

Submission for response to NDIS Lists.

Dear Engage Team,

As an Occupational Therapist with approaching 18 years of experience, I am deeply concerned about the NDIS Lists proposed, as in its current format – this list and the contents are not fit for purpose. It is vital that lists defining NDIS supports protect the needs and priorities of people with disability.

1. I am concerned about the appropriateness of seeking inputs to this list - The fact that it took until almost submission time to make easy-read versions of the lists is representative of what kind of input the government seems to want in 'co-design'.

Recommendations

1a: Definite requirement for extension of time before any new definitions take effect, maintaining current arrangements until those are clear.

1b: A principles-based approach to replace the lists, which would provide flexibility and avoid narrowing supports, pushing people with disability to more costly support types; and

1c: Clear guidelines and assurance on exceptions for reviewable decisions, ensuring accessible processes for contesting decisions, developed in consultation with people with disability.

Further, please see my individual recommendations below:

2. There should not be blanket bans on exclusions from 'NDIS Supports'. There should be an appeals process, with funding available for experts in this area (i.e. Ots) to assess function, and task analyse the best way forward, including the use of potentially mainstream items. Why?

- Sometimes, 'regular' items, which may assist people in living their lives as non-disabled people to be more convenient, are actually quite essential for disabled people – examples – benchtop ovens, or benchtop dishwashers/draw dishwashers – enable people with physical impairments to more easily access these items independently, increasing independence and felt sense of occupational achievement, as well as decreasing reliance on person-based supports.

3. It appears that debts can now be raised for misspending – this should not be the case in the transitional timeframe.

- This is not appropriate for a cohort of persons who are NOT legally trained – trying to understand these documents is brutal.
- This will mean that anxiety raises etc for families and carers, and potentially mean their loved ones with disabilities will go without due to fear and concern.
- Given this will arise from the lack of clarity within this document as it stands – this needs to be properly worked through in the process of Co-design, as was intended, to ensure this is correct BEFORE penalties should be considered.

4. We need to ensure that previous allowances must be maintained (i.e. now not allowed too, though was already funded) – should only be focused on NEW builds

- Any transitional rules must not prevent the NDIS from funding supports it currently funds.
- Any new determinations to exclude supports from the NDIS should be left to the development of the NDIS Rules that will define 'NDIS supports', which MUST be subject to a full co-design process.
- We must ensure participants with approved funding for 'reasonable and necessary' supports will not be prevented from spending funding if it is to be a 'non-NDIS support'
- The proposed section 46 of the NDIS Bill should be amended to insert a grandfathering provision to allow NDIS amounts to be spent where a support has been found to be reasonable and necessary for a participant and funding for that support is already included in the participant's plan

5. We need to remove the lists of 'non-NDIS supports', and where 'non-NDIS supports' are needed, to include them as a carve out to the relevant 'NDIS support'

- As the lists are currently listed – it requires careful and nuanced referring between BOTH lists, to see where something fits.
- This opens up the possibility of potential misuse of funds as something may be 'missed' looking between both lists.
- Having carve outs to the 'allowed' lists, makes things far easier to understand and navigate for participants and their representatives.
- These should be worded as narrowly as possible – specifics are important here.

6. Remove the references to 'specialist' and 'disability-specific' supports:

- Specialised and disability specific are exclusionary terms, when the entire Disability Royal Commission focused on integration!?!?
- Better value for money is often available outside of a 'disability shop', for exactly the same thing. We need to continue to empower people with disability and their families to continue using innovative and cost-effective solutions to live their lives within their communities.
- Instead of requiring supports to be specialised in nature, the supports should address 'disability-related needs'.

7. Government should remove from the exclusion list all supports that could be in specific circumstances a reasonable and necessary support, and instead detail circumstances in which they can be funded via the approval power.

8. In relation to mainstream supports excluded under the NDIS – we need to ensure that the interface between 'NDIS supports' and mainstream supports should:

- be set out in a separate section of the transitional rule, instead of under 'non-NDIS supports';
- not exclude supports that have previously been the responsibility of the NDIS;

- only exclude supports from the NDIS where state and territory services/programs are currently available to people with disability; and
- make clear how a participant accesses the mainstream support *ie specify the actual specific state or territory service/program providing that support.*

9. That the ‘substitution’ process creates a rights-based mechanism for participants to challenge a ‘no’ determination. We need the Government’s proposed substitution process should be reformulated to:

- not be dependent on prescribing supports in NDIS Rules (per proposed subsection 10(6)(a));
- not impose mandatory conditions (per proposed subsection 10(6)(d)) for a substitution to be approved and instead assess applications based on relevant factors;
- require the CEO to approve the substitution if relevant factors are met; and
- ensure participants have a right to seek review of the CEO’s determination not to approve a substitution.

10. The idea of something being ‘solely and directly’ related to ones disability needs reframing:

- This is generally an impossibility for a lot of items, that are useful for many purposes, but may be MORE useful to aid in mitigating a person’s disability -

11. That Government should include a provision in the rules guiding interpretation to presume inclusion when it is unclear which list a support falls under. Supports should be provided wherever possible, and circumstances where the prohibition power is used are limited and very specific.

- There should not be more reason to instil fear of doing the wrong thing in participants and representatives lives.
- If the lists are unclear, that needs to be resolved – not blame and finger pointing at scheme participants and representatives.

12. Adequate Agency/PITC staff training is essential!

- We need assurance that ALL staff applying these rules are well trained in applying the nuanced understanding needed for specific contexts – as yet in the history of NDIS – unfortunately this has been more MISS, than it has been HIT.
- We also need to be sure that there will be appropriate and timely oversight of the practical application of these rules by NDIA staff to **ensure accuracy and consistency**, and guard against the lists being misunderstood or broadly interpreted to exclude supports and narrow access unjustifiably.
- There needs to be a clear and accessible process for challenging decisions – as this power will no longer being administered by Administrative Appeals Tribunal or Federal Court.

Kind Regards

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