

# **National Disability Insurance Scheme Supports**

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## 1 Between two stools — Why draft Section 10 Lists should not be part of NDIS reforms

More than 660,000 Australians with lifelong disability depend on the National Disability Insurance Scheme (NDIS). And yet, this critical government program is threatened by uncontrolled cost growth and reputational damage.

Efforts to reform the NDIS and bring costs down to the federal government's 8 per cent growth target, and maintain public confidence, are vital. However, the draft list of NDIS Supports will not achieve these goals. The lists are incoherent, heavy handed, and, worst of all, inconsistent with the purpose of the NDIS and with larger reforms the scheme needs to be sustainable.

For the sake of public confidence in the NDIS, there may be good reason to create a shortlist of supports that are illegal or at odds with public expectations about the appropriate use of public funds. But trying to codify all supports that are 'in' or 'out' is a fruitless exercise.

The government should ditch its 17-page list and focus reform efforts on bringing the NDIS back to its original design intent as a world-leading system of self-directed disability support.

I support key changes included in the recently passed NDIS Bill that will reform the assessment and planning process and introduce tighter guardrails to contain plan inflation:

- The new assessment and budget-setting approach proposed will end line-by-line planning and bring the NDIS into line with design features of comparable systems the world over. Once rules are developed, this promises to fix the biggest design flaw in the NDIS, which is critical if NDIS costs are ever to be predictable or sustainable.

- Similarly, measures that tackle plan inflation by placing caps on total or component plan budgets and introduce interval payments, to help participants calibrate their spending within intended plan durations, are sensible fixes which will make the scheme easier to administer.

Whilst there is also some merit in a clearer definition of NDIS Supports, establishing a lengthy 'outs and ins' list is fundamentally at odds with what disabled Australians should expect to see as benefits from these legislative reforms.

### 1.1 Seeing the bigger picture

Currently, the financial health of the NDIS rests on the sum of thousands of decisions made every week by junior bureaucrats working with highly complex and subjective criteria to determine every support included in a participant's plan. This means inconsistency and inequity is hardwired into the design, which also includes no effective way of controlling costs. This design has served participants very poorly, inviting dispute and plan inflation in equal measure.

There were two routes open to last year's NDIS Review for fixing this: the extensive codification of everything that can be deemed reasonable and necessary (like a Medicare Benefits Schedule for disability... or indeed the Section 10 List), or the ability for participant funding levels to be set using objective variables derived from standardised assessment. Thankfully the Review opted for the latter – this was the right choice for a scheme whose success will rely on individualised and creative use of funds.

## 1.2 The significance of 'reasonable and necessary' changes in NDIS 2.0

In future, 'reasonable and necessary', the animating concept of the NDIS, will refer to the level of funding a person with disability gets in their budget, and not to the reasonableness or necessity of the individual supports they have asked for. This ends 'bottom-up' planning, where the person with disability requests supports which are then funded or denied. Instead, the NDIS will shift to a 'personal budgets' approach which provides participants with an upfront funding entitlement – a common design feature of many contemporary systems of self-directed disability support.

This change has the potential to transform the previously adversarial planning process requiring negotiation around each support into a genuine discussion about how a fair and reasonable budget can best be used to pursue goals.

This change is also good for scheme sustainability because it will connect individual funding allocations to the actuarial model for the NDIS for the first time, so that the sum of participant plans fits within the overall funding envelope set by government.

This is the most important change that the new Act will enable, providing the levers to moderate NDIS cost growth. Anything that diverts attention from that change at this important point in the history of the scheme is an unhelpful distraction that will make the work ahead harder.

### 1.3 Is there a place for a list?

NDIS 2.0 does need clear guardrails, but it is the new planning framework that will control costs in this system, not the Section 10 List. When you are confident you are setting budgets correctly at the front door in a way that fits within the funding set by government, barricading the back door with extensive rules on spending is not necessary. It is also

conceptually inconsistent with the bigger change that is being made, and risks undermining the benefits intended to be derived from it.

The prominent benefit of the current reforms from a participant perspective should be flexibility in how funding can be used. It is hard (I would say impossible) to sell this real and tangible benefit while also brandishing a lengthy list of things you can and cannot buy.

This approach should not be a significant feature of any system of self-directed support. These systems operate best with the minimum hard exclusions and a permissive, principles-based framework that optimises flexibility day-to-day.

Ironically, the principles and exclusions in the current supports for participants rules are far better aligned to what is needed in NDIS 2.0 than the interim Section 10 rule. The current rule excludes supports that would put the person or others at risk, are not related to the person's disability, or are funded through another service system, as well as a small number of day-to-day living costs.

Expanding this rule to explicitly exclude alcohol, gambling, junk therapies, and anything illegal is fair enough. Expanding it further to include foundational supports, once they exist, will also make sense so that duplication is avoided and there is a clear separation of service systems.

But the proposed list goes a great deal further, to try and itemise everything that cannot ever relate to someone's disability – which is a fool's game. In most cases, the answer should rightly be 'it depends'.

As a general rule, I'd say that if your list extends to 17 pages, and has 'beanbags' on it, you probably need to go back to the drawing board.

### 1.4 The draft list is inconsistent

For illustrative purposes, here are a few of the exclusions that jumped out to me that really should be in the 'it depends' basket.

Batteries? Well, it depends. I can envisage situations when these might be entirely reasonable and potentially lifesaving – say where someone is dependent on assistive technology or respiratory equipment.

Legal costs? Well, again it depends. What if the legal costs relate to a self-manager meeting their obligations and responsibilities as an employer of staff?

Holiday accommodation? Well, again it depends. When does a Holiday Inn reservation become an entirely valid and cost-effective approach for someone to take a short break to ensure their care arrangements remain sustainable? Does the medicine really have to taste bad?

And who is to say that a smart watch can never be a wholly valid piece of technology for someone who can be prone to falls or forgetting to take prescription medicines?

If the NDIS can pay for the preparation and delivery of a meal for someone who cannot do this for themselves as a legitimate cost (excluding the cost of the ingredients), then how is it possible to simultaneously rule out takeaway food?

The list as it stands includes hard exclusions with no carve-out for rent and housing subsidies, which would preclude innovative housing and living arrangements that offer genuine alternatives to group homes for people with profound disability. These include home-share arrangements where an adult with disability lives in their own home with a housemate who provides in-kind support for partially or wholly subsidised rent.

Why rule such a thing out if the circumstances are right? Grattan Institute's forthcoming report *Better, safer, more sustainable: How to reform NDIS housing and support* shows that these kinds of approaches are things that government should be embracing and promoting for the benefit of disabled people and taxpayers, not outlawing.

Our report will also argue that a targeted rental subsidy to support people with very high in-home support needs would be a sensible policy position for the NDIS. A rental subsidy would enable some people in this group to contemplate renting an ordinary home in the private rental market with a housemate, rather than living in costly Specialist Disability Accommodation. Stable housing will have considerable downstream benefits for the scheme in terms of more stable and sustainable support costs.

### 1.5 Focus on what matters

These examples highlight the futility of drafting such a list in the first place. The NDIS isn't Medicare and it shouldn't aspire to be. The objectives of increasing people's social and economic participation are not the same as the objectives of medical treatment, and don't lend themselves to similar policy settings. The success of a self-directed support system depends on how well it enables creativity and innovation.

The Section 10 List is a fix for the old system rather than a framework that supports the evolution to a new one. It suggests the government either doesn't know what it is doing or at least doesn't fully understand the implications of the bigger reform it should be making. Neither option is very encouraging.

What is needed now is urgency and momentum behind the further design work required to turn the NDIS Review's sketch ideas (which the new Act enables) into implementable rules and policies to improve the scheme and moderate cost growth as quickly as possible.

As it stands, legislating for a new assessment, budget-setting, and planning model at the same time as a lengthy list of 'outs and ins' risks falling between two stools and creating an NDIS 1.5 that serves nobody well.