIS supports for participants or prospective participants. The note also advises the reader that those supports are declared under subsection (2) of this section in the Instrument.
- subsection 10(9) of the NDIS Act, which provides that a support is not an NDIS support for a participant or prospective participant if the support consists of the provision of:
  - (a) sexual services; or
  - (b) alcohol; or
  - (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Subsection 5(2) declares supports for the purposes of subsection 10(4) of the NDIS Act, being supports that are not NDIS supports. It provides that a support covered by column 2 of an item in the table in clause 1 of Schedule 2 is not an NDIS support for any participant or prospective participant. For participants, this is subject to subsection 10(6).

To assist the reader in understanding how subsection 5(2) operates, there are two legislative notes at the end of subsection 5(2). Those notes:

- remind the reader of subsection 10(6) of the NDIS Act, which allows the CEO, on application by a participant, to determine that a support is taken to be an NDIS support for the participant if, among other things, the CEO is satisfied that the support would replace one or more other supports that are NDIS supports for the participant.
- advise the reader that determinations under subsection 10(6) of the NDIS Act are referred to in this instrument as replacement support determinations. This note also advises the reader that section 7 of the Instrument includes additional rules about replacement support determinations.

Subsection 5(3) is an interpretive provision. It provides that a reference in section 5 to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the Amending Act. A legislative note is included at the end of subsection 5(3) to remind the reader that item 124 provides that, until the first NDIS rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 has effect as if a reference to NDIS rules are a reference to rules made under item 138 of Schedule 1 to the amending Act.

This provision is required as a result of the Instrument being of a transitional nature, rather than the permanent Category A section 10 rules. It ensures that the provisions of the Amended Act, the NDIS Act and the Instrument are all interpreted consistently with each other.

## **Section 6 – Transitional rule for certain pre-commencement plans**

Section 6 provides a transitional rule for some participants. In effect, it will ensure a participant who has a support stated in their plan can continue to access that support

after commencement if it is not an NDIS support. It will also ensure participants who have received a decision from the Tribunal that identifies a particular support as reasonable and necessary for them can continue to access that support if it is not an NDIS support. This will apply for as long as the relevant plan is in effect.

Subsection 6(1) provides that this section applies for a participant who has a plan in effect that includes a statement of participant supports approved before the Amending Act commenced.

Subsection 6(2) provides that a support specified in a participant's plan as a reasonable and necessary support, for the purpose of paragraph 33(2)(b) of the NDIS Act, is taken to be an NDIS support in some circumstances. Those circumstances are if:

- (a) the support is expressed in the participant's plan to be a stated support; or
- (b) the Tribunal made a decision to the effect that the particular support should be specified in, or funded under, the plan as a reasonable and necessary support. This may occur as part of a decision by the Tribunal to:
  - (i) vary the statement of participant supports;
  - (ii) set aside the previous statement of participant supports and approve a new statement in its place; or
  - (iii) remit the approval of the statement of participant supports for reconsideration by the CEO.

In the case of a remittal, subsection 6(3) confirms that it does not matter whether:

- (a) the Tribunal remitted the decision in accordance with any directions or recommendations of the Tribunal; or
- (b) the Tribunal also set aside the decision.

This provision is important to ensure that participants can continue to access supports that are not NDIS supports if they have been specifically identified as reasonable and necessary for the participant prior to the Amending Act commencing. This will provide continuity of supports for a period of time while the participant becomes familiar with the list of supports that are NDIS supports and is able to select alternatives, if applicable.

Paragraph 6(2)(b) is included as a safeguard for participants who have received a Tribunal decision, because their plan will not always state each individual support as reasonable and necessary. This provision will ensure any support assessed as reasonable and necessary by the Tribunal will continue to be available until the participant receives their next plan. It will also capture supports that are included in a participant's plan as a result of a remittal under section 42D of the *Administrative Appeals Tribunal Act 1975*, whether those supports are specifically stated in the participant's plan or not.

Subsection 6(4) provides that subsection 6(2) applies:

- (a) despite subsection 10(4) of the NDIS Act and subsection 5(2) of the Instrument; but
- (b) subject to subsection 10(9) of the NDIS Act.

To assist the reader in understanding how subsection 5(2) operates, there are two legislative notes at the end of subsection 5(2). Those notes remind the reader of:

- subsection 10(4) of the NDIS Act, which allows supports to be declared to not be NDIS supports for participants or prospective participants. The note also reminds the reader that those supports are declared under subsection 5(2) of this instrument, and
- subsection 10(9) of the NDIS Act, which provides that a support is not an NDIS support for a participant if the support consists of the provision of:
  - (a) sexual services;
  - (b) alcohol; or
  - (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

This means that a support covered by subsection 6(2) will be an NDIS support for a participant even if it is expressly prescribed in the Instrument to not be an NDIS support. However if the support is one captured by subsection 10(9), which are listed above, it will not be an NDIS support regardless of whether it was specifically identified as reasonable and necessary for the participant prior to the Amending Act commencing.

### **Part 3 – Replacement support determinations**

#### **Section 7 – Replacement support determinations**

Section 7 relates to ‘replacement support determinations’ which is something provided for in subsection 10(6) of the NDIS Act. In effect, this allows the CEO to deem that something is an NDIS support for a participant if some circumstances.

Subsection 10(6) provides that the CEO may determine, in writing, that a support is taken to be an NDIS support for a participant if:

- (a) the support is prescribed by NDIS rules;
- (b) the support would, apart from subsection 10(4), be an NDIS support for the participant;
- (c) the participant applies to the CEO in accordance with subsection 10(7) for a determination under subsection 10(6);
- (d) the CEO is satisfied that:
  - (i) the support would replace one or more other supports that are NDIS supports for the participant; and
  - (ii) the cost of the support is the same or lower than the total of the costs of the supports it would replace; and
  - (iii) the support would provide the same or a better outcome for the participant than the supports it would replace; and
  - (iv) any other conditions specified in the NDIS rules are met in relation to the support, the participant, or both.

Subsection 10(7) includes requirements for an application for a replacement support determination. This includes paragraph 10(7)(c), which requires that an application be made in accordance with any other requirements specified in NDIS rules.

Subsection 7(1) is made for the purpose of paragraph 10(6)(a), meaning it prescribes the supports that a replacement support determination can be made for. Subsection 7(1) provides that a replacement support determination may be made for a support covered by column 1 of the table in subsection 7(3).

Subsection 7(2) is made for the purposes of subparagraph 10(6)(d)(iv) of the NDIS Act, meaning it prescribes conditions that must be satisfied before a replacement determination can be made. Subsection 7(2) provides that the CEO must be satisfied of conditions included in column 2 of the table to subsection 7(3) before making a replacement support determination.

Subsection 7(3) includes the table mentioned in subsections 7(1) and (2). That table includes the supports for which a replacement support determination can be made, and conditions that must be met for each support. These are as follows:

<b>Available supports</b>	<b>Conditions that must be met</b>
Standard commercially available household items	<p>The support must:</p> <ul style="list-style-type: none"> <li>(a) be necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements; and</li> <li>(b) increase whole task independence; and</li> <li>(c) reduce or eliminate the need for a support worker or disability specific assistive technology.</li> </ul>
<p>The following:</p> <ul style="list-style-type: none"> <li>(a) smart watches;</li> <li>(b) tablets;</li> <li>(c) smartphones;</li> <li>(d) an app used for accessibility or communication purposes</li> </ul>	<p>The support must be necessary to address communication or accessibility needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements.</p>

Subsection 7(4) prescribes circumstances in which a participant cannot apply for a replacement support determination, for the purpose of paragraph 10(7)(c).

Subsection 7(4) provides that a participant cannot make more than one application for the same support within the following period:

- (a) if the reassessment date of the participant's plan is less than 12 months after the plan came into effect—while the plan is in effect; or
- (b) otherwise—during any 12 month period starting while the plan is in effect.



This means that a participant can apply for a replacement support determination in respect of a particular support once during each plan that is effect, unless the plan is in effect for longer than 12 months in which case a fresh application may be made every 12 months. As soon as a new plan is approved, the participant will be entitled to make a further request for a replacement support determination no matter how recently they last made an application. This will ensure participants who have a change in circumstances are not prevented from applying for a replacement support determination when their new plan comes into effect.

Subsection 7(5) is an interpretive provision. It provides that a reference in section 5 to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the Amending Act. A legislative note is included at the end of subsection 5(3) to remind the reader that item 124 provides that, until the first NDIS rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 has effect as if a reference to NDIS rules are a reference to rules made under item 138 of Schedule 1 to the amending Act.

This provision is required as a result of the Instrument being of a transitional nature, rather than the permanent Category A section 10 rules. It ensures that the provisions of the Amended Act, the NDIS Act and the Instrument are all interpreted consistently with each other.

## **Schedule 1 – Support that are NDIS supports unless otherwise provided**

Schedule 1 is made for the purposes of subsection 10(1) of the NDIS Act and declares the supports that are NDIS supports unless otherwise provided.

If a support is declared not to be an NDIS support under subsection 10(4) of the NDIS Act (see Schedule 2), or falls within subsection 10(9) of the NDIS Act, then it is not an NDIS support regardless of whether it falls within one of the categories described in this Schedule.

This Schedule contains a table with 36 categories of supports, set out in column 1 to the table. These categories are loosely based on the provider registration groups set out in section 20 the *National Disability Insurance Scheme (Provider Registration and Practices Standards) Rules 2018* (Provider Registration Rules). While the categories have some similarities with the Provider Registration Rules, this is for ease of organisation only. It does not have any impact on how providers are registered, their categories of registration or the kinds of supports that registered NDIS providers may provide.

Column 2 of the table contains a description of the supports that fall within each category. Many of the descriptions include a list of included supports. These lists are not exhaustive so do not exclude an item that is not listed in the description. The purpose of the listed supports is to clarify the kinds of supports that fall within the overarching description.

Some of the categories of supports may only be provided where a participant has that support specified in their plan. Column 3 sets out whether the support may be provided to participants generally or only to participants who have the support stated in their plan. References to prospective participants are also included for the purposes of considering whether a prospective participant is likely to require NDIS supports at the time of access.

The 36 categories of NDIS supports are explained below. The below provides some additional context and examples for some of the categories, but does not repeat the inclusions that are set out in the instrument.

### *Accommodation assistance or tenancy assistance*

These are supports that guide, prompt, or assist a participant to do activities for finding or keeping appropriate accommodation.

The majority of supports that fall within this category are available to participants and prospective participants generally.

However, medium term accommodation (where a participant cannot move into long term accommodation due to that accommodation or other supports not being ready and current accommodation is not suitable) is only an NDIS support for participants that have the support specifically stated in their plan.

This may occur where a participant needs to move to a new house because their disability support needs have changed and their house is no longer accessible, and while their new home is being prepared they require accommodation that is accessible

and meets their currently disability-related needs. In these circumstances, accommodation which meets the person's disability-related needs for an interim period may be provided.

#### *Assistance animals*

This is a support provided by an eligible assistance animal. The definition of an eligible assistance animal is described above. The types of assistance animals funded by the NDIS are:

- dog guides
- hearing assistance animals
- physical assistance animals
- assistance animals for some participants who have been diagnosed by a psychiatrist with long term but stable Post Traumatic Stress Disorder who are able to take on the ongoing responsibilities of a primary handler.

This support is only available to participants who have the support stated in their plan.

#### *Assistance in coordinating or managing life stages, transitions and supports*

These are supports provided on a short-term basis that provide assistance to manage life transitions. Some participants require temporary supports that help them prepare for and navigate major life changes successfully, such as preparing to move out of home for the first time or getting ready to leave hospital after a long stay. Supports can be provided which help a participant to get used to using new equipment, develop new routines, work with new support workers, or orient to a new house or community setting.

These supports can be provided to any participants or prospective participants who need them as a result of their disability.

#### *Assistance to access and maintain employment or higher education*

These are supports that build a participant's capacity to successfully prepare for, find or keep employment in the open labour market (including self-employment and micro-enterprise) or the supported labour market.

These are the extra supports that a participant may need as a result of their disability to:

- prepare for work
- prepare for and find a first job or a new job
- study at university or TAFE
- start an apprenticeship or traineeship
- volunteer or have work experience to build work skills
- work in their own business.

The NDIS will fund a range of supports, including

- help to build basic work skills

- supports to help move from school to further study, training or work
- supports not available through DES or Workforce Australia to develop work skills, find and keep a job
- training for teachers or work mates about a participant's individual disability support needs and how to help them be productive at work
- travel to and from work and study in some situations.

#### *Assistance with daily life tasks in a group or shared living arrangement*

These are supports that provide assistance with or supervision of daily living tasks to participants in a shared living environment.

Participants who live with other participants may receive help from one or more support workers who provide support to all the residents in the house. Supports provided in a shared living arrangement include support to organise and manage the household, and to help residents to prepare for and carry out their usual daily activities.

While these supports can be provided to participants generally, they can only be provided in a shared living environment and so will only be provided to participants with those living arrangements.

#### *Assistance with travel or transport arrangements*

These are supports that provide transport assistance to participants that cannot travel or use public transport independently.

A participant will generally be able to access funding through the NDIS for transport assistance if the participant cannot use public transport without substantial difficulty due to their disability.

For children, this may look like transport to from school from an approved in-kind support provider that is organised by the child's school. This would not generally extend to extracurricular activities as it is reasonable to expect parents to provide transport to and from their child's after-school activities.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

#### *Assistive equipment for recreation*

This is the provision of assistive products used in sports or other recreational activities.

These products are equipment or related modifications that is specially designed to help a participant play or participate equitably where they normally can't because of their disability.

For example, a child may obtain a modified wheelchair or bike that is recommended by their physiotherapist to support their participation in family and peer recreational activities.

Recreation also includes indoor recreation, and this support could cover adaptations for musical instruments or paint brushes, or modified controllers for online games.

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

This category does not include products for elite or professional sport.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

#### *Assistive products for household tasks*

This is the provision of assistive products that support a participant to carry out domestic and everyday actions and tasks within their home.

This includes the equipment a participant needs to help them do things they normally can't do because of their disability, in and around their home. It includes items that mean the participant can do tasks independently, or needs less help from others, such as to clean floors or make their own meal. For example, supports may include modified cutlery, plate guards, special cutting boards and pick up sticks.

This does not include standard home items that everyone uses, such as a standard kettle, broom or food processor, as these are not related to a participant's disability.

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

#### *Assistive products for personal care and safety*

This is the provision of assistive products for self-care activities and participation in self-care. This category includes the tools and equipment a participant needs to help do things that they normally can't do because of their disability for their personal care, or to stay safe. It includes items that mean the participant can do the task independently or needs less help from others. For example, the following may be supports that fall within this category:

- shower chairs and extended brushes or pads to help a participant to wash and groom themselves
- adaptations to help a participant go to the toilet independently
- tools and hooks to help a participant put their clothes and footwear on
- an alert device to call a carer when a participant needs help to change position in bed
- smoke alarm packages including visual a strobe light and bed shaker or vibration pad to alert to the smoke alarm

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants generally who need the support as a result of their disability.

### *Specialist positive behaviour support*

These are supports that are provided by professionals with specialist skills in positive behaviour support.

Specialist positive behaviour supports will involve the development of a Behavioural Support Plan, which outlines specifically designed positive behavioural support strategies for a participant, their family and support persons. These supports will assist participants with:

- multiple complexities that may require multiple interventions,
- extreme behaviours of concern where there is a use of regulated restrictive practice,
- behaviours of concern involving various stakeholders (multiple issues for intensive intervention requiring comprehensive assessment, planning, support and training for the participant and carers),
- significant 1:1 support in the community, 1:2 support in the community (greater than 30% of the day) or exceptional circumstance supports at home due to their harmful or persisting behaviours that may present risk to themselves or others,
- a requirement for additional support to implement newly developed strategies in the community or within newly engaged activities/services,
- an anticipated significant transition during the plan period, such as moving into SIL or from school to a day program, and
- circumstances where:
  - there are a lack of services willing to engage with the participant due to presenting behaviours and risk to staff/participants/community, or
  - there has been a significant change of participant circumstances that will result in withdrawal of service support and need for immediate intervention.

These supports are only available to participants who have the support stated in their plan.

### *Communication and information equipment*

This is the provision of assistive products to support communication and information management. These assistive products are the tools and equipment a participant requires because of their disability, to enable them to communicate and/or share and receive information. Products will be recommended, and training provided in their use, by a speech pathologist or an occupational therapist depending on the disability need being addressed.

Assistive products calling under this category may include:

- communication books, boards or electronic solutions, including computerised communication devices
- alternate access systems for electronic communication/information devices such as neuro-sensor; head, switch or eye interfaces
- mounting systems for holding communication solutions

- person specific programming and vocabulary preparation and entry to a communication device
- voice/speech amplification devices

These supports are available to participants generally who need the support as a result of their disability.

#### *Community nursing care*

These are supports that provide disability-related nursing care for participants with high care needs (not including high intensity daily personal activities), requiring a high level of clinical skill.

A registered nurse will generally set up a daily management regime and train high intensity support workers for people with physical disability to maintain hygiene of catheters or tracheostomies and good skin integrity. Wound management, catheter changes, or provision of intramuscular injections where required will be undertaken by the registered nurse but day to day care needs will be delivered by properly trained support workers who must comply with the management routine developed by the health professional.

These supports are available to participants generally who need the support as a result of their disability.

#### *Prostheses and orthoses*

These are assistive products externally applied to replace, wholly or in part an absent or deficient body segment, or to assist participant control and functioning of their neuromuscular skeletal systems.

Protheses are items that are worn or fitted externally to replace or complete a missing or incomplete body segment, such as an artificial limb, including powered upper limbs.

Orthoses provide extra control or support around joints due to nerve or muscle impairments. These include products such as braces that provide control to a child's ankles or specialised footwear to manage pain, both of which enable better walking, which can also reduce the longer-term effects of their disability. It also includes items such as a dynamic neoprene fitted glove to reduce tremor and contracture in a participant's hand.

This category also includes services that are associated with the products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants generally who need the support as a result of their disability.

#### *Daily personal activities*

These are supports that provide supervision or assistance with personal daily living tasks to help a participant to live as independently as possible in their own home and in the community.

Supports may be provided to directly assist, or support through prompting, a participant to undertake tasks such as:

- transfer in and out of bed safely,
- choose clothing and dress,
- brush teeth, brush hair, and apply deodorant.
- go to the toilet (including assistance to mobilise to the toilet, adjust clothing before and after toileting, and maintain perineal hygiene without incontinence or soiling clothes),
- eat (including cutting food, bringing food to the mouth, and cleaning of face if needed),
- managing medication.

These supports are available to participants generally who need the support as a result of their disability.

#### *Development of daily care and life skills*

These are supports that provide training and development activities for participants and carers to increase a participant's ability to live as independently as possible (including as part of psychosocial recovery supports). This includes increasing the participant's ability to independently undertake a range of activities.

Supports may be provided where a participant requires assistance to gain confidence and independence to travel on public transport. This could include tailored assistance to understand the bus or train timetable, identifying the right route to take, and practising travelling on the bus or train to identified destinations.

Other development activities include tailored cooking classes for a participant with intellectual disability who wants to learn how to cook independently but needs a modified teaching schedule to learn to do this safely or to use modified kitchen equipment. Support may also be provided to build a participant's capacity to manage their own plan and/or finances more broadly.

These supports are available to participants generally who need the support as a result of their disability.

#### *Disability related health supports*

These are supports that would generally be funded through the health system for people who are not participants. If the need for the support arises as a result of a participant's disability, then it may be funded through the NDIS.

Health supports that are directly related to a participant's disability include:

- dysphagia supports – may be provided if a participant has trouble eating, drinking or swallowing on a daily basis



- respiratory supports – may be provided if a participant needs support, care and planning to help breathe and maintain respiratory health where this is compromised
- nutrition supports – may be provided if a participant needs help with the way they eat or understanding the food they need
- diabetes management supports – may be provided if a participant needs extra help to manage their diabetes, for example, testing their blood sugar level because they are unable to do this on their own due to the functional impact of their disability
- continence supports – may be provided if a participant needs products to maintain their continence or someone to help them with toileting on a daily basis
- wound and pressure care supports – may be provided if a participant has slow to heal wounds, a condition that results in swollen arms or legs, or ongoing loss of feeling in body or arms or legs, and the participant needs regular skin, wound and pressure care
- podiatry supports – may be provided if a participant needs assessment and development of a care plan to help look after their feet, ankles and lower limbs.
- seizure supports – may be provided if a participant needs help to monitor and manage seizures when they occur. This includes epilepsy supports and supports for seizures arising from other disability related needs.

Certain assistive products may also be provided to help participants do things that they cannot do because of their disability. This may include:

- pressure care cushions or mattress – may be provided if a participant needs regular care to prevent wounds or pressure sores arising as a result of their disability
- a cough assist machine – may be provided if a participant needs support to maintain respiratory health because of their disability.

Disability-related health supports may also include:

- funding for a person, such as a support worker, to provide disability-related health supports
- training for support workers or other people who provide support to a participant such as family or friends
- consumables, which are the things a participant uses, such as continence products like catheter bags, pads, bottles and straps

These supports are available to participants generally who need the support as a result of their disability.

#### *Early intervention supports for early childhood*

These are supports that are evidence-based early childhood intervention supports for children 0-9 years (including children aged 0-6 with developmental delay) and their families to achieve better long-term outcomes for the child.

The early childhood approach aims to:

- provide timely support to ensure that a child is able to access the supports they need
- give parents and carers information about best-practice early childhood supports and how they can help their child
- increase parents and carers confidence and capacity to manage and respond to their child's support needs
- increase a child's ability to do activities they need or want to do
- increase a child's inclusion and participation in mainstream and community settings like playgroup, childcare, kindergarten or preschool.

This may include a range of therapeutic interventions delivered by a qualified treating health professional, such as an occupational therapist, developmental educator or speech pathologist, which are aimed at building a child's functioning.

This may also include a key worker, who is the main person in a team of early childhood professionals who work with the child and their family to deliver and co-ordinate child and family centred supports, including connections with mainstream and other systems.

These supports are available to participants who are children generally.

#### *Exercise physiology and personal well being activities*

These are supports that maintain or increase physical mobility or physical well-being through personal training or exercise physiology to address the functional impact of the participant's disability. For example, a participant with a spinal cord injury may need support to develop a safe and appropriate exercise program that will help them maintain their upper limb strength and condition over time.

These supports are available to participants generally who need the support as a result of their disability.

#### *Group and centre based activities*

These are supports for participants to access and participate in community, social, cultural and recreational activities that are provided in a group setting, either in the community or in a centre. They include supports provided to a group of participants in a day program environment or in the community. Supports might include assistance with navigating around the community and participating in an activity either as an individual or as part of a group.

Supports in this environment can range from supporting a person to communicate and engage with other community members, or could entail physical support such as help with toileting, eating and moving around.

These supports are available to participants generally who need the support as a result of their disability.

#### *Hearing equipment*

This is the provision of hearing equipment directly related to a participant's permanent hearing impairment that is not provided through the Hearing Services Program for the

participant. The Hearing Services Program will fund any supports that a participant is eligible for. The NDIS can fund other supports to address the participant's hearing related needs that the Hearing Services Program does not fund.

This may include specialised hearing aids, hearing aid protection for use in water environments, replacement cochlear implant external speech processors.

These supports are available to participants generally who need the support as a result of their disability.

#### *High intensity daily personal activities*

These are supports that assist a participant with complex needs or psychosocial disabilities to undertake high intensity daily personal activities.

High intensity daily personal activities present some of the highest risks for participants. Many of these supports are intensely personal in nature and require workers to communicate and work closely with the participant to understand when and how to deliver supports safely in ways that meet the participants' preferences and daily routines.

These supports must be provided by a worker with additional qualifications and experience relevant to the participant's complex or psychosocial needs.

These supports are available to participants generally who need the support as a result of their disability.

#### *Home modification design and construction*

These are supports that design, change or modify a participant's home to help the participant live as independently as possible and to live safely at home. Home modifications are changes to a participant's home that help manage a participant's disability. These changes can be minor or more complex. They can help a participant safely access or move around their home and make daily tasks easier.

Home modifications may be required if a participant:

- has safety concerns or difficulty moving around their home
- has trouble with personal care, like using a shower
- cannot use the rooms they need to use in their home
- needs changes to their home so their carers can support them safely.

The NDIS may also fund equipment or assistive technology to make a home safer and more accessible, including helping participants undertake activities that are difficult or impossible as a result of their disability. An occupational therapist might recommend equipment such as:

- grab rails
- accessible tapware or a hand-held shower
- a weighted shower curtain
- lever door handles

- portable ramps.

These supports are only available to participants who have the support stated in their plan.

#### *Household tasks*

These are supports that provide assistance with essential household tasks that a participant is not able to do themselves because of their disability. For example, a participant with physical impairments may need assistance from another person to vacuum their floors or do their laundry when these are tasks the participant cannot do themselves.

These supports are available to participants generally who need the support as a result of their disability.

#### *Innovative community participation*

These are supports that are tailored for individual participants with extraordinary support needs to assist them to participate in the community.

Extraordinary support needs arise due to a participant's specific situational and personal circumstances. This may include when participants living with a disability have different challenges impacting on their lives such as mental health issues, incarceration or homelessness, and need a higher level of specialised and tailored supports in their plan. For example, a participant who has been in secure mental health facility for an extended period and wishes to reintegrate with the community may need very specific, bespoke supports to do so. This will look different for every individual but could include supports like assisted volunteering.

These supports are only available to participants who have the support stated in their plan.

#### *Interpreting and translation*

These are supports that assist a participant with independent communication in personal, social, cultural or community activities where translation and interpretation is needed as a result of their disability.

Interpreting and translation supports may be provided to attend events and occasions such as:

- medical or health professional appointments such as GP's or Specialist.
- private legal and financial appointments
- special occasions such as weddings or funerals
- volunteering opportunities
- attending support or interest groups
- access to sporting opportunities
- courses provided by private education providers who do not provide interpreters.

These supports will not be provided if they are funded by a mainstream service such as the following:

- Health Care Interpreting Services at public hospitals
- Employment Assistance Fund for the workplace
- Community Relations Commission for the justice system
- National Relay Service to assist a deaf, hard of hearing or person with speech impairment to make and receive phone calls

These supports are available to participants generally who need the support as a result of their disability.

#### *Management of funding for supports*

These are supports provided by a registered plan management provider to manage the funding of supports under a participant's plan. Plan management providers can purchase supports on behalf of participants from either registered or unregistered providers. A plan manager will receive funds from the NDIA and disburse funds on behalf of a participant to providers of other services received.

These supports are only available to participants who have made a plan management request to have their plan managed (at least in part) by a registered plan management provider.

#### *Participation in community, social and civic activities*

These are supports that assist a participant to take part in community, social, cultural and civic activities. For example, a participant may need a support worker to accompany them when they go shopping to assist with purchases, or to help them to participate in their local basketball club. These supports can be provided to individual participants or groups of participants who are participating in the same social or community activity.

These supports are available to participants generally who need the support as a result of their disability.

#### *Personal mobility equipment*

This is the provision of personal mobility equipment that supports or replaces a participant's capacity to move indoors and outdoors and to transfer from one place to another. These supports help participants to do things that they otherwise would not be able to do because of their disability. This includes items that:

- allow participants to do tasks independently
- mean participants need less help from others
- help participants do things more safely or easily
- help participants keep doing the things they need to do
- are personalised for participants.

These supports are available to participants generally who need the support as a result of their disability.

### *Specialist disability accommodation*

This is the provision of specialist disability accommodation (SDA) which is accommodation for a participant who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs.

SDA is generally provided to participants who have an extreme functional impairment and/or very high support needs. Most participants don't need to live in SDA, and there may be other home and living supports that are more suitable. SDA does not refer to the support services, but the homes in which these services are delivered. SDA may, for example, have specialist designs for people with very high needs or a location or features that make it feasible to provide complex or costly supports for independent living.

The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* set out the eligibility criteria for SDA, including the kind of dwelling that a participant is eligible for.

These supports are only available to participants who have the support stated in their plan.

### *Specialised driver training*

These are supports that provide driver training with a specialised vehicle driving instructor. The supports may also provide training on the use of adapted equipment or vehicle modifications. This support is only provided after a driving training assessment has been completed by an occupational therapist who has completed specialist post graduate training in conducting driving assessments.

A specialised vehicle driving instructor helps teach a participant to safely operate their modified vehicle or address other disability related needs, to meet the driver licencing requirements in the participant's home State or Territory. The NDIS may fund specialised driving lessons so that a participant can learn to drive a modified vehicle and additional driving lessons where a participant's disability affects their ability to learn to drive. The NDIS does not fund all driving lessons, only ones required as a result of a participant's disability.

These supports are only available to participants who have the support stated in their plan.

### *Specialised hearing services*

These are specialist audiological services provided by an allied health professional for participants with complex needs. This support is provided for certain participants with needs that are not covered by the Hearing Services Program. Participants are likely to require Specialised Hearing Services when:

- the participant has a profound hearing loss
- the participant uses an implantable device
- the participant has hearing loss and severe communication impairment which:

- prevents the person from communicating effectively in his or her daily environment such as significant visual impairment, or
- is caused or aggravated by significant physical, intellectual, mental, emotional or social disability or mobility issues such as after a stroke.

These supports are available to participants generally who need the support as a result of their disability.

This category of supports is different to the provision of 'hearing equipment' which is dealt with above.

#### *Specialised supported employment*

These are supports that provide a participant with assistance to prepare for, find and retain a job in the participant's employment setting of choice. These supports include on the job assistance in paid employment that help a participant gain work skills, adjust to a work environment, increase productivity, and progress their career. These services may be provided in employment settings such as a participant's own business or a micro business as well as private, public and not for profit enterprises

These supports are available to participants generally who need the support as a result of their disability.

#### *Support coordination*

These are supports that assist participants to connect with informal community and funded supports (including as part of psychosocial recovery supports).

This includes meeting with a participant to discuss and help them understand their NDIS plan, considering strategies for implementing their plan in a way which is tailored to their life and needs, helping them to identify and contact providers in their local community, and managing any challenges or changes of circumstance that may arise during their plan period. A support coordinator will work with a participant to help them understand and use their NDIS plan to pursue their goals, connect the participant with NDIS providers, community and other government services, and build their confidence and skills to use and coordinate their supports.

These supports are only available to participants who have the support stated in their plan.

#### *Therapeutic supports*

These are supports that provide evidence-based therapy to help participants improve or maintain their functional capacity in areas such as language and communication, personal care, mobility and movement, interpersonal interactions, functioning (including psychosocial functioning) and community living.

This includes an assessment by allied health professionals for support planning and review as required.

Therapeutic supports may be provided by a range of therapists. The following are examples of therapeutic supports that may be provided:

- support from an occupational therapist to practice and improve their motor planning skills, or to assess and prescribe a piece of assistive technology they need
- support from a speech therapist to develop their verbal language skills or write a mealtime management plan which helps them to manage swallowing and aspiration risks

These supports are available to participants generally who need the support as a result of their disability.

### *Vehicle modifications*

This is the provision of assistive products that can be added to vehicles or modifications made to vehicles that help a participant to operate, enter, exit or ride in the vehicle safely. This includes modifications, specialised vehicle controls, restraints and other equipment a participant requires because of their disability to safely use their private vehicle, either as a passenger or registered driver.

It is critical to note that the NDIS does not fund the purchase of a vehicle, only the modifications required.

The modifications should allow a participant to access their vehicle independently or need less help from others in doing so. If a participant meets the requirements to have a licence to drive the vehicle, the vehicle modifications and altered or additional controls must address their disability needs to enable the participant to meet the functional and legal requirements for safe operation of the vehicle.

All modifications and additional driving controls must be assessed and specified as suitable for the specific participant through a driver trained occupational therapist assessment and, as required, supervised training program (see specialised driver training above).

Modifications can include modification of the vehicle structure and components, vehicle passenger and wheelchair hoists, driver and auxiliary controls, modified restraints, and modified car seats. Supports may also include certification for registration and additional vehicle insurance premium costs as a direct result of the modification and maintenance or repair of the modifications (not the vehicle itself).

These supports are available to participants generally who need the support as a result of their disability.

### *Vision equipment*

This is the provision of products for navigation, orientation, braille, magnifiers and note taking equipment. These products are provided to participants who are blind or have low vision and who require the products to interact with their world and engage in daily tasks. These supports may also help children to achieve developmental milestones and may relate to mobility aids that aid orientation and mobility.

Vision equipment includes products such as:



- products related to navigation orientation such as white canes and apps
- sonar or vibration devices to assist in detecting obstacles
- magnifiers either optical (glass), electronic (video-based), smart device applications, cameras or computer software
- screen readers that can assist with reading text on websites, emails or digital books by converting text, buttons, images and other screen elements into speech or braille
- braille displays that can connect to your computer and translate what's on screen into Braille dots, or print in Braille
- smart glasses, which are high tech glasses which can provide higher magnification, read text aloud and help for navigation
- reading devices for digital content and books such as DAISY reader, talking book, audio book player.

These supports are available to participants generally who need the support as a result of their disability.

## **Schedule 2 – Supports that generally are not NDIS supports**

Schedule 2 is made for the purposes of subsection 10(4) of the NDIS Act and declares supports that are not NDIS supports.

Schedule 2 includes a table that sets out 24 categories of supports. Each of these categories is set out in Column 1. Column 2 provides an exhaustive list of the supports that are included in that category and are therefore declared not to be NDIS supports.

This schedule reflects existing arrangements as outlined in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Supports for Participants Rules) and intergovernmental agreements such as the applied principles and tables of support and the Disability Reform Council's Communique dated 28 July 2019.

There are universal obligations for all governments to provide inclusive and accessible services for people with disability. The NDIS and other service systems retain the general principle of working together at the local level to plan and coordinate streamlined care for people requiring both disability supports and mainstream services, recognising both services may be required in conjunction with the need for smooth transitions, coordination and collaboration across service systems.

It is important to note that just because something is excluded from the list of NDIS supports does not confer an obligation on other service systems to provide it.

The lists in schedule 2 declare that the NDIS will not fund a number of 'standard' items. That is, the NDIS will not fund items that any person would buy for themselves, but may fund items that are specifically required or modified as a result of a person's disability.

While the instruments in the list are exhaustive, the below provides a more general outline and explanation of the supports that are not NDIS supports and does not enumerate all of the supports that are captured.

### *Day-to-day living costs*

Day-to-day living costs are items that every person needs to pay for or purchase, regardless of whether they have a disability or not. There are 8 categories of day to day living costs that are declared not to be NDIS supports:

- *Accommodation and household*: this includes items such as rent, home and property deposits, stamp duty, and standard utilities and household items. The NDIS does not fund additional utility costs as subsidies are available to assist participants with impairments that impact these costs, such as thermoregulatory impairments.
- *Finance and payments*: this includes things such as donations, fines, penalties, insurance, tuition fees and legal costs.
- *Food and groceries*: groceries, fast food and some food delivery services. This category does not exclude meal delivery services where the food and ingredient component can be separately identified from the meal preparation and delivery components. The NDIS will pay for meal preparation and delivery where it is required because of a participant's disability but will not pay for the cost of food

and ingredients. This is consistent with existing policy and many providers already separate these components for billing purposes.

- *Lifestyle*: this includes items such as standard computers, recreational and sporting equipment, smoking paraphernalia, tickets and entertainment. This does not include modified equipment required as a result of a participant's disability. The NDIS does not cover costs associated with participation in professional, elite or competition level sports, including more expensive products that may be required to facilitate participation.
- *Clothing and beauty*: this includes jewellery and watches, make up, standard clothing and footwear, hair styling and body art. It does not include adaptive clothing that a participant may require as a result of their disability.
- *Travel and transport*: this includes cruises, holiday packages, holiday accommodation, standard vehicles, petrol and personal mobility devices (which are different from the mobility devices required by a participant as a result of their disability).
- *Pets*: this includes day to day costs associated with having a pet (other than an eligible assistance animal included in a participant's plan). It also includes costs associated with taxidermy and pet burials.
- *Reproductive health and family related*: this includes all surrogacy and fertility treatments.

#### *Not evidenced based*

The NDIS does not fund supports that are not evidence based. This refers to supports for which there is no contemporary body of evidence that the support is likely to be result in a favourable long-term outcome for people with disability.

There are 3 categories of supports that are not evidence based that are declared not to be NDIS supports:

- *Alternative and complementary therapies*: this includes therapies such as crystal therapy, cuddle therapy, reflexology, animal therapy and alternative or complimentary medicine.
- *Wellness and coaching*: this includes services such as hypnotherapy, sports or athletic supplements and life coaching.
- *Energy and healing practices related*: this includes services such as reiki, deep energy clearing and shamanic healing.

#### *Health*

A number of items in this category are not NDIS supports because they reflect the existing division of responsibility to provide health supports set out in the Supports for Participants Rules. This includes the diagnosis and clinical treatment of health conditions, including ongoing or chronic health conditions; and time-limited, goal-oriented services and therapies predominantly related to a person's health status, or following medical or surgical events with the aim of improving a person's functional status, for example rehabilitation following hip replacement surgery.

Other items are not NDIS supports in accordance with intergovernmental agreements such as the Applied Tables and Principles of Supports. This reflects the existing universal obligations of governments to provide access to health supports and

services for all Australians, regardless of disability. For example, mainstream health systems provide diagnostic assessments and screening services, or provision of acute, subacute, emergency and outpatient clinical services delivered through public or private hospitals.

Health systems will remain responsible for the diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions. This may involve general practitioner services, medical specialist services, dental care, nursing, allied health services, preventive health care, and care in public and private hospitals.

While the NDIS will not fund any pharmaceuticals, access to some pharmaceuticals will be available through the Pharmaceutical Benefits Scheme.

The exclusion of sub-acute palliative care including in-patient and out-patient services delivered in the person's home or clinical setting reflects the existing division of roles and responsibilities for palliative care. This exclusion does not change existing responsibilities between the NDIS and health systems. The NDIS retains responsibility for the provision of disability-related supports as part of an NDIS participant's plan alongside the provision of palliative care services.

The exclusion of an item as an NDIS support does not create a commitment or obligation for other service systems to provide that support. Similarly, these lists do not create an obligation for other service systems to provide for accessibility or to make reasonable adjustments. Those obligations are created through relevant anti-discrimination legislation at the federal and State and Territory level.

The commitment for the NDIS and health system to work together at the local level to plan and coordinate streamlined care for people requiring both health and disability supports remains unchanged, recognising that both services may be required in conjunction and that there is a need to ensure a smooth transition, coordination and collaboration across service systems.

Some items related to health that are not NDIS supports are activities, products or services that are largely expected to be funded directly by a person or their families as an ordinary cost, for example sunscreen or health retreats.

### *Mental health*

A number of items in this category are not NDIS supports because they reflect the existing division of responsibility to provide mental health supports set out in the Supports for Participants Rules.

Other items are not NDIS supports in accordance with intergovernmental agreements such as the Applied Tables and Principles of Supports. This reflects the existing universal obligations of governments to provide access to mental health supports and services for all Australians, regardless of disability.

The NDIS is responsible for supports for ongoing psychosocial recovery focused on improving a person's functional ability, including those that enable a person with

psychosocial disability to undertake activities of daily living and participate in the community and in social and economic life.

The mental health system retains responsibility for supports that are clinical in nature, including treatment of mental illness. This includes acute, subacute, emergency and outpatient clinical services delivered through public and private hospital mental health services.

It is acknowledged that rehabilitation support occurs in both a clinical and community setting including non-clinical staff. A distinction has been made that rehabilitation interventions that are clinical in nature are to be funded through the mental health system, while other forms of rehabilitation may be provided through the NDIS, if appropriate to do so based on a participant's disability related support needs.

The commitment for the NDIS and health system to work together at the local level to plan and coordinate streamlined care for people requiring both health and disability supports remains unchanged, recognising that both services may be required in conjunction and that there is a need to ensure a smooth transition and collaboration across service systems. A coordinated response between clinical mental health services and non-clinical psychosocial services gives people with severe and enduring mental illness the best chance at increasing their independence, functioning, community participation and quality of life.

#### *Child protection and family support*

This includes things such as family therapy and parenting programs, travel or accommodation for parents visiting their children in out of home care as well as out of home care or support to carers of children who are participants in out of home care.

This category does not capture supports and costs for children in out of home care that are over and above what would generally be required for another child of a similar age in similar arrangements due to the child's disability.

#### *Early childhood development*

This includes things such as early childhood supports or therapies that may be required to support the general development needs of any child, childcare fees and reasonable adjustments to childcare settings to meet the education and care needs of a child who is a participant.

#### *School education*

This category captures tuition fees as well as any supports that schools are responsible for providing for children. This includes making reasonable adjustments to personalise learning and support for students that primarily relate to their educational attainment (including teaching, learning assistance and aids, school building modifications and transport between school activities).

#### *Higher education and vocational education and training*

This category captures tuition fees as well as any supports that higher education and vocational education and training providers are responsible for providing. This includes

the learning and support needs of students that directly relate to their educational and training attainment (including teaching, learning assistance and aids, building modifications and transport between education or training activities where this transport is being arranged for all students). This also includes general transition supports from education or training to employment.

### *Employment*

This category includes government funded employment programs, including those funded at the Commonwealth, State or Territory level. It also includes work specific aids and adjustments, reasonable adjustments, employer responsibilities and programs for to encourage and assist employers to hire people with disability.

Employers are required to comply with employment laws, including those related to disability discrimination. This includes making reasonable adjustments for people with disability.

### *Housing and community infrastructure*

This includes things such as direct costs of compliance with a person's tenancy agreement, including bond, pest control, exit cleaning and general damage repairs (noting that the NDIS will fund repairs that are required because of the impact of a participant's disability). It also includes design and subsequent changes or modifications to State and Territory owned residential facilities and reasonable adjustments to social housing to make buildings accessible for people with disability. The NDIS may fund costs that are over and above what may constitute a 'reasonable adjustment'. The NDIS also does not fund homelessness and outreach programs and services, including emergency accommodation.

This category also includes subsequent changes or modifications to SDA as this is the responsibility of the SDA provider.

### *Transport*

This category includes supports the public transport system is responsible for providing. For example:

- ensuring that transport options are accessible to people with disability. This includes through concessions to people with disability to use public transport (including parties choosing to provide concessions for the total cost of transport) and compliance with relevant non-discrimination legislation including the *Disability Standards for Accessible Public Transport 2002*.
- transport infrastructure, including road and footpath infrastructure, where this is part of a universal service obligation or reasonable adjustment. This includes managing disability parking and related initiatives.

### *Justice*

The NDIS does not fund supports that are more appropriately funded by the justice system. Whether or not certain services are NDIS supports will depend on whether or not a participant is in custody.

A participant is in custody if they are:

- in custody in a correctional facility, for example a prison, remand centre, youth detention centre or secure mental health facility
- on remand, awaiting or following sentencing
- required by a court order to regularly report to a correctional or community correctional agency, for example on bail, probation or parole
- serving a community based order, or are on a leave of absence order or therapeutic leave
- under forensic orders, which may include restrictions on your movements or other requirements, such as drug testing or attending prescribed treatment.

If in custody, the justice system is responsible for a participant's day-to-day care and support needs. This includes supervision, personal care and general supports. If a participant is in custody, the justice system will provide help with personal care, such as showering, eating and dressing as well as disability-related health supports.

The justice system is also required to make reasonable adjustments to supports or services to make them accessible to specific participants. This includes things like:

- shower rails in bathrooms, or fixed aids such as hoists, that may be used by the participant and other inmates
- help with communicating and engaging, including Auslan interpreting
- adapting the building so the participant can move around it
- case coordination to help the participant transition out of a justice setting, including the management of orders, child protection and family support, health, mental health, housing or homelessness services
- secure mental health facilities that are mainly clinical in nature
- transport, for example to and from court hearings.

There are disability related supports not captured by this category that may be provided to a participant while they are in the justice system. This includes things like

- certain assistive products, such as a replacement prosthetic limb
- training for staff in custody, where it is specifically for a participant's disability support needs
- capacity building supports that will help a participant following release, such as support coordination, a recovery coach, occupational therapy or behaviour supports related to a participant's disability.

### *Aged care*

NDIS supports do not include basic daily care fees, refundable accommodation deposits and extra service fees within the meaning of the *Aged Care Act 1997*.

The NDIS does not fund the following supports when they are provided by a residential aged care provider:

- daily assistance with tasks such as cleaning, cooking and laundry;
- personal care supports including bathing, dressing and going to the toilet;

- access to health practitioner services, clinical care and therapies;
- social and emotional support services and entertainment.

On some occasions, these may be NDIS supports for participants who move permanently into residential aged care under the age 65. This is based on an agreement between the NDIA and the Department of Health and Aged Care.

Under paragraph 29(1)(b) of the NDIS Act, a person ceases to be a participant in the NDIS if the person enters a residential care service on a permanent basis, or starts being provided with home care on a permanent basis, and this first occurs only after the person turns 65 years of age. The NDIS does not fund Commonwealth funded aged care services for people who are no longer participants.

#### *Unlawful goods and services*

This includes supports or items that would contravene a law of the Commonwealth or the State or Territory in which the support would be provided. It also includes all supports involving restrictive practices that are prohibited in the participant's State or Territory of residence and seclusion rooms.

#### *Income replacement*

The NDIS does not provide income replacement or supplementation.

Funding provided under the NDIS is not income support or a social security payment that can be used to purchase any item or service a person could spend their own money on. It is specifically and directly intended to obtain supports that a participant needs as a result of their disability to allow them to realise their full potential for physical, social, emotional and intellectual development, as well as participate in and contribute to social and economic life.

There are other services available, such as the social security system, to supplement a participant's income if they are unable to work as a result of their disability.



## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024***

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

This *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (the Instrument) provides a transitional definition of 'NDIS support' which is a key concept inserted into the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The definition of NDIS support clarifies what supports are provided through the National Disability Insurance Scheme (NDIS, Scheme) in a manner that is consistent with the original intention of the Scheme. It also reinforces the constitutional basis for the supports that are funded and provided under the Scheme, which is necessary as it transitions to a new budget-based planning framework.

The Instrument sets out the supports that are declared to be NDIS supports, including whether they are NDIS supports for participants generally, or only when the support is specifically stated in a participant's plan. These supports are described generally to ensure that participants continue to have choice and control over how they use their plans.

It also includes transitional arrangements that ensure a support specifically stated in a participant's plan at the commencement of the Amending Act will continue to be an NDIS support for the duration of the participant's current plan. This ensures that participant's will receive continuity of support. Similar transitional arrangements are in place for supports that the AAT has found to be reasonable and necessary for a participant.

The Instrument also declares supports that are not NDIS supports. It is important to note that a support will not be an NDIS support, even if that support could otherwise fall within one of the categories of supports that are declared to be NDIS supports.

In addition to the supports that are declared not to be NDIS supports, subsection 10(9) of the NDIS Act (as amended by the Amending Act) provides that a support is not an NDIS support if the support consists of the provision of:

- sexual services
- alcohol
- drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Finally, the instrument prescribes the supports that are declared not to be NDIS supports but may be substituted for other supports that are in particular circumstances.

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act and will only remain in place until permanent NDIS rules are made under section 209 of the NDIS Act.

## **Human rights implications**

The Instrument engages the following human rights:

- Right for all people to self-determination and to freely pursue economic, social and cultural development - Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- Right of people with disability – Articles 3, 4, 5, 7 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16, 24 and 26 of the ICCPR.
- Article 28 of the CRPD and Article 23 of the Convention on the Rights of the Child (CRC)

### Right for all people to self-determination and to freely pursue economic, social and cultural development - Article 1

Article 1 of the ICCPR and ICESCR enshrines the right for all people to self-determination and to freely pursue economic, social and cultural development. The Instrument will provide clarity and certainty for people with disability when selecting their supports, but it does not change the types of supports that have always been appropriate to purchase with NDIS funding.

The Instrument promotes these rights by clarifying how NDIS funding can be used to enable people with disabilities to pursue their goals and maximise their independence, to live independently, to be included in the community as fully participating citizens and develop and support the capacity of people with disabilities to undertake activities that enable them to participate in the mainstream community and in employment.

To the extent that the Instrument may be seen to limit some of the rights mentioned above, this is a necessary and appropriate limitation. Additionally, the overarching principles outlined in section 34 of the NDIS Act remain the same, including whether a support meets a participant's disability related support needs and is effective and beneficial for the participant. The Instrument provides important clarification about what types of goods and services are appropriately funded by the NDIS to allow participants greater certainty and flexibility when choosing how to spend their allocated NDIS funding.

### Right to equality and non-discrimination - Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for respect of the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence

of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference and acceptance of persons with disabilities, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 and 5 of the CRDP outline the need to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5 of the CRPD outlines obligations to recognize all persons as being equal under the law and being entitled, without discrimination to the equal benefit of the law. Specifically, section 5 prohibits discrimination on the basis of disability.

Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards. The Article also provides that persons with disability should be given equal rights to, among other things, control their financial affairs and not be arbitrarily deprived of their property.

The Instrument promotes these rights by clarifying how NDIS funding in participants' plans can be used. This provides certainty and enables participants to make informed choices about the supports they can acquire using their NDIS funding. The NDIS support categories are intentionally broad, to promote and respect the diversity of people with disability and ensure equal opportunity.

In addition, the Instrument provides that any support stated in a participant's plan at commencement of the Amending Act on 3 October 2024 will be considered an NDIS support for that participant until the plan ends. Similarly, supports found by the Administrative Appeals Tribunal to be reasonable and necessary and included in a participant's plan at commencement will be considered NDIS supports for that participant until the plan ends.

This will preserve existing rights and interests in a support that has been determined to be reasonable and necessary before commencement of the Amending Act, and allow time for participants to adjust to any changes introduced by the Instrument.

The Instrument promotes Article 12(5) of the CRPD by recognising the equal right of people with disability to control their own financial affairs and identify NDIS supports that most appropriately meet their disability related support needs. Under the new planning framework enabled by the Amending Act, the definition of NDIS support will facilitate greater choice and control.

To the extent that the Instrument may be seen to limit some of the rights mentioned above by excluding goods and services from being funded by the NDIS, this is a necessary and appropriate limitation. The Instrument is consistent with the original intent of the Scheme, and it will operate until new Category A rules are made.

Rights of people with disability - Articles 4(3) and 7 of the CRPD, Article 24 of the ICCPR and Article 23 of the CRC

Article 4(3) of the CRPD seeks to ensure necessary consultation with, and active involvement of, persons with disabilities in the development and implementation of legislation and policies. The Instrument is consistent with Article 4(3) as there has been wide consultation with the disability community, as set out in the Consultation Statement.

Having regard to Article 7 of the CRPD, children receive special rights under human rights law, reflecting their intrinsic vulnerabilities as members of society. Children's rights are protected under several international treaties, notably under the CRC. These rights extend to all children under the age of 18 and are guaranteed.

Article 23 of the CRC and Article 7 of the CRPD reflects the need to respect that every child with a disability should enjoy the best possible life in society through recognition of their human rights and fundamental freedoms on an equal basis with other children. It recognises that government should remove obstacles for children with disabilities to become independent and to participate actively in the community.

The Instrument reinforces participants' inherent dignity and individual autonomy by supporting freedom to make choices about the best use of supports outlined in the Instrument, thus ensuring a child is achieving the fullest possible social integration and individual development consistent with Article 23(3).

The effect of the transitional rule is not a retrogressive measure, as it is not a limitation on an economic or social right. Rather, the rules represent a clarification of what has always been intended to be available under the NDIS as a disability support and to clarify what cannot be purchased using NDIS funding. This will enhance transparency, and enable participants, nominees and parents to make informed choices and have confidence about the use of NDIS funding.

Right to social security - Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 28 of the CRPD

The right to social security recognises the importance of adequate social benefits, through reducing the effects of poverty and other roles. The right plays an important role in recognizing other social, economic and cultural rights.

Funding provided under the NDIS is not an income support or a social security payment that can be used to purchase any item or service a person could spend their own money on. It is specifically and directly intended to obtain supports that a participant needs as a result of their disability to allow them to realise their full potential for physical, social, emotional and intellectual development, as well as participate in and contribute to social and economic life.

The Instrument has no impact on a participant's right to social security.

**Conclusion**

This instrument is compatible with human rights as it advances the protection of the rights of people with disability.

To the extent it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the NDIS, for the benefit of all persons with disability who need access to the NDIS.

DRAFT





# **National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024**

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I, Bill Shorten, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2024

Bill Shorten  
Minister for the National Disability Insurance Scheme

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under item 138 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

### 4 Definitions

- (1) In this instrument:

**amending Act** means the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

**NDIS Act** means the *National Disability Insurance Scheme Act 2013*.

- (2) An expression that is defined for the purposes of the NDIS Act has the same meaning when used in this instrument as it has in that Act.

## Part 2—Transitional provisions

### 5 Debts due to the Agency—complying with requirement to spend NDIS amounts only on NDIS supports

- (1) This section applies in relation to a person’s failure to comply with paragraph 46(1)(a) of the NDIS Act, as in force on and after the commencement of Schedule 1 to the amending Act, in relation to an NDIS amount where the failure occurs during the following period:
  - (a) if the person is an NDIS provider and the person received the amount on behalf of a participant—the period of 30 days starting on that commencement;
  - (b) in any other case—the period of 12 months starting on that commencement.
- (2) Subsection 182(3) of the NDIS Act does not apply in relation to the failure unless:
  - (a) the NDIS amount is \$1,500 or more; or
  - (b) before the failure occurred, the Agency had notified the person about at least 2 previous failures by the person to comply with paragraph 46(1)(a) of the NDIS Act.

### 6 Claims not required for certain supports

- (1) Section 45A of the NDIS Act, as in force on and after the commencement of Schedule 1 to the amending Act, does not apply in relation to a payment in respect of the acquisition or provision of a recurring transport support under an old framework plan.
- (2) Subitem 132A(1) of Schedule 1 to the amending Act has effect as if the words “and subsection 6(1) of the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024*” were added at the end of that subitem.

Note: See subitem 138(2) of Schedule 1 to the amending Act for the power to modify the effect of provisions of that Schedule.

### 7 Requirement for supports to be most appropriately funded or provided through the National Disability Insurance Scheme

- (1) This section applies in relation to a statement of participant supports included in an old framework plan for a participant if the statement is approved or varied during the period:
  - (a) starting on the commencement of Schedule 1 to the amending Act; and
  - (b) ending immediately before the commencement of the first National Disability Insurance Scheme rules made for the purposes of paragraph 35(4)(d) of the NDIS Act (as added by Schedule 1 to the amending Act).

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- (2) For the purpose of specifying in the statement the general supports that will be provided, and the reasonable and necessary supports that will be funded, the CEO must be satisfied of the matter mentioned in subsection (3) in relation to the funding or provision of each such support, in addition to the matters of which the CEO must be satisfied as mentioned in subsection 34(1) of the NDIS Act, as in force on and after the commencement of Schedule 1 to the amending Act.
  - (3) The matter of which the CEO must be satisfied is that the support is most appropriately funded or provided through the National Disability Insurance 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.
  - (4) In deciding whether or not he or she is satisfied of the matter mentioned in subsection (3), the CEO must apply any methods or criteria, and have regard to any matters, that:
    - (a) were prescribed for the purposes of subsection 34(2) of the NDIS Act by National Disability Insurance Scheme rules in force immediately before the commencement of Schedule 1 to the amending Act; and
    - (b) related to the matter mentioned in paragraph 34(1)(f) of the NDIS Act, as in force immediately before that commencement.
  - (5) This section applies as mentioned in subsection (1):
    - (a) whether the participant becomes a participant; and
    - (b) in the case of a variation—whether the plan comes into effect; before, on or after the commencement of Schedule 1 to the amending Act.



## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the National Disability Insurance Scheme

*National Disability Insurance Scheme Act 2013*

*National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1)  
(Miscellaneous Provisions) Transitional Rules 2024*

### **Purpose**

The *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (the Instrument) provides for a number of transitional arrangements that will support implementation of amendments to be made to the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The Instrument makes three specific transitional arrangements. The transitional arrangements provided for in the Instrument will:

- provide that a participant does not owe debt for purchasing a support that is not an NDIS support in some circumstances, to allow for an educative approach around what is and is not an NDIS support
- ensure that participants with recurring transport payments in their plan do not need to lodge a claim for these payments, and
- ensure that reasonable and necessary supports identified in a participant's plan are most appropriately funded by the National Disability Insurance Scheme (NDIS, Scheme).

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act.

### **Background**

#### **The Amending Act**

On Tuesday 18 October 2022, the Government announced there would be an independent review into the NDIS to improve the wellbeing of Australians with disability and the Scheme's sustainability (NDIS Review). The Terms of Reference for the NDIS Review provided 3 overarching objectives:

- put people with disability and their families back at the centre of the NDIS to create a more personal experience
- restore trust and confidence
- ensure the long-term sustainability of the NDIS.

The NDIS Review, which was co-chaired by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM, delivered its final report 'Working together to deliver the NDIS' in December 2023. It included 26 recommendations with 139 integrated actions which

were intended to provide a blueprint to renew the promise of the NDIS and deliver a more accessible and inclusive Australia.

The Amending Act addresses priority recommendations from the NDIS Review and represents the first tranche of amendments to the NDIS Act to improve participant experience. It followed agreement by National Cabinet that the Commonwealth would work with state and territory governments to implement legislative and other changes to return the NDIS to its original intent of supporting people with permanent and significant disability, within a broader ecosystem of supports.

The changes to be made by the Amending Act are critical to improving the experience of people with disability participating in the Scheme while ensuring the long-term sustainability of the NDIS, so that it is available to support Australians with disability for many years to come.

One of the key NDIS Review recommendations to be implemented by the Amending Act is a move towards a more flexible budget-based planning framework. That framework will not commence until supporting NDIS rules and legislative instruments have been made. This will take time, to ensure there is deep engagement with the disability community about the content of key instruments.

Until the new planning framework is operational, the existing planning framework (now known as the 'old framework') will continue to operate with some important changes. The amendments relevant to this Instrument are explained below.

### *NDIS supports*

One of the key changes to be made by the Amending Act was to insert a new concept of 'NDIS support' into the NDIS Act. The concept of an NDIS support will be defined in new section 10 of the NDIS Act, and will appear in numerous places throughout the NDIS Act. It is central to the operation of the future of the NDIS in a number of ways.

In particular, the Amending Act will amend:

- section 34 of the NDIS Act (which deals with reasonable and necessary supports for old framework plans) to ensure a reasonable and necessary support is an NDIS support, and
- section 46 of the NDIS Act (which deals with how funding provided under the NDIS can be used). Section 46 of the NDIS Act will now require participants to spend funding provided under their plan only on NDIS supports. This will apply in addition to the existing requirement to spend in accordance with the participant's plan.

### *Claims and payments*

The Amending Act will insert new section 45A into the NDIS Act. This new section will provide a claims and payments framework that clarifies how people, including participants and providers, may make 'claims' for NDIS amounts and how and when the Agency must 'pay' relevant amounts. This section is consistent with the Agency's existing operational practice but provides set parameters and more clarity around how the framework operates.



## Power to make the Instrument

The Instrument is made under item 138 of Schedule 1 to the Amending Act.

Subitem 138(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Bill.

Subitem 138(2) confirms that without limiting subitem (1), rules made under this item before the end of the period of 12 months starting on the day this Schedule commences may provide that provisions of this Schedule, or any other Act or instrument, have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.

## Outline of instrument

### *Debts arising out of failure to spend only on NDIS supports*

The new concept of 'NDIS support' includes the supports that have always been appropriately funded by the NDIS. It provides further clarity on the boundaries that have always existed so that it is easier for participants and other members of the disability community to identify supports that can and cannot be purchased using NDIS funding.

The Amending Act inserts new paragraph 46(1)(a) into the NDIS Act to require a participant (or person receiving funding on behalf of a participant) to spend money under a participant's plan only on NDIS supports.

Subsection 182(3) of the NDIS Act provides that a person who does not comply with section 46 in relation to an NDIS amount will owe a debt to the Agency equal to that amount. This means a participant who purchases a support that is not an NDIS support will owe a debt for the amount of the support they purchased. This is consistent with the general principle that any person who receives money from the Commonwealth that they are not legally entitled to will owe a debt to the Commonwealth in the same amount.

That being said, the Government recognises that introducing the concept of NDIS supports is a change for participants. While participants are becoming more familiar with the concept of NDIS supports, there are may be circumstances where a person purchases a support that is not an NDIS support. In particular, this may happen due to previous uncertainty about what can be purchased under the NDIS.

To mitigate the potential effect during the transition period, particularly on participants, the Instrument includes a transitional provision that ensures a debt will not be raised against a participant for purchasing a support that is not an NDIS support in certain circumstances.

A debt will only exist if a participant purchases a support that is not an NDIS support if it costs less than \$1,500, unless that have been given two prior 'notifications' that they have purchased supports that are not NDIS supports. This will require the Agency to take an educative approach by contacting participants twice to explain that what is

and is not an NDIS support without a debt being raised against the participant. A debt will still be raised if the support cost \$1,500 or more.

It is important to note that any debts that are raised in relation to purchase or provision of a support that is not an NDIS support can be written off or waived under the existing provisions of the NDIS Act (including the 'special circumstances' waiver in section 195, which will be amended by the Amending Act to ensure it has a broader application).

#### *Recurring transport*

NDIS participants may receive funding for transport where that is a reasonable and necessary support for them. There are different types of transport support available, one of which is described in participant plans as 'recurring transport'.

Currently (that is, prior to the commencement of the Amending Act), funding for this support is paid directly to participants without the need to submit a claim. This is possible due to the claims and payments framework being operational rather than specified in the NDIS Act. However, when the Amending Act commences there will be a legislative requirement for a claim to be lodged before any payment can be made for a support. This means that participants will be required to lodge a claim to be able to receive their recurring transport support funding.

This instrument creates a transitional arrangement that 'switches off' the requirement to lodge a claim in respect of recurring transport. This will apply only for old framework plans, and only for recurring transport. All other supports will still need to have a valid claim lodged before they can be paid.

This transitional arrangement is necessary to ensure participants are not disadvantaged by the new claims and payments framework and can continue to receive access to funding for supports in the same way they did prior to the Amending Act commencing.

#### *Appropriately funded or provided by the NDIS*

The Instrument will also impose a requirement that the Chief Executive Officer (CEO) of the National Disability Insurance Agency must specifically consider whether reasonable and necessary supports are appropriately funded by the NDIS under subsection 34(1). This is particularly relevant to supports that may otherwise be provided through statutory compensation schemes.

This requirement exists in paragraph 34(1)(f), which currently provides that to be a reasonable and necessary support the CEO must be satisfied that:

- (f) the support is most appropriately funded or provided through the National Disability Insurance 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:
  - (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.

As noted above the Amending Act repeals and replaces this with a requirement for a support to be an NDIS support.

One of the criteria for prescribing a support as an NDIS support is that it is appropriately funded by the NDIS (or is not appropriately funded by the NDIS, in the case of something that is not an NDIS support).

Further work is required to understand how some supports interact with other supports on the list and the responsibility of the NDIS compared to other service systems. This is primarily a concern for supports that are available through statutory insurance schemes and other similar compensation arrangements. This needs to be carefully worked through to ensure participants are not disadvantaged by any change.

In the interim, the Instrument re-imposes the requirement to consider whether a support is appropriately funded or provided by the NDIS in assessing whether it is reasonable and necessary. This will apply only until rules are made that provide how the CEO is to take into account a support that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law.

It should be noted that the consideration of whether a support is most appropriately funded or provided by the NDIS is done by the transitional section 10 rules for the vast majority of supports. In those circumstances, the CEO will be easily satisfied of whether the support is most appropriately funded or provided by the NDIS by considering the transitional section 10 instrument and deciding whether the support is or is not an NDIS support. The only circumstance in which a support may be an NDIS support but not appropriately funded or provided by the NDIS is where that support is not captured by the transitional section 10 instrument. This will primarily be those provided by statutory insurance schemes and other similar compensation arrangements.

## **Commencement**

The Instrument commences on the later of the day after it is registered and the day that the Amending Act commences. The Amending Act commences on 3 October 2024.

## **Consultation**

In early August 2024, the Department of Social Services released draft lists of NDIS supports for public consultation. Feedback was provided through survey responses and email submissions with over 7,000 responses received. The Government welcomes the significant engagement both from the disability community and the broader Australian community.

The public consultation process was undertaken from 4 August 2024 to 25 August 2024 via the Department's [DSS engage.dss.gov.au](https://engage.dss.gov.au) website. A discussion paper outlining the purpose of the proposed transitional rule for section, as well as the draft lists of NDIS supports were published on the DSS Engage website.

The feedback from the disability community has been vital to help clarify the supports that can be funded by the NDIS and those that cannot.

A number of overarching themes were raised through the public consultation, consistent with written submissions received from peak and disability representative organisations including:

- fear about participants unknowingly purchasing something that NDIS funding cannot be used for resulting in debts being owed
- the need for time to understand what the new definition of NDIS Supports means for participants without the risk of incurring a debt.

A detailed consultation report outlining the views of the community on the draft lists of NDIS supports was prepared to inform the Schedules to the Instrument. The report has been published on the DSS Engage website and a summary report is [Attachment A](#).

The National Disability Insurance Agency conducted a series of targeted engagements from August to September 2024 and heard from over 100 stakeholders including:

- Disability Representative and Carer Organisation members
- Independent Advisory Council members
- Participant Reference Group members
- Industry Chief Executive forum members
- Participant focus groups
- Self managers
- Child representatives
- Rural and remote
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group
- NDIA Board members

Many of these groups also raised concerns and fear about the immediate impact of introducing the concept of NDIS supports on participants with stated supports in their plans that will no longer be NDIS supports, including accidental expenditure on a non-NDIS support giving rise to a debt.

In addition to engagement with the disability community, there has been significant consultation with States and Territories from July through September 2024 utilising established governance arrangements under the Disability Reform Ministerial Council.

## **Regulation Impact Analysis (RIA)**

The Office of Impact Analysis has agreed to the use of the Final Report of the Independent Review of the NDIS delivered to Governments in December 2023 as an Impact Analysis Equivalent. A link to the report can be found on the NDIS Review website - [Working together to deliver the NDIS | NDIS Review](#) and an Executive Summary of the report is Attachment B.

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## **Explanation of the provisions**

### **Part 1 – Preliminary**

#### **Section 1 – Name**

This instrument is the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024*.

#### **Section 2 – Commencement**

This instrument commences on the later of the day after the instrument is registered and the day on which Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amendment Act) commences. The Amendment Act commences on 3 October 2024.

#### **Section 3 – Authority**

This instrument is made under item 138 of Schedule 1 to the Amending Act.

#### **Section 4 – Definitions**

Section 4 provides definitions for the purpose of the Instrument.

Subsection 4(1) provides that in the Instrument:

***amending Act*** means the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

***NDIS Act*** means the *National Disability Insurance Scheme Act 2013*.

Subsection 4(2) notes that an expression that is defined for the purposes of the NDIS Act has the same meaning when used in this instrument as it has in that Act.

### **Part 2 – Transitional provisions**

#### **Section 5 – Debts due to the Agency – complying with requirement to spend NDIS amounts only on NDIS supports**

Section 5 provides for circumstances where a debt does not arise for spending NDIS funding on supports that are not NDIS supports.

Subsection 5(1) provides that this section applies in relation to a person's failure to comply with paragraph 46(1)(a) of the NDIS Act, as in force on and after the commencement of Schedule 1 to the amending Act, during the following period:

- (a) if the person is an NDIS provider and the person received the amount on behalf of a participant—the period of 30 days starting on that commencement;

- (b) in any other case—the period of 12 months starting on that commencement.

Paragraph 46(1)(a) requires a participant, or a person who receives an NDIS amount on behalf of a participant, to spend that amount only on NDIS supports. In effect, this means section 5 applies where a person has spent NDIS funding on something that is not an NDIS support within 30 days (for providers) or 12 months (for all others) of when the Amending Act commences.

Subsection 5(2) provides that subsection 182(3) of the NDIS Act does not apply in relation to the failure unless:

- (a) the NDIS amount is \$1,500 or more; or  
(b) before the failure occurred, the Agency had notified the person about at least 2 previous failures by the person to comply with paragraph 46(1)(a) of the NDIS Act.

Subsection 182(3) provides that a person who does not comply with section 46 in relation to an NDIS amount owes a debt to the Agency equal to that amount.

Subsection 5(2) has the effect of ‘switching off’ subsection 182(3) in limited circumstances, which means a debt will not be raised unless:

- the support purchased cost \$1,500 or more, or
- the support cost less than \$1,500, but the participant has previously purchased at least 2 non-NDIS supports and been contacted by the Agency about this issue.

### **Section 6 – Claims not required for certain supports**

Section 6 provides an exception to new section 45A, which will be inserted into the NDIS Act by the Amending Act. Section 45A establishes a legislative claims and payments framework, requiring a valid claim to be lodged before a payment can be made in relation to a participant’s plan.

Subsection 6(1) provides that section 45A of the NDIS Act, as in force on and after the commencement of Schedule 1 to the amending Act, does not apply in relation to a payment in respect of the acquisition or provision of a recurring transport support under an old framework plan. This means that a claim is not required to be made for a participant to receive funding for a support identified in their plan as a ‘recurring transport support.’

Subsection 6(2) provides that subitem 132A(1) of Schedule 1 to the amending Act has effect as if the words “and subsection 6(1) of the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024*” were added at the end of that subitem. Subitem 132A(1) is an application provision for section 45A which confirms that it applies in relation to payments made from a participant’s NDIS plan on or after commencement of the Amending Act.

A legislative note to subsection 6(2) points the reader to subitem 138(2) of Schedule 1 to the Amending Act, which provides for the power to modify the effect of provisions of that Schedule.

This section is necessary to ensure that participants can continue to receive funding for transport supports in the same way while they have under an old framework plan. The new planning framework will change how supports are described in a participant's plan and that will make this provision no longer necessary.

### **Section 7 – Requirement for supports to be most appropriately funded or provided through the National Disability Insurance Scheme**

Section 7 provides an additional requirement for the CEO to be satisfied of in deciding whether a support is reasonable and necessary in accordance with section 34 of the NDIS Act. This relates to a change that will be made by the Amending Act to replace existing paragraph 34(1)(f) with a requirement for a support to be an NDIS support. The change made by section 7 will require the CEO to also be satisfied that the support is appropriately funded or provided by the NDIS. This additional requirement will only apply until new Category A NDIS rules are made that specify how the CEO is to take into account supports in respect of personal injury that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law. This is because it is intended to primarily capture supports that are more appropriately provided by a scheme of statutory insurance or other similar compensation arrangement, which will no longer be necessary once specific rules have been made.

Subsection 7(1) provides that this section applies only until Category A NDIS rules are made for the purpose of paragraph 35(4)(d). That paragraph allows for rules to be made prescribing how the CEO is to take into account supports in respect of personal injury that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law. Once those rules are made, section 7 of the Instrument will cease to have any effect.

Subsection 7(2) provides that for the purpose of specifying in the participant's statement of participant supports the general supports that will be provided, and the reasonable and necessary supports that will be funded, the CEO must be satisfied of the matter mentioned in subsection (3) in relation to the funding or provision of each such support. This applies in addition to the matters of which the CEO must be satisfied mentioned in subsection 34(1) of the NDIS Act, as amended by the Amending Act.

Subsection 7(3) provides that the additional matter of which the CEO must be satisfied is that the support is most appropriately funded or provided through the NDIS, 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.

This is consistent with the language of paragraph 34(1)(f) that was in force prior to commencement of the Amending Act.

Subsection 7(4) provides that in deciding whether or not he or she is satisfied of the matter mentioned in subsection (3), the CEO must apply any methods or criteria, and have regard to any matters, that:

- (a) were prescribed for the purposes of subsection 34(2) of the NDIS Act by NDIS rules in force immediately before the commencement of Schedule 1 to the Amending Act; and
- (b) related to the matter mentioned in paragraph 34(1)(f) of the NDIS Act, as in force immediately before that commencement.

This means any rules that were in force prior to commencement of the Amending Act will be applied for the purpose of this transitional rule.

Subsection 7(5) provides that this section applies in relation to a statement of participant supports included in an old framework plan for a participant if the statement is approved or varied on or after the commencement of Schedule 1 to the amending Act (whether the participant becomes a participant and, in the case of a variation, whether the plan comes into effect, before, on or after that commencement).

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024*

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the legislative instrument

The *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (the Instrument) provides for a number of transitional arrangements that will support implementation of amendments to be made to the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The Instrument makes three specific transitional arrangements, which make minor but important changes to the operation of amendments made by the Amending Act. The transitional arrangements provided for in the Instrument will:

- provide that a participant does not owe debt for purchasing a support that is not an NDIS support in some circumstances, to allow for an educative approach,
- ensure that participants with recurring transport payments in their plan do not need to lodge a claim for these payments, and
- ensure that reasonable and necessary supports identified in a participant's plan are most appropriately funded by the NDIS.

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act.

### Human rights implications

The Instrument engages the following human rights:

- Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- Rights of people with disability – Article 4(3) of the CRPD

Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for respect of the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference and acceptance of persons with disabilities,

equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 of the CRDP outlines the need to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5(2) of the CRPD seeks to prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds. Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards. The Article also provides that persons with disability should be given equal rights to, among other things, control their financial affairs and not be arbitrarily deprived of their property.

The Instrument promotes these rights by providing for circumstances in which a debt will not arise, to allow time for participants to adjust to the changes made by the Amending Act. This will allow the changes made by the NDIS Act to operate as intended while also providing an appropriate safeguard for participants and ensuring they do not arbitrarily have a debt raised against them.

In addition, the Instrument allows participants to continue accessing funding for transport in the manner it was paid prior to commencement of the Amending Act. For some participants, who have a reasonable and necessary support in their plan described as 'recurring transport', the Instrument provides that a claim is not required to be lodged for this funding to be paid. This promotes the rights of people, and in particular advances the inherent dignity and individual autonomy of participants by allowing access to funding for this particular support in a simple manner consistent with longstanding practice.

To the extent that the Instrument may be seen to limit some of the rights mentioned above by re-introducing a consideration of whether a support is appropriately funded or provided by the NDIS, this is a necessary and appropriate limitation. This consideration is consistent with the law as in effect prior to commencement of the Amending Act, and it will operate only for a transitional period until specific NDIS rules are made. In practical terms, it will have very little work to do as the majority of supports will be captured by the transitional section 10 rule that prescribes supports that are, and are not, NDIS supports. Consideration of whether the support in question is appropriately funded or provided by the NDIS is built into the section 10 transitional rule in almost all circumstances. As such, the change made by the Instrument is minimal. It is also an important consideration to ensure that supports remain available outside the NDIS, including for participants who have a disability resulting from a compensable event or circumstance.

## Rights of people with disability – Article 4(3) of the CRPD

Article 4(3) of the CRPD seeks to ensure necessary consultation with, and active involvement of, persons with disabilities in the development and implementation of legislation and policies.

Although the specific instrument has not been consulted on publicly, the changes made by this Instrument are, for the most part, to address concerns and questions raised by people with disability and the broader disability community about provisions of the Amending Act and how they will be implemented. This is consistent with Article 4(3) of the CRPD.

### **Conclusion**

This instrument is compatible with human rights as it advances the protection of the rights of people with disability.

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Australian Government  
Department of Social Services

General Brief

MS24-000776

To: Minister for the National Disability Insurance Scheme and Minister for Government Services (for decision)

Subject: Circulation of NDIS Supports lists

s 22

Recommendations for Minister Shorten: That you

<p>1. Note, following your discussion with National Disability Insurance Agency (NDIA) Acting CEO, the Department of Social Services (department) has updated the NDIS Supports list at <u>Attachment A</u> to remove items from the exclusion list as requested, including references to other systems' support responsibilities.</p>	<p><input checked="" type="radio"/> Noted / Please Discuss</p>
<p>2. Agree to circulate the list to states and territories and NDIA identified advisory groups/stakeholders on the basis that when this is done the department and Agency will note the APTOS definition of responsibilities remains in effect.</p>	<p><input checked="" type="radio"/> Agreed / Not Agreed</p>
<p>3. Note the department's advice that references to other systems' supports should be re-inserted into the exclusions list of the transitional instrument before it is finalised.</p>	<p><input checked="" type="radio"/> Noted / Please Discuss</p>

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**Regulatory Implications:** Nil.

**Legal Advice:** Not required.

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**Attachments:**

**Attachment A:** Updated draft transitional instrument for NDIS supports inclusions and exclusions

Contact Officer: Edwina Dohle  
Position: Branch Manager  
Branch: Commonwealth/State Engagement  
Phone/Mobile: s 22

Cleared by: Robyn Shannon  
Position: Deputy Secretary, Disability and Carers Stream  
Phone/Mobile: s 22

Signature:

s 22

Date: 2/ 7/ 2024

Attachment A – supports that are ‘NDIS supports’

Category	List of ‘NDIS supports’	Carve-outs that are not ‘NDIS supports’
<b>Accommodation/ tenancy assistance</b>	<p>Supports that guide, prompt, or assist a participant to undertake activities that ensure they obtain/retain appropriate accommodation.</p> <p>This may include assisting a participant to apply for a rental tenancy or to undertake tenancy obligations in line with the participant’s tenancy agreement.</p>	<p>Does not include:</p> <ul style="list-style-type: none"> <li>• rental costs,</li> <li>• bond costs,</li> <li>• mortgage repayments etc</li> </ul> <p>See the ‘Day-to-day living costs’ category.</p>
<b>Assistance Animals</b>	<p>An animal specially trained by an accredited assistance animal provider to help a participant with tasks. These are things the animal wouldn’t naturally do otherwise, like guiding a participant through crowded places.</p>	
<b>Assistance In Coordinating or Managing Life Stages, Transitions and Supports</b>	<p>Supports to establish volunteer assistance within the participant’s home or community to develop skills. Includes mentoring, peer support and individual skill development such as attending appointments, shopping, bill paying, taking part in social activities and maintaining contact with others.</p>	
<b>Assistance to Access and Maintain Employment or higher education</b>	<p>Workplace assistance that enables a participant to successfully obtain and/or retain employment in the open or supported labour market, including individual employment support, employment preparation and support in a group and school leaver employment supports to assist students transitioning from school to employment.</p>	<p>Does not include:</p> <ul style="list-style-type: none"> <li>• learning and support needs of students that primarily relate to their education and training attainment,</li> <li>• work-specific support related to recruitment processes, work arrangements or the working environment,</li> <li>• funding or provision of employment services and programs</li> </ul>
<b>Assistance With Daily Life Tasks in a Group or Shared Living Arrangement</b>	<p>Assistance with and/or supervision of tasks of daily life in a shared living environment, which is either temporary or ongoing, with a focus on developing the skills of each individual to live as autonomously as possible, including short term accommodation and respite.</p>	
<b>Assistance With Travel/Transport Arrangements</b>	<p>Transport assistance, including activity-based transport and provider travel, where the participant cannot use public transport without substantial difficulty due to their disability.</p> <p>This includes transporting participants to funded supports and other activities including school, educational facility, employment, or the community.</p>	



Category	List of 'NDIS supports'	Carve-outs that are not 'NDIS supports'
<b>Assistive Equipment for Recreation</b>	Products used in competitive and non-competitive sports and other recreational pursuits.	
<b>Assistive Products for Household Tasks</b>	Products to enable cooking, cleaning, washing, home maintenance and other tasks	
<b>Assistive Products For Personal Care And Safety</b>	Products for personal care or safety including beds and pressure mattresses, toilet and bathroom equipment, specialised clothing and continence needs.	
<b>Specialist Positive Behaviour Support</b>	Support provided by allied health professionals with specialist skills in positive behaviour support including assessment and the development of a comprehensive plan that aims to reduce and manage behaviours of concern.	
<b>Communication And Information Equipment</b>	Products to assist with alternate communication or to access written or spoken communication via electronic or other means.	
<b>Community Nursing Care</b>	Provision of specialist care for participants who have high care needs requiring a high level of skill, and for the training of support workers to respond to the participant's complex needs.	
<b>Customised Prosthetics (includes Orthotics)</b>	Prescription and manufacture of customised prostheses or orthoses requiring specialist skills.	
<b>Daily Personal Activities</b>	Assistance with and/or supervision of personal tasks of daily life to enable a participant to live as autonomously as possible in a range of environments, including but not limited to, the participant's own home.	
<b>Development Of Daily Care And Life Skills</b>	Development of daily living and life skills focuses on training and development activities undertaken by a participant or their carer to increase their ability to live as autonomously as possible, including supports that will enhance the ability of the participant to travel and use public transport independently.	
<b><u>Disability-Related Health Supports</u></b>	<u>Disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability. This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports, as agreed in the DRMC 2019 agreement on disability-related health supports.</u>	

Category	List of 'NDIS supports'	Carve-outs that are not 'NDIS supports'
<b>Early Intervention Supports For Early Childhood</b>	Provision of a mix of therapies, and a key worker for the family. Supports for all children 0-6 years with developmental delay or disability and their families to achieve better long-term outcomes, regardless of diagnosis.	
<b>Exercise Physiology &amp; Personal Well-being Activities</b>	Physical wellbeing activities to promote and encourage physical well-being, including exercise.	
<b>Group And Centre Based Activities</b>	Assistance for participants to access and participate in community, social and recreational activities provided in a group setting, either in the community or in a centre.	
<b>Hearing Equipment</b>	Assistive listening devices.	Hearing aids
<b>High Intensity Daily Personal Activities</b>	Assistance with and/or supervision of tasks of daily life to enable a participant with complex needs to live as autonomously as possible in a range of environments, including but not limited to, the participant's own home. These supports are provided by a worker with additional qualifications and experience relevant to the participants' complex needs.	
<b>Home Modification Design and Construction</b>	Design and subsequent changes or modification to a participant's home, including installation of equipment or changes to building structures, fixture or fittings to enable participants to live as independently as possible or to live safely at home.	
<b>Household Tasks</b>	Essential household tasks that a participant is not able to undertake because of their disability, including meal preparation and delivery, house or yard maintenance, cleaning and laundry.	
<b>Innovative Community Participation</b>	Activities not included under other community participation registration groups; for mainstream providers who want to enable participants to access mainstream activities	
<b>Interpreting and Translation</b>	Assistance to a participant to enable independent communication in essential personal, social or community activities where translation is not available from a mainstream service.	
<b>Management of Funding for Supports</b>	Management of funding for supports by a registered plan management provider – both defined in the Act.  Section 9:	

Category	List of 'NDIS supports'	Carve-outs that are not 'NDIS supports'
	<p><b>registered plan management provider</b> means an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a).</p> <p>Section 42:            (1) For the purposes of this Act, <b>managing the funding for supports</b> under a participant's plan means doing one or more of the following:            (a) purchasing the supports identified in the plan (including paying any applicable indirect costs, such as taxes, associated with the supports);            (b) receiving any funding provided by the Agency;            (ba) managing any funding provided by the Agency;            (c) acquitting any funding provided by the Agency.</p>	
<b>Participation in Community, Social and Civic Activities</b>	Assisting a participant to participate actively in community, social and civic activities; including supporting participants during these activities, and developing participants' ability to partake in these activities.	
<b>Personal Mobility Equipment</b>	Products to enable personal mobility, including equipment for walking, wheelchairs and transfer aids.	
<b>Specialist Disability Accommodation (SDA)</b>	<p>As defined in the <i>National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020</i>:</p> <p><b>specialist disability accommodation:</b></p> <p>(a) means accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs; but</p> <p>(b) does not include supports delivered to the person while the person is living in the accommodation.</p> <p>These rules also govern participant eligibility and requirements for SDA dwellings.</p>	
<b>Specialised Driver Training</b>	Driver training using adapted equipment or vehicle modification.	
<b>Specialised Hearing Services</b>	Specialised hearing services for children and adults with complex needs.	

Category	List of 'NDIS supports'	Carve-outs that are not 'NDIS supports'
<b>Specialised Supported Employment</b>	Assistance in specialised supported employment/Australian Disability Enterprise	
<b>Specialised Support Coordination</b>	The provision of Support Coordination within a specialist framework necessitated by specific high level risks in the participant's situation. Support is time limited and focuses on addressing barriers and reducing complexity in the support environment, while assisting the participant to connect with supports and build capacity and resilience. It may also involve development of an intervention plan which will be put in place by disability support workers	
<b>Therapeutic Supports</b>	Evidence-based therapy supports provided to assist a participant to apply their functional skills to improve participation and independence in daily, practical activities in areas such as language and communication, personal care, mobility and movement, interpersonal interactions and community living.	
<b>Vehicle Modifications</b>	Vehicle modifications including the installation of, or changes to, equipment in a vehicle to enable a participant to travel safely as a passenger or to drive.	<ul style="list-style-type: none"> <li>• Purchase of a vehicle of any kind, including motor vehicles, motorbikes, watercrafts, all terrain vehicles and other recreational vehicles,</li> <li>• Mechanical repairs,</li> <li>• Tools,</li> <li>• Vehicle registration</li> </ul>
<b>Vision Equipment</b>	Products for navigation, orientation, braille, magnifiers and note taking equipment.	Prescription glasses

## Attachment B – supports that are not ‘NDIS supports’

Category	Non-exhaustive list of supports that are not ‘NDIS supports’	Carve-outs that are considered ‘NDIS supports’
<p><b>Day-to-day living costs</b></p>	<ul style="list-style-type: none"> <li>• Rent, rental bonds, home deposits, mortgage deposits, strata fees, rental bonds and home deposits.</li> <li>• <u>General F</u>furniture removal and services, unwanted furniture pick up</li> <li>• Donations, tithes, gifts, and political contributions,</li> <li>• Fines penalties, and court-ordered amounts</li> <li>• Pools, pool heating and maintenance, spa baths, saunas, steam rooms</li> <li>• <u>General h</u>Home repairs, general renovations and maintenance.</li> <li>• Groceries (except for modified foods required as a result of your disability e.g. PEG feeding), Uber eats and takeaway food,</li> <li>• Alcohol</li> <li>• Cigarettes, vapes and smoking paraphernalia, legal cannabis</li> <li>• Gambling</li> <li>• Petrol</li> <li>• Water, gas, and electricity bills, council rates</li> <li>• Water filters, purifiers, or aerators.</li> <li>• Electricity generators, solar panels, and batteries</li> <li>• Jewellery, watches (including smart watches)</li> <li>• Makeup, cosmetic treatments, wigs, and cosmetic s</li> <li>• Internet services, land line phone, mobile phones, mobile phone accessories, and mobile phone plans and smart phones.</li> <li>• Gaming PCs, consoles and games, subscriptions for streaming services</li> <li>• Cruises, holiday packages, holiday accommodation, including overseas travel, Airfares, passports, visa, meals and activities.</li> <li>• Tickets to theme parks, tourism and entertainment operators</li> <li>• Motor vehicles, motorbikes, watercraft, all-terrain vehicles and other recreational vehicles, mechanical repairs, tools, vehicle registration</li> <li>• Animals (other than approved NDIS funded assistance animals), pet food for animals other than <u>for approved NDIS</u></li> </ul>	<p>Day-to-day living costs do not include the following (which may be funded under the NDIS if they relate to reasonable and necessary supports):</p> <ul style="list-style-type: none"> <li>• Additional living costs that are incurred by a participant solely and directly as a result of their disability support needs</li> <li>• 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</li> <li>• <u>Services delivered in a gym or recreational club related to the participant’s disability support needs -where it -does not include the cost of membership, entry, or basic equipment.</u></li> <li>• <u>Play equipment where it is specialist sensory equipment could be funded under Assisted Technology</u></li> </ul>

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Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<p><del>assistance animal</del><del>certified dog guides</del>, veterinarian costs, pet boarding, pet grooming, taxidermy, pet cremations/funeral</p> <ul style="list-style-type: none"> <li>• Standard not disability specific commercially available household items (dishwasher, fridge, washing machine, non-modified kitchen utensils and crockery, fire alarms, floor rugs, beanbags, lounges, standard mattresses, and bedding), replacement of appliances, including hot water services, solar panels, etc.</li> <li>• Standard clothing and footwear</li> <li>• Standard toys, balls, racquets, uniforms, membership costs and other costs associated with recreational sports</li> <li>• Standard home security and maintenance costs, fencing, gates, building repairs.</li> <li>• Travel insurance, life insurance, home and contents insurance, car insurance and excess (but the NDIS may fund additional insurance costs for vehicle modifications), insurance for Novated vehicles (Salary Sacrifice).</li> <li>• Superannuation for participants or related parties (exceptions apply for arm's length Employment arrangements)</li> <li>• School / education fees including TAFE and university.</li> <li>• Wedding, honeymoon, funeral, other events.</li> <li>• Musical instruments, music production, social media production</li> <li>• Tickets to music, theatre, cinema or sporting events, <u>and</u> <u>general</u> conference fees</li> <li>• Sex toys</li> <li>• Surrogacy, Menstrual products, IVF</li> <li>• Legal costs</li> <li>• Child support fees, debt repayments, gift cards</li> <li>• Trampolines</li> <li>• <u>General P</u>play equipment, indoor or outdoor.</li> <li>• Business development costs, business skills development costs</li> <li>• Membership of a recreational club</li> <li>• Debts, liabilities, and taxes, other than those necessarily incurred in the receipt of supports</li> </ul>	

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Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
<p><b>Not value for money/not effective or beneficial</b></p>	<ul style="list-style-type: none"> <li>• Crystal therapy</li> <li>• Tarot card reading, Clairvoyants</li> <li>• Cuddle therapy</li> <li>• Reflexology</li> <li>• Aromatherapy</li> <li>• Sound therapy</li> <li>• Yoga Therapy</li> <li>• <del>Equine therapy</del>, Wilderness Therapy</li> <li>• <del>Alternative or complementary Chinese</del> medicine</li> <li>• <del>Avocational activities including art, music, dance, craft, academic, self-help, construction, gaming, outdoor lessons, classes, or workshops.</del></li> <li>• <del>General M</del>assage</li> <li>• Nutritional supplements</li> <li>• Life/wellness/career coach/cultural coach</li> <li>• Hypnotherapy</li> <li>• Neurofeedback</li> <li>• Gaming therapy E.G: Therapeutic dungeons and Dragons</li> <li>• Mastermind coaching</li> <li>• Somatic <del>and dance movement</del> therapy</li> <li>• Kinesiology</li> <li>• <del>Chiropractor</del></li> <li>• Reiki (including intuitive reiki), Scalar Lounge, Frequency Healing and Energy balanced massage, Deep Energy Clearing, Spinal Flow Technique, Shamanic Healing</li> <li>• Hair Therapy, hair and beauty services including nail salons</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Therapeutic massage that is directly related to a participant's disability support needs</u></li> </ul>
<p><b>Mainstream – Health</b></p>	<ul style="list-style-type: none"> <li>• The diagnosis and clinical treatment of health conditions, including ongoing or chronic health conditions</li> <li>• Diagnostic assessments and screening services.</li> <li>• Time-limited, goal-oriented services and therapies: <ul style="list-style-type: none"> <li>○ where the predominant purpose is treatment directly related to the person's health status, or</li> <li>○ provided after a recent medical or surgical event, with the aim of improving the person's functional status, including post-acute rehabilitation or post-acute care</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Disability-related health supports where the supports are a regular part of the participant's daily life, and result from the participant's disability. This includes continence, dysphagia, respiratory, nutrition, diabetic management, epilepsy, podiatry and foot care, and wound and pressure care supports.</li> </ul>

**OFFICIAL: Sensitive**

Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"> <li>• Any pharmaceutical or supplements</li> <li>• Any equipment or assistive technology prescribed as a result of clinical care, treatment or management from a medical practitioner referred to above.</li> <li>• Any clinical service delivered in a public or private hospital setting, including outpatient services.</li> <li>• Prescription medicines, non-prescription medicines, biological medicines, vaccines, sunscreens, weight loss products, vitamins, nutritional supplements, homeopathic medicines, prescription glasses</li> <li>• Primary healthcare nursing</li> <li>• Ambulance services or membership</li> <li>• Health transport services</li> <li>• Hospital in the home services, Hospice</li> <li>• Sleep consultant services.</li> <li>• Health retreats</li> <li>• <del>Palliative care</del></li> <li>• New-born follow-up provided in the health system, including child and maternal health services</li> </ul>	
<b>Mainstream – Mental Health</b>	<ul style="list-style-type: none"> <li>• Any Pharmaceutical</li> <li>• Treatment for drug and alcohol dependency, eating disorders, gambling and other addictions.</li> <li>• Any clinical service delivered in a public or private hospital setting, including outpatient services.</li> <li>• Supports related to mental health that are clinical in nature, including acute, ambulatory and continuing care, rehabilitation</li> <li>• Any residential care where the primary purpose is for inpatient treatment or clinical rehabilitation, or where the services model primarily employs clinical staff</li> <li>• Supports <del>relating to a co-morbidity with a psychiatric condition where the co-morbidity is clearly the responsibility of another service system (e.g. for</del> treatment for a drug or alcohol issue)</li> </ul>	
<b>Mainstream – Child Protection and Family Support</b>	<ul style="list-style-type: none"> <li>• Out of school hours care</li> <li>• Vacation care, excluding respite.</li> <li>• Travel and accommodation for parents with children in OOHC</li> <li>• Guardianship services</li> </ul>	Parenting programs specific to a disability need (could be considered under capacity building supports)



**OFFICIAL: Sensitive**

Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"> <li>• Family therapy</li> <li>• Parenting programs</li> <li>• Babysitting or nannying services, au pairs</li> <li>• Dating or relationship services including VR/match makers/Apps</li> <li>• Marriage and relationship counselling</li> <li>• Statutory child protection services required by families who have entered, or are at risk of entering, the statutory child protection system</li> <li>• General parenting programs, counselling or other supports for families, which are provided to families at risk of child protection intervention and to the broader community, including making them accessible and appropriate for families with disability</li> <li>• Funding or providing out-of-home care or support to carers of children in out-of-home care where these supports are not additional to the needs of children of similar age in similar out-of-home care arrangements.</li> <li>• <del>Services that are the responsibility of States</del></li> </ul>	
<b>Mainstream – Early Childhood Development</b>	<ul style="list-style-type: none"> <li>• Childcare fees, including any fees associated with specialist or segregated childcare service models.</li> <li>• Teaching aids or supports related to educational or developmental attainment</li> <li>• Building modifications for early childhood educational and care settings.</li> <li>• Meeting the early childhood education and care needs of a child</li> </ul>	
<b>Mainstream – School Education</b>	<ul style="list-style-type: none"> <li>• Out of school hours care</li> <li>• School fees including any fees associated with specialist or segregated schooling models.</li> <li>• School uniforms, shoes, lunchboxes, drink bottles or other school equipment unless a specially adapted item is required to address a participant's functional impairment.</li> <li>• Personalised learning or supports for students that primarily relate to their educational attainment</li> <li>• Learning assistance and aids</li> <li>• Teaching assistance and aids</li> <li>• Building modifications to schools</li> </ul>	

**OFFICIAL: Sensitive**

Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"> <li>• Services from a person employed at the participant's school or the relevant department of education for education purposes</li> <li>• Textbooks and teaching aids (including alternative formats)</li> <li>• Tutors, scribes</li> <li>• Home schooling</li> <li>• School refusal programs</li> <li>• School camp fees</li> <li>• Transport between school activities</li> </ul>	
<p><b>Mainstream – Higher Education and Vocational Education and Training</b></p>	<ul style="list-style-type: none"> <li>• School fees</li> <li>• Any supports for students that primarily relate to their education and training attainment</li> <li>• Building modifications to TAFEs and university campuses</li> <li>• Services from a person employed at the participant's higher education facility</li> <li>• Learning assistance and aids</li> <li>• Teaching assistance and aids</li> <li>• Textbooks and teaching aids (including alternative formats)</li> <li>• Transport between education or training activities</li> <li>• General education to employment transition supports</li> </ul>	
<p><b>Mainstream – Employment</b></p>	<ul style="list-style-type: none"> <li>• Disability Employment Services</li> <li>• Work-specific aids and equipment required to perform a job (including modified hardware and software)</li> <li>• Reasonable adjustments to access a workplace</li> <li>• Work-specific support related to:               <ul style="list-style-type: none"> <li>○ recruitment processes,</li> <li>○ work arrangements or the working environment, including workplace modifications, work-specific aids and equipment,</li> <li>○ transport within work activities and</li> <li>○ work-specific support required in order to comply with laws dealing with discrimination on the basis of disability</li> </ul> </li> <li>• Employment services and programs, including both disability-targeted and open employment services, to provide advice and support to:</li> </ul>	

**OFFICIAL: Sensitive**

Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"> <li>○ people with disability to prepare for, find and maintain jobs</li> <li>○ employers to encourage and assist them to hire and be inclusive of people with disability in the workplace (i.e. support, training and resources, funding assistance to help employers make reasonable adjustments, and incentives for hiring people with disability, e.g. wage subsidies)</li> </ul>	
<b>Mainstream – Housing and Community Infrastructure</b>	<ul style="list-style-type: none"> <li>● The provision of accommodation for people in need of housing assistance, including routine tenancy support</li> <li>● Ensuring that appropriate and accessible housing is provided for people with disability, other than participants eligible for specialist disability accommodation (SDA)</li> <li>● Ensuring that new publicly-funded housing stock, where the site allows, incorporates Liveable Housing Design features</li> <li>● Homelessness-specific services including homelessness prevention and outreach, or access to temporary or long-term housing for participants who are homeless or at risk of homelessness</li> <li>● The improvement of community infrastructure, i.e. accessibility of the built and natural environment, where this is managed through other planning and regulatory systems and through building modifications and reasonable adjustment where required</li> <li>● Postal services</li> <li>● Housing subsidies (e.g. rental bonds, mortgage relief and assistance with buying a home)</li> <li>● Crisis housing (excluding discharge from hospital, aged care)</li> <li>● Mortgage payments.</li> <li>● Rental payments</li> <li>● Mobile homes, caravans, campervans, tents.</li> <li>● Purchase of land, or house and land packages</li> <li>● Land taxes and levies</li> <li>● Council rates and taxes</li> </ul>	
<b>Mainstream – Transport</b>	<ul style="list-style-type: none"> <li>● Ensuring that public transport options are accessible to a person with disability</li> <li>● Public transport fares and travel concessions</li> </ul>	

**OFFICIAL: Sensitive**

Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"> <li>• Airline lounge memberships</li> <li>• Transport costs for pets and companion animals.</li> <li>• Compliance of transport providers and operators with laws dealing with discrimination on the basis of disability, including the Disability Standards for Accessible Public Transport 2002</li> <li>• Transport infrastructure, including road and footpath infrastructure, where this is part of a universal service obligation or reasonable adjustment (including managing disability parking and related initiatives)</li> </ul>	
<b>Mainstream – Justice</b>	<ul style="list-style-type: none"> <li>• Supports in secure mental health facilities which are primarily treatment focused (clinical in nature)</li> <li>• Supervision and monitoring of offenders</li> <li>• The day-to-day care and support needs of a person in custody, including supervision, personal care and general supports</li> <li>• Ensuring that criminal justice system services are accessible for people with disability including appropriate communication and engagement mechanisms, adjustments to the physical environment, accessible legal assistance services and appropriate fee waivers</li> <li>• General programs for the wider population, including programs to prevent offending and minimise risks of offending and re-offending and the diversion of young people and adults from the criminal justice system</li> <li>• The management of community corrections, including corrections-related supervision for offenders on community based orders</li> <li>• The operation of secure mental health facilities that are primarily clinical in nature</li> </ul>	
<b>Mainstream – Aged Care</b>	<ul style="list-style-type: none"> <li>• Aged care services</li> </ul>	<ul style="list-style-type: none"> <li>• Supports for an NDIS participant under the age of 65 who chooses to live in residential aged care and purchase support from an aged care provider.</li> </ul>
<b>Unlawful goods and services</b>	<ul style="list-style-type: none"> <li>• A support the provision of which would be contrary to:               <ul style="list-style-type: none"> <li>○ a law of the Commonwealth</li> <li>○ a law of the State or Territory in which the support would be provided.</li> </ul> </li> </ul>	

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Category	Non-exhaustive list of supports that are not 'NDIS supports'	Carve-outs that are considered 'NDIS supports'
	<ul style="list-style-type: none"><li>• Assistive technology, vehicle modifications or home modifications that do not meet state and territory laws, the National Construction Code or relevant Australian standards</li><li>• Supports involving restrictive practices that are not authorised in the participant's state or territory of residence</li><li>• Illicit drugs or other consumable products that are against the law</li><li>• Firearms and weapons,</li><li>• Seclusion rooms.</li></ul>	
<b>Income replacement</b>	<ul style="list-style-type: none"><li>• Income support payments</li><li>• Rent subsidy</li><li>• Loan repayments or buy now pay later payments.</li><li>• Income protection insurance</li><li>• Fringe Benefits for staff or contractors</li><li>• Cryptocurrency, shares, investment products</li></ul>	



Australian Government  
Department of Social Services

General Brief

MS24-001044

To: Minister for the National Disability Insurance Scheme and Minister for Government Services (for decision)

Subject: Section 10 NDIS Supports lists

s 22

Recommendations for Minister Shorten: That you

1. Agree the updated version of the National Disability Insurance Scheme (NDIS) supports list at <u>Attachment A</u> to inform the final section 10 transitional instrument.	Agreed / Not Agreed
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s 22

**Key Issues:**

1. Updated lists of supports that are, and are not, NDIS supports including items that will be the available in the new substitution process are at **Attachment A**. s 22

s 22

2. The section 10 transitional rule will be finalised together with an Explanatory Statement following your approval of the NDIS supports lists. s 22

s 22

- 3.

s 34(3)

s 34(3)

s 22

s 22

# s 22

## Transitional arrangements

10. During consultations, significant concern was raised about the immediate impact of the new section 10 transitional instrument on participants with stated supports in their plans. The concern is around how participants can access stated supports if they are not on the NDIS support list and whether accidental expenditure on a non-NDIS support would give rise to a debt.
11. To alleviate these concerns, a transitional rule will provide that any support stated in a participant's plan at the commencement of the Act on 3 October 2024 will be considered an NDIS support until the plan ends. Similarly, supports found by the Administrative Appeals Tribunal to be reasonable and necessary and included in a participant's plan at commencement will be considered NDIS supports until that plan ends.
12. In addition, a transitional arrangements instrument will provide for a limited moratorium on debts automatically arising for a period of up to one year after the Act commences. This will not apply to illicit drugs or other illegal activities including purchase of sexual services, alcohol, firearms and weapons.
13. These transitional arrangements are important to manage a significant change process and avoid unintentional consequences of participants inadvertently purchasing non-NDIS supports. It will also allow time for the NDIA to undertake the planned education and communication campaign.
14. Other transitional arrangements may also be required to deal with other aspects of the Act and you will be briefed on these together with the final section 10 instrument and once all issues have been identified by the department and the NDIA.



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s 22

**Attachments:**

**Attachment A:** Updated NDIS Supports List

s 22

Contact Officer: Sarah Hawke  
Position: Branch Manager  
Branch: NDIS Policy, Legislation and Engagement  
Mobile: s 22

Cleared by: Ross Schafer  
Position: A/g Group Manager  
Group: Participants and Performance  
Mobile: s 22

Cleared by: Robyn Shannon  
Position: Deputy Secretary  
Phone/Mobile: s 22

Signature:

s 22

Date: 19/09/2024

## Attachment A - Updated NDIS Support Lists – final draft 18 September 2024

### 1. Supports that are ‘NDIS supports’

The below table has 37 groupings on ‘NDIS supports’. This includes a description of the supports that are ‘NDIS supports’. It also shows how the supports fit within both the provider registration groups and the support categories that are included in NDIS plans.

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are ‘NDIS supports’
<b>Accommodation assistance or tenancy assistance</b>	Support Coordination, Assistance with Daily Life	<p>Supports that guide, prompt, or assist a participant to find or keep appropriate accommodation.</p> <p>This includes support that helps a participant apply for a rental tenancy or to take part in tenancy obligations in line with their tenancy agreement.</p> <p>Medium term accommodation if you can't move into your long-term home yet because your disability supports aren't ready and you can't stay in your current accommodation while you wait for your long term home. We usually fund medium term accommodation for up to 90 days.</p> <p>For example, a participant who has been found eligible for specialist disability accommodation but is awaiting on a vacancy or build to be completed.</p>
<b>Assistance Animals</b>	Assistive Technology, Consumables	<p>An animal specially trained by an accredited assistance animal provider or through state and territory laws that provide for accreditation to help a participant with tasks.</p> <p>These are things the animal wouldn't naturally do otherwise, like guiding a participant through crowded places.</p> <p>Includes ongoing maintenance costs such as pet food, grooming, flea and worm treatments, medication, vaccinations, vet services and yearly reviews with an accredited assistance animal provider.</p>
<b>Assistance In Coordinating or Managing Life Stages, Transitions and Supports</b>	Assistance with Daily Life, Finding and Keeping a Job, Home and Living, Improved Daily Living Skills, Improved Living Arrangements,	<p>Supports to set up help within the participant's home or their community to develop their skills.</p> <p>This includes short term transition supports.</p> <p>This includes support before hospital discharge.</p>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
<b>Assistance to Access and Maintain Employment or higher education</b>	Increased Social and Community Participation, Support Coordination Finding and Keeping a Job, Lifelong Learning	This includes disability related supports through the transition process, including where an individual has been in custody or on remand, or in detention in a mental health setting.  Capacity building assistance that enables a participant to successfully prepare for, find or keep employment in the open labour market (including self-employment or micro-enterprise) or supported labour market. The assistance includes employment preparation complementary to that delivered while at school. It also includes assistance for a participant transition to employment, further education or training.
<b>Assistance With Daily Life Tasks in a Group or Shared Living Arrangement</b>	Assistance with Daily Life Home and Living	Assistance with or supervision of daily living tasks in a shared living environment. This could be either temporary or ongoing, with a focus on developing the skills of each participant to live as autonomously as possible. This includes short-term accommodation and respite. This includes supports for an NDIS participant under the age of 65 who lives in residential aged care and purchases support from an aged care provider.
<b>Assistance With Travel or Transport Arrangements</b>	Transport	Transport assistance, including activity-based transport, provider travel, and costs associated with the use of taxis or private transport.  This includes transporting participants to funded supports and other activities including school, other educational facilities, employment, healthcare (excluding patient transfer) or the community.  This includes travel training to build participant's confidence and skills to use public transport safely and independently.  Transport assistance can only be used where the participant cannot travel independently or use public transport independently due to the impact of their impairment/s.
<b>Assistive Equipment for Recreation</b>	Assistive Technology, Assistive Technology Maintenance, Repair and Rental Improved Daily Living Skills	<i>Assistive Technology for Recreation and Leisure</i> - assistive products and associated services used in sports and other recreational activities. This includes personal recreation equipment and sporting equipment modification to meet disability specific need.

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
<p><b>Assistive Products for Household Tasks</b></p>	<p>Assistive Technology, Assistive Technology Maintenance, Repair and Rental Improved Daily Living Skills</p>	<p><i>Assistive Technology for Domestic Activities and Participation in Domestic Life</i></p> <p>Assistive products and associated services to support a participant to carry out domestic and everyday actions and tasks. This includes assistive products for preparation of food and drink, house cleaning, gardening and laundry.</p> <p>Additional costs to upgrade standard household items to household items that include participant required accessibility features.</p> <p>This includes modified foods required as a result of a participant's disability (for example, PEG feeding).</p> <p>This includes delivery fees for assistive products.</p> <p><i>Assistive Technology for Self-care Activities and Participation in Self-care</i></p> <p>Assistive products and associated services to support the participant's personal care. This includes washing and drying their body, caring for their body and body parts, dressing and protecting their body.</p> <p>This includes incontinence care.</p> <p>This includes modified or adaptive clothing.</p> <p>This includes use of menstrual products and adaptive products necessary to manage menstruation and continence, for example applicators and period underwear.</p> <p><i>Assistive Technology for Supporting Activities in Indoor and Outdoor Human-made Environments (Including a garden or outdoor area of the participant's residence).</i></p> <p>Adapted or specifically made furniture and other products to address the participant's impairment that meets the disability or early intervention requirements, that can be placed in or added to the participant's home to help with movement and positioning. This includes entry and exit of the environment. This includes beds and pressure mattresses, toilet and bathroom equipment specific to the participant's impairment that meets the disability or early intervention requirements.</p>
<p><b>Assistive Products For Personal Care And Safety</b></p>	<p>Assistive Technology, Assistive Technology Maintenance, Repair and Rental, Consumables, Improved Daily Living Skills</p>	<p>Support provided by professionals with specialist skills in positive behaviour support. This includes assessment, development and delivery of a comprehensive plan that aims to reduce and manage behaviours of concern, and training and ongoing monitoring of staff in implementation of the behaviour support plan, and training and capacity building to deliver</p>
<p><b>Specialist Positive Behaviour Support</b></p>	<p>Assistance with Daily Life, Relationships</p>	<p>Support provided by professionals with specialist skills in positive behaviour support. This includes assessment, development and delivery of a comprehensive plan that aims to reduce and manage behaviours of concern, and training and ongoing monitoring of staff in implementation of the behaviour support plan, and training and capacity building to deliver</p>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
		<p>positive behaviour supports. This includes the development and delivery of interim or transitional plans as necessary.</p> <p>This support will be specifically identified in participants' plans.</p>
<b>Communication And Information Equipment</b>	<p>Assistive Technology, Assistive Technology Maintenance, Repair and Rental, Consumables, Improved Daily Living Skills</p>	<p><i>Assistive Technology for Communication and Information Management</i></p> <p>Assistive products and associated services to help a participant to receive, send, produce and process information in different forms. This includes communicating by language, signs and symbols, receiving and producing messages, having conversations and using communication devices and techniques.</p>
<b>Community Nursing Care</b>	<p>Assistance with Daily Life, Improved Daily Living Skills</p>	<p>Provision of nursing care for participants with high care needs, requiring a high level of clinical skill outside the high intensity support skill descriptors, and specific to the participant's impairment that meets the disability or early intervention requirements. For example, catheter care, skin integrity checks, tracheostomy care, disability-related medication management and intramuscular injections. This includes the training of support workers to respond to the participant's complex needs.</p>
<b>Customised Prosthetics (includes Orthotics)</b>	<p>Assistance with Daily Life, Assistive Technology Maintenance, Repair and Rental, Consumables, Improved Daily Living Skills</p>	<p><i>Ortheses and Prostheses</i></p> <p>Design, manufacture, fitting and associated services for participant-matched, functional prostheses or orthoses.</p> <p>This includes assessment and specification (prescription) by a professionally qualified prosthetist or orthotist, and osseo-integrated, external products.</p>
<b>Daily Personal Activities</b>	<p>Assistance with Daily Life, Improved Daily Living Skills, Increase Social and Community Participation, Relationships, Support Coordination and Psychosocial Recovery Coaches</p>	<p>Support with or supervision of personal daily living tasks to help a participant to live as independently as possible in their own home and in the community.</p> <p>This includes hair washing and drying, fingernail and toenail cutting and cleaning, to maintain personal hygiene.</p> <p>This includes in-kind personal care in school and specialist school transport.</p>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
<p><b>Development Of Daily Care And Life Skills</b></p>	<p>Assistance with Daily Life, Improved Daily Living Skills, Increased Social and Community Participation, Relationships, Support Coordination and Psychosocial Recovery Coaches</p>	<p>Training and development activities done by a participant or their carer to increase their ability to live as independently as possible. This includes supports to increase the participant's ability to travel and use public transport independently and psychosocial recovery supports.</p>
<p><b>Disability-Related Health Supports</b></p> <p><b>Note this is listed as a group of supports, but it is not a provider registration group.</b></p>	<p>May be under many of the support categories, depending on the support type and circumstances</p>	<p>Provision of disability-related health supports which relate directly to the functional impact of the participant's disability. This includes support with continence, dysphagia, respiratory, nutrition (including thickeners and nutritional supplements for disability-related nutrition supports), diabetic management, epilepsy, podiatry and foot care, and wound and pressure care.</p> <p>Supports for people with complex communication access needs or behaviours when accessing health services, including hospitals and in-patient facilities.</p> <p>Jointly with other parties including health services, provision of specialist allied health, rehabilitation and other therapy, to facilitate enhanced functioning and community re-integration of people with recently acquired severe conditions such as newly acquired spinal cord and severe acquired brain injury.</p> <p>Ongoing psychosocial recovery supports that enable activities of daily living and participation in the community, and in social and economic life.</p> <p>Includes assistive technology for sustaining or replacing physiological function.</p>
<p><b>Early Intervention Supports For Early Childhood</b></p>	<p>Assistance with Daily Life, Improved Daily Living Skills</p>	<p>Evidence-based early intervention childhood supports of varying type and intensity for children 0-9 years with developmental delay or disability and their families to achieve better long-term outcomes, regardless of diagnosis. This includes the provision of a mix of therapies, and a key worker for the family. May also include other NDIS supports according to intensity of needs.</p>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
<b>Exercise Physiology &amp; Personal Well-being Activities</b>	Assistance with Daily Life, Health and Wellbeing, Improved Daily Living Skills	<p>This includes support that maintains or increases physical mobility or physical well-being through personal training or exercise physiology that is required due to the functional impact of the participant's disability.</p> <p>This includes where a participant accesses services from an appropriately qualified professional within a gym or recreational club, for assessment and development of a personalised exercise program which aims to increase or maintain their functional capacity. For example, maintenance of muscle strength, range of motion, balance and mobility.</p>
<b>Group And Centre Based Activities</b>	Assistance with Social, Economic and Community Participation	Support for participants to access and participate in community, social, cultural and recreational activities. Activities are provided in a group, either in the community or in a centre.
<b>Hearing Equipment</b>	Assistive Technology, Assistive Technology Maintenance, Repair and Rental Improved Daily Living Skills	Hearing supports not typically provided through the Hearing Services Program where these supports directly relate to a participant's permanent impairment. This may include replacement external processor(s) for implanted hearing devices.
<b>High Intensity Daily Personal Activities</b>	Assistance with Daily Life	<p>Support with or supervision of tasks of daily life so a participant with complex needs or psychosocial disabilities can live as independently as possible in their own home and other environments.</p> <p>This includes high intensity daily personal activities as described by the <a href="#">NDIS Quality and Safeguards Commission</a>.</p> <p>These supports are provided by a worker with additional qualifications and experience relevant to the participants' complex or psychosocial needs.</p>
<b>Home Modification Design and Construction</b>	Assistive Technology, Home Modifications	<p>Design and changes or modifications to a participant's home. This includes installing equipment or changing a building's structure, fixture or fittings, necessary because of a participant's disability, to help participants to live as independently as possible or to live safely at home.</p> <p>Internal and external building modifications to remedy damage arising exclusively from disability-related behaviours or use of NDIS funded assistive technology or equipment rather than expected wear and tear or purposeful actions that are not related to a person's disability.</p>



Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
		This support will be specifically identified in participants' plans.
<b>Household Tasks</b>	Assistance with Daily Life	Support with essential household tasks that a participant is not able to do themselves because of their disability. This includes meal preparation and delivery, house or yard maintenance, cleaning and laundry.
<b>Innovative Community Participation</b>	Increased Social and Community Participation	Support for participants to access new and innovative services for community participation. This includes where a person has extraordinary support needs based on the presence of situational and personal factors that require innovative and tailored supports.  This support will be specifically identified in participants' plans.
<b>Interpreting and Translation</b>	Consumables	Supporting a participant with independent communication in essential personal, social, cultural or community activities where translation and interpretation is needed as a result of their disability and is not available from a mainstream service.
<b>Management of Funding for Supports</b>	Choice and Control	Supports for a registered plan manager to manage a participant's NDIS funding and pay for NDIS supports. Managing funding for plan supports means: <ul style="list-style-type: none"> <li>• buying NDIS supports as described in the participant's plan, including paying GST or any other taxes related to those supports</li> <li>• receiving and managing funding for plan supports, including paying for supports on time</li> <li>• keeping track of what has been bought with NDIS funding, including keeping receipts and invoices.</li> </ul>
<b>Participation in Community, Social and Civic Activities</b>	Assistance with Social, Economic and Community Participation, Increased Social and Community Participation	Assisting a participant to participate actively in community, social, cultural and civic activities; including supporting participants during these activities and developing participants' ability to partake in these activities.
<b>Personal Mobility Equipment</b>	Assistive Technology, Assistive Technology Maintenance, Repair and Rental,	<i>Assistive Technology for Activities and Participation Relating to Personal Mobility and Transfer</i>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
	Consumables	<p>Products to support or replace a participant's capacity to move indoors and outdoors, to transfer from one place to another.</p> <p>This includes assistive products for walking, wheelchairs and transfer devices and hoists.</p> <p>This includes motorised mobility devices as defined by the National Transport Commission when assessed by a suitable Assistive Technology Assessor.</p>
<b>Specialist Disability Accommodation (SDA)</b>	Specialist Disability Accommodation (SDA)	<p>Accommodation for a participant who requires specialist housing solutions, including assistance providing better and more effective delivery of supports that cater for the person's extreme functional impairment or very high support needs.</p> <p>This does not include supports delivered to the participant while they are living in the accommodation.</p> <p>The SDA rules govern participant eligibility and requirements for SDA dwellings.</p> <p>This support will be specifically identified in participants' plans.</p>
<b>Specialised Driver Training</b>	Assistance with Daily Life, Improved Daily Living Skills	<p>Driver training with a specialised Vehicle Driving Instructor. This is based on a driving training assessment by an occupational therapist who has completed specialist post graduate training in conducting driving assessments. This support may also include training on the use of adapted equipment or vehicle modifications.</p>
<b>Specialised Hearing Services</b>	Improved Daily Living Skills	<p>Specialised hearing services for children and adults with complex needs.</p>
<b>Specialised Supported Employment</b>	Assistance with Social, Economic and Community Participation, Finding and Keeping a Job	<p>Assistance to prepare for, find and retain a job in an employment setting of choice.</p>
<b>Specialised Support Coordination</b>	Support Coordination and Psychosocial Recovery Coaches,	<p>Support Coordination provided within a specialist framework to address e participant needs because of specific high-level risks in their situation. This support addresses barriers and reduces complexity in the support environment. It also helps the participant to connect with</p>

Category - Provider Registration Group	Support Category in NDIS Plan	Description of supports that are 'NDIS supports'
<b>Therapeutic Supports</b>	<p>Assistance with Daily Life</p> <p>Assistance with Daily Life, Finding and Keeping a Job, Health and Wellbeing, Improved Daily Living Skills</p>	<p>supports and build their capacity and resilience. This can also involve developing an intervention plan to be put in place by disability support workers.</p> <p>Provision of evidence-based therapy supports to help the participant to apply their skills to improve or maintain their participation and independence. This includes daily, practical activities in areas such as language and communication, personal care, mobility and movement, interpersonal interactions, functioning (including psychosocial) and community living. This includes funding an assessment by health professionals for support planning and review as required.</p>
<b>Vehicle Modifications</b>	<p>Assistive Technology, Assistive Technology Maintenance, Repair and Rental</p> <p>Improved Daily Living Skills</p>	<p><i>Assistive Technology for Personal Vehicle Modification</i></p> <p>Assistive products and associated services that can be added to vehicles or modifications made to vehicles that help a participant to operate, enter, exit or ride in the vehicle safely.</p> <p>This includes vehicle passenger and wheelchair hoists, controls, modified restraints, modified car seats.</p> <p>This includes certification costs for registration and additional vehicle insurance premium costs as a direct result of the modification.</p> <p>This does not include the purchase of a vehicle.</p>
<b>Vision Equipment</b>	<p>Assistive Technology, Assistive Technology Maintenance, Repair and Rental</p> <p>Improved Daily Living Skills</p>	<p>Products for navigation, orientation, braille, magnifiers and note taking equipment.</p>

## 2. Supports that are not 'NDIS supports'

The table has 15 categories of goods and services that are not an 'NDIS support'.

Category	Goods and services that are not an 'NDIS support'
Day-to-day living costs	<p><b>Accommodation and household related</b></p> <ul style="list-style-type: none"> <li>• Rent, rental bonds, home deposits, mortgage deposits, mortgage repayments, strata fees, rental bonds and home deposits</li> <li>• Standard home security and maintenance costs, fencing, gates and building repairs</li> <li>• Pools, pool heating and maintenance, spa baths, saunas, steam rooms</li> <li>• General home repairs, home improvements, general renovations and maintenance</li> <li>• Water, gas, and electricity bills, council rates</li> <li>• Water filters, purifiers, or aerators</li> <li>• Electricity generators, solar panels, home batteries for power storage, hot water and gas systems</li> <li>• Standard (non-modified and not adaptive) household items and appliances. For example, a dishwasher, fridge, washing machine, non-modified kitchen utensils and crockery, food processors, electric toothbrushes, floor rugs, beanbags, standard mattresses, and bedding</li> <li>• Standard (non-modified and not adaptive) household and garden cleaning and maintenance tools, appliances and products</li> <li>• Standard (non-modified and not adaptive) furniture, fixtures or fittings. For example, lounges, beds, fire alarms, blinds</li> </ul> <p><b>Finance and payments related</b></p> <ul style="list-style-type: none"> <li>• Donations, tithes, gifts, and political contributions</li> <li>• Fines, penalties, and court-ordered amounts</li> <li>• Travel insurance, life insurance, home and contents insurance, car insurance and excess insurance for Novated vehicles (Salary Sacrifice)</li> <li>• Health insurance, gap payments for Medicare funded services and private health insurance claims</li> <li>• Superannuation for participants or related parties (exceptions apply for arm's length Employment arrangements)</li> <li>• Ambulance membership</li> <li>• Education and tuition fees including school, vocational education and training (VET) and higher education/university</li> <li>• Legal costs</li> <li>• Child support fees, debt repayments</li> <li>• Gifts and gift cards</li> <li>• Business development costs, business skills development costs. For example, company registration, book-keeping, accounting services or software</li> <li>• Debts, liabilities, and taxes, other than those necessarily incurred in the receipt of supports</li> </ul>

Category	Goods and services that are not an 'NDIS support'
	<p><b>Food and groceries</b></p> <ul style="list-style-type: none"> <li>• Groceries including all food, beverage, cleaning, household, health and hygiene products. For example, detergent, light bulbs, soap</li> <li>• Fast food services, takeaway food and food delivery platforms (excluding meal delivery platforms where cost of ingredients are not included)</li> </ul> <p><b>Lifestyle related</b></p> <ul style="list-style-type: none"> <li>• Cigarettes, vapes and smoking paraphernalia, legal cannabis</li> <li>• Smoking cessation devices such as a nicotine replacement items</li> <li>• Gambling</li> <li>• Internet services, land line phone, mobile phones, mobile phone accessories, tablets, and smart phones</li> <li>• Internet, landline and mobile phone plans and data</li> <li>• Gaming computers, consoles and games, subscriptions for streaming services</li> <li>• Standard (non-modified and not adaptive) recreational equipment and tools, including toys, balls, racquets</li> <li>• Costs associated with recreational sports and activities. This includes membership costs, venue hire fees, uniforms and footwear</li> <li>• Costs associated with elite or professional sports and activities, including equipment or modifications to equipment</li> <li>• Wedding, honeymoon, funeral, and other social, business, private, public, formal or informal event</li> <li>• Musical instruments, music production, social media production</li> <li>• Tickets to theme parks, tourism and entertainment operators</li> <li>• Tickets to music, theatre, cinema, sporting events, and conference fees or entrance fees</li> <li>• Accommodation to attend or participate in work, study, music, theatre, cinema, sporting events and conferences. This includes any other social, business, private, public formal or informal event</li> <li>• Sexual services and sex work</li> <li>• Indoor or outdoor play equipment</li> <li>• General health, fitness, social and recreational activity costs or services</li> <li>• Membership and entry to a recreational club and basic gym equipment</li> <li>• Non-prescription medicines, sunscreens, weight loss products, vitamins, sport and athletic supplements, homeopathic medicines</li> <li>• Dating or relationship services including virtual reality, match makers or Apps</li> </ul> <p><b>Clothing and beauty related services</b></p> <ul style="list-style-type: none"> <li>• Jewellery, watches (including smart watches)</li> <li>• Makeup, cosmetic treatments, wigs, cosmetics and cosmetic accessories</li> <li>• Standard (non-modified and non-adaptive) clothing and footwear</li> </ul>

Category	Goods and services that are not an 'NDIS support'
Not evidenced based	<ul style="list-style-type: none"> <li>• Hair treatments, cutting, dying, styling, extensions, threading, weaving, hair replacements and transplants,</li> <li>• Manicures, pedicures, false nail application or removal of any kind, nail painting and removal, henna, nail decorations, nail piercings, hand or foot massage or treatments.</li> </ul> <p><b>Travel and transport related</b></p> <ul style="list-style-type: none"> <li>• Cruises, holiday packages, holiday accommodation, including interstate and overseas travel, airfares, passports, visa, activities and meals included in travel</li> <li>• Vehicles. This includes motor vehicles, motorbikes, watercraft, all-terrain vehicles, recreational bikes and scooters (including electronic) and other recreational vehicles. Any modifications or products that are not legal for use in the state/territory (e.g. not approved by the vehicle registration authority)</li> <li>• Mechanical repairs (except for NDIS funded vehicle modifications), tools, vehicle registration</li> <li>• Mobility devices intended for community access which are not legal for use on state or territory road related areas (including footpaths)</li> <li>• Transport for children as part of their reasonable care and support provided by families or carers</li> <li>• Petrol, diesel, gas</li> </ul> <p><b>Pet Related</b></p> <ul style="list-style-type: none"> <li>• Animals (other than NDIS funded assistance animals). This includes pets and companion animals</li> <li>• Pet food for animals other than NDIS funded assistance animals</li> <li>• Veterinarian costs, pet boarding, pet grooming for animals that are not NDIS funded assistance animals. For example, this includes for pets and companion animals</li> <li>• Pet insurance</li> <li>• Taxidermy and pet cremations or funerals</li> </ul> <p><b>Reproductive health and family related</b></p> <ul style="list-style-type: none"> <li>• Surrogacy and fertility treatments</li> </ul> <p><b>Alternative and complementary therapies</b></p> <ul style="list-style-type: none"> <li>• Crystal therapy</li> <li>• Tarot card reading, clairvoyants</li> <li>• Cuddle therapy</li> <li>• Reflexology</li> <li>• Aromatherapy</li> <li>• Sound therapy</li> <li>• Yoga therapy</li> <li>• Wilderness therapy</li> </ul>

Category	Goods and services that are not an 'NDIS support'
	<ul style="list-style-type: none"> <li>• Animal therapy. For example, puppy therapy, goat therapy</li> <li>• Hair therapy</li> <li>• Alternative or complementary medicine</li> </ul> <p><b>Wellness and coaching related</b></p> <ul style="list-style-type: none"> <li>• Massage</li> <li>• Sports or athletic supplements</li> <li>• Life coaches, wellness coaches, career coaches, cultural coaches</li> <li>• Hypnotherapy</li> <li>• Neurofeedback</li> <li>• Gaming therapy</li> <li>• Mastermind coaching including Apps and software</li> <li>• Somatic therapy</li> <li>• Kinesiology</li> </ul> <p><b>Energy and Healing Practices related</b></p> <p>Reiki (including intuitive reiki), Scalar Lounge, Frequency Healing and Energy balanced massage, Deep Energy Clearing, Spinal Flow Technique, Shamanic Healing</p>
<b>Related to Health</b>	<ul style="list-style-type: none"> <li>• The diagnosis and clinical treatment of health and dental conditions, including ongoing or chronic health conditions. This includes assistive technology products used by healthcare professionals</li> <li>• Diagnostic assessments and screening services</li> <li>• Time-limited, goal-oriented services and therapies:             <ul style="list-style-type: none"> <li>○ where the predominant purpose is treatment directly related to the person's health status, or</li> <li>○ provided after a recent medical or surgical event, with the aim of improving the person's functional status, including post-acute rehabilitation or post-acute care</li> </ul> </li> <li>• Any pharmaceutical</li> <li>• Any equipment or assistive technology prescribed or issued as a result of clinical care, treatment or management from a medical practitioner and then delivered in the clinical setting, unrelated to the person's disability (For example, a knee brace issued following an acute knee ligament injury after sport or gardening accident)</li> <li>• Surgical or other implanted assistive products</li> <li>• Acute, subacute, emergency and outpatient clinical services delivered through public or private hospitals</li> <li>• Prescription medicines, non-prescription medicines, biological medicines, vaccines, sunscreens, weight loss products, vitamins, sport and athletic supplements, homeopathic medicines</li> <li>• Prescription spectacles or contact lens</li> <li>• Nursing services (where related to treatment of a health event)</li> </ul>

Category	Goods and services that are not an 'NDIS support'
	<ul style="list-style-type: none"> <li>• Ambulance services</li> <li>• Health transport services</li> <li>• Hospital in the home services</li> <li>• Sleep consultant services</li> <li>• Health retreats</li> <li>• New-born follow-up provided in the health system, including child and maternal health services</li> <li>• Sub-acute, palliative care including in-patient and out-patient services delivered in the person's home or clinical setting, noting disability-related supports as part of an NDIS participant's plan may continue to be provided at the same time as palliative care services</li> <li>• Hearing services or supports provided by the Hearing Services Program</li> <li>• Surgical services for hearing</li> </ul>
<b>Related to Mental Health</b>	<ul style="list-style-type: none"> <li>• Any pharmaceutical</li> <li>• Treatment, including for drug and alcohol dependency, gambling, and other addictions or disorders</li> <li>• Acute, subacute, emergency and outpatient clinical services delivered through public and private hospital mental health services</li> <li>• Supports related to mental health that are clinical in nature, including acute, ambulatory and continuing care and rehabilitation within a health treatment plan</li> <li>• Any residential care where the primary purpose is for inpatient or outpatient treatment or clinical rehabilitation</li> </ul>
<b>Related to Child Protection and Family Support</b>	<ul style="list-style-type: none"> <li>• Travel and accommodation for parents with children in out-of-home-care (OOHC)</li> <li>• Guardianship services</li> <li>• General family therapy</li> <li>• Parenting programs</li> <li>• Babysitting or nanny services, au pairs</li> <li>• Marriage and relationship counselling</li> <li>• Statutory child protection services required by families who have entered, or are at risk of entering, the statutory child protection system</li> <li>• General parenting programs, counselling or other supports for families, which are provided to families at risk of child protection intervention and to the broader community, including making them accessible and appropriate for families with disability</li> <li>• Out-of-home care or support to carers of children in out-of-home care where these supports are not additional to the needs of children of similar age in similar out-of-home care arrangements</li> </ul>
<b>Related to Early Childhood Development</b>	<ul style="list-style-type: none"> <li>• Early childhood supports or therapies to support the general child development needs of all children</li> <li>• Childcare fees or payments, including any fees associated with specialist or segregated childcare service models, long day care, family day care and informal care arrangements. This includes the costs associated with the reasonable adjustment that childcare services are required to provide to accommodate a child with developmental delay or disability</li> <li>• Teaching aids or supports related to educational attainment</li> <li>• Building modifications for early childhood educational and care settings</li> </ul>



Category	Goods and services that are not an 'NDIS support'
<p><b>Related to School Education</b></p>	<ul style="list-style-type: none"> <li>• Meeting the early childhood education and care needs of a child</li> <li>• Fees and payments for outside school hours care. This includes, before school, after school, student free days and vacation care</li> <li>• Education and tuition fees across all education settings</li> <li>• School uniforms, shoes, lunchboxes, drink bottles or other school equipment unless a specially adapted item is required to address a participant's functional impairment</li> <li>• Personalised learning or supports for students that primarily relate to their educational attainment</li> <li>• Aids and equipment for educational purposes. For example, modified computer hardware, education software, braille textbooks</li> <li>• Aids and equipment (including assistive technology) which are fixed or non-transportable in schools that enable a student access to education. For example, hoists</li> <li>• Reasonable adjustment to education campuses, including capital works. For example, ramps, lifts, hearing loops</li> <li>• Services from a person employed at the participant's school or the relevant State or Territory agency with responsibility for education</li> <li>• Textbooks and teaching aids (including alternative formats)</li> <li>• Tutors and scribes</li> <li>• Educational supports associated with home schooling</li> <li>• School refusal programs</li> <li>• School camp, incursion and excursion fees</li> <li>• Transport between school activities. For example, excursions, sporting carnivals</li> </ul>
<p><b>Related to Higher Education and Vocational Education and Training</b></p>	<ul style="list-style-type: none"> <li>• Education and tuition fees across all education and training settings</li> <li>• Any supports (including assistive technology) for students that primarily relate to their education and training</li> <li>• Building modifications to TAFE, registered training organisations (RTOs) and university campuses</li> <li>• Services from a person employed at the participant's higher education facility or at the relevant department of education for education purposes</li> <li>• Personalised learning or supports for students that primarily relate to their educational or training attainment</li> <li>• Aids and equipment (including assistive technology) which are fixed or non-transportable in higher education or VET provider campuses that enable a student or trainee to access to education or training. For example, hoists.</li> <li>• Aids and equipment for education or training purposes For example, modified computer hardware, education software, braille textbooks</li> <li>• Textbooks and teaching aids, including in alternative formats such as braille or Easy English</li> <li>• General education and training to employment transition supports</li> </ul>

<b>Goods and services that are not an 'NDIS support'</b>	
<b>Related to Employment</b>	<ul style="list-style-type: none"> <li>• Disability Employment Services, Workforce Australia or any other government funded employment program</li> <li>• Work-specific aids and equipment required to perform a job, including modified hardware and software</li> <li>• Reasonable adjustments (including assistive technology) to access a workplace</li> <li>• Work-specific support related to:               <ul style="list-style-type: none"> <li>○ recruitment processes</li> <li>○ work arrangements or the working environment, including workplace modifications, work-specific aids and equipment</li> <li>○ transport within work activities</li> <li>○ work-specific support required to comply with laws dealing with discrimination on the basis of disability</li> </ul> </li> <li>• Employment programs, including both disability-targeted and open employment services, to provide advice and support to:               <ul style="list-style-type: none"> <li>○ job seekers with disability to find and retain a job who are largely independent once placed in employment</li> <li>○ employers to encourage and assist them to have recruitment policies and practices to hire and be inclusive of people with disability in the workplace. For example, support, training and resources, funding assistance to help employers make reasonable adjustments, and incentives for hiring people with disability, such as wage subsidies</li> </ul> </li> </ul>
<b>Related to Housing and Community Infrastructure</b>	<ul style="list-style-type: none"> <li>• Accommodation for people in need of housing assistance, including direct costs of compliance with a person's tenancy agreement. For example, bond, pest control, exit cleaning, general damage repairs</li> <li>• Ensuring that appropriate and accessible housing is provided for people with disability, other than participants eligible for specialist disability accommodation</li> <li>• Design and subsequent changes or modifications to state and territory owned residential facilities, public buildings and boarding schools to make buildings accessible for people with disability</li> <li>• Design and subsequent changes or modifications to specialist disability accommodation</li> <li>• Reasonable adjustments to social housing to make buildings accessible for people with disability</li> <li>• Ensuring that new publicly funded housing stock, where the site allows, meets required Liveable Housing Design Standards and incorporates other features</li> <li>• Homelessness-specific services including homelessness outreach and emergency accommodation</li> <li>• The improvement of community infrastructure. For example, improving accessibility of the built and natural environment, where this is managed through other planning and regulatory systems and through building modifications and reasonable adjustment where required</li> <li>• Postal services</li> <li>• Housing subsidies. For example, rental bonds, mortgage relief and assistance with buying a home</li> <li>• Crisis housing</li> <li>• Mortgage payments</li> <li>• Rental payments</li> <li>• Mobile homes, caravans, campervans, tents</li> <li>• Purchase of land, or house and land packages</li> <li>• Land taxes and levies</li> <li>• Council rates and taxes</li> </ul>

Category	Goods and services that are not an 'NDIS support'
<p><b>Related to Transport</b></p>	<ul style="list-style-type: none"> <li>• Accessible public transport. This includes alternate accessible transport options.</li> <li>• Public transport fares</li> <li>• Concessions to facilitate use of public transport</li> <li>• Airline lounge memberships and access fees</li> <li>• Transport costs for any animals that are not NDIS funded assistance animals</li> <li>• Transport infrastructure, including road and footpath infrastructure</li> <li>• Community transport services</li> <li>• Modifications to public transport and taxis</li> </ul>
<p><b>Related to Justice</b></p>	<ul style="list-style-type: none"> <li>• Supports in secure mental health facilities which are primarily treatment focused (clinical in nature)</li> <li>• Supervision and monitoring to prevent or observe offending behaviour or to monitor adherence to justice system-imposed conditions</li> <li>• The day-to-day care and support needs of a person in custody (including in a secure mental health facility), which includes supervision, personal care and general supports</li> <li>• Pre-sentence psychological and psychiatric reports</li> <li>• Secure accommodation facilities where the purpose of this accommodation is to safeguard the community or prevent reoffending, including secure mental health facilities</li> <li>• Aged care services</li> </ul>
<p><b>Related to Aged Care</b></p>	
<p><b>Related to personal injury</b></p>	<ul style="list-style-type: none"> <li>• Supports in respect of personal injury that may be funded or provided under a scheme of insurance, under a Commonwealth, State or Territory law or under a common law claim.</li> </ul>
<p><b>Unlawful goods and services</b></p>	<ul style="list-style-type: none"> <li>• A support the provision of which would be contrary to: <ul style="list-style-type: none"> <li>○ a law of the Commonwealth</li> <li>○ a law of the State or Territory in which the support would be provided</li> </ul> </li> <li>• Assistive technology, vehicle modifications or home modifications that do not meet state and territory laws, the National Construction Code or relevant mandated Australian standards for the environment or purpose the participant will require them. For example, some motorised mobility devices are not legal to use on footpaths, so can only be used on private property</li> <li>• Supports involving restrictive practices that are prohibited in the participant's state or territory of residence</li> <li>• Illicit drugs that are against the law</li> <li>• Firearms and weapons</li> <li>• Seclusion rooms</li> </ul>
<p><b>Income replacement</b></p>	<ul style="list-style-type: none"> <li>• Income support payments</li> <li>• Rent subsidy</li> <li>• Loan repayments or buy now pay later payments</li> <li>• Income protection insurance</li> <li>• Fringe Benefits for staff or contractors</li> <li>• Cryptocurrency, shares, investment products</li> </ul>

### 3. Supports that are not NDIS supports which may be substituted (replacement support list)

The following table outlines the list of items that may be considered a substituted support for participants in specific circumstances where there is clear evidence that the need for the item relates specifically to the participant's impairment that meets the disability or early intervention requirements.

Category	Substitution item	Specific circumstances the support may be considered	Proposed support category
Day to day living	Standard commercially available household items	Where there is clear evidence that the need for the item relates specifically to the participant's impairment that meets the disability or early intervention requirements. This item must increase whole task independence and reduce or eliminate the need for a support worker or disability specific assistive technology.	Consumables Assistive Technology
	Smart watches	Participants who require the use of a smart watch, tablet and smartphones associated technology required to meet communication and accessibility needs.	Consumables Assistive Technology
	Tablets	For example, a participant with complex communication needs who uses a tablet as an alternative communication device, which is their only way to communicate and so cannot be shared, where this is the most appropriate solution for their needs.	
	Smartphones	Note: Any smart device used for tracking purposes could be considered a restrictive practice and needs to be considered in this context.	
	Apps for accessibility/communication purposes		