23 July 2025

Support List Consultation – Chris Coombes

Department of Social Services,

Sincere appreciation for opening up the NDIS Supports rule (Supports lists) for consultation.

Every parent wants, I imagine, their 4 year-old to live at home with them. Not in hospital. And every 4-year-old wants, I imagine, around-the-clock dignity, shelter, life and love. We, Australians, have a stake in this want. Otherwise our law-makers wouldn't have signed up to the *United Nations Convention on the Rights of Disabled People (2006)*. Otherwise, we would not have marched for the introduction of the *NDIS Act* (2013) to give effect to the CRPD, with it the introduction of an incredible Scheme which arrived with bi-partisan support more than 12 years ago.

In *YGBW and the Chief Executive Officer of the National Disability Insurance Agency*, however, the Tribunal accepted the following facts: because of the 4-year-old's complex disabilities, she needs support to breathe, swallow, toilet and feed at home. She needs trained, responsive professionals exercising critical judgement present with her.

Like every resourceful parent would do in their situation, this child's folks requested 24/7 Registered Nursing in the home for their loved one. Because of lists, the NDIS was unable to fund it. Regular High Intensity Support Workers were found unskilled and unqualified for the tasks. High Intensity Daily Personal Activities, when delivered by a Registered Nurse, are not in the 'in list', this Tribunal Member found.

The Agency argued and the Tribunal member accepted the 'in list's' inclusions are exhaustive (at 178). The word 'including' in the in-list's context was treated as *everything*, rather than *several examples of*. If this is not the case, the drafters cannot relegate vital interpretations to explanatory memorandums.

Instead of nurses, Support Workers now must do extremely risky things to and for this child. The Tribunal acknowledged the family's pleas that Health won't fund on-going care needed in hospital, let alone at home.

SM Collins noted the grim outcome, "in the absence of HIDPA being provided by a RN, 24 hours each day YGBW's health and her life expectancy is highly likely to be compromised".

With resignation in Senior Member Collins' words, "based on the evidence I am neither persuaded nor convinced that this [delegated model of care with support workers] will adequately and safely address YGBW's care needs. [...] I am however bound by the statutory requirements of the Scheme".

Trying everything, the family were then informed that the truncated, un-reviewable replacement powers cannot fix this mess. Senior Member Collins again urged the law-makers with a huge task ahead of them, "It is of course a matter for the legislature to consider whether other types of supports should, in the future, be included in section 7 of the Transitional rules. This includes consideration of whether HIDPA should be included as a support capable of consideration by the Agency as an NDIS Support for a participant in the circumstances of YGBW".

Herein lies the question for the drafters of a discrete, list-based approach to s10: have you thought of every support? Has every interface been fleshed out? Policymakers must keep this four year old in their minds. We have not yet established resolution processes where participants with immense disability-related need are caught between two service systems, excluded by both.

These lists arrived twelve months ago promising 'clarity'. Many providers I have worked alongside have acknowledged a level of clarity. But after analysing over 200 decisions out of the Tribunal over the last 6 months, I see residual absurdities, dictionary-dances, lawyers-picnics, and families of four year olds put through the unimaginable.

Questions remain (and I have linked you to the relevant caselaw),

1. Is overnight, 24/7 nursing ever an NDIS support? *YGBW* (no) *v KDKJ* (yes)
2. What does the word 'standard' mean as it is applied to 15 'out list' categories?
    a. Must people go to the disability-shop for their assistive technology and home modifications, even when sacrificing choice, dignity, value for money and insurance principles? XTHS (yes) vs QGRY (no)

b. Must people break down their home modifications into 'standard' bits and 'disability' bits when the purpose is accessible modifications? See Dudgeon (no) and QGRY (yes)
c. Why would taxpayers sooner agree to funding a more expensive, undignifying support worker with a cool washer than an air-conditioner to support someone with disability-related thermoregulation issues (the standard household appliance problem might too infringe upon fans Ives and Johnstone)
d. For it not to be considered not a 'standard item', can a support be adapted an modified before or during manufacture? NZGW (no) vs VPYC (maybe) vs QGRY (yes)
e. What is a 'vehicle' and what is a 'scooter'? Are mobility scooters in or out? Eastham (no, but this decision is subject to Federal Court appeal)
f. Does the definition of 'standard item' apply to 'standard appliances' and 'standard renovations' et cetera?

3. Is the 'in list' exhaustive?
    a. If yes, what will the Commonwealth do to ensure the 4 year old does not go to live at hospital for 48 days at a time when the parents want her at home with them - see *YGBW*?
    b. Have we thought of:
        i. Why, in like circumstances, a commercial washing machine is in, but a standard one out – see SPLC v XTHS?
        ii. medication roll packaging – see Johnstone?
        iii. batteries and future disaster-responsive technologies - see Ives?
        iv. Noise cancelling headphones – see ATIF?
        v. Gap-fees for swimming/ other items – see WWWX?
4. Is the 'out list' exhaustive?
    a. Will the government need to amend the rules every time there is a technological advancement in assistive technology? E.g. will the prohibition on spectacles (see XTHS) or the definition of 'standard' (NZGW) kill requests for AI glasses for vision impaired people that may obviate support worker funds? Would the NDIS sooner fund a support worker to describe the thing, when that erodes dignity and independence and costs more over time?
    b. How will the evidence-advisory committee embed green-lit evidence-based therapies if the lists do not entertain principle-based notions of NDIS supports?

5. Can the NDIS part-fund a support where a state-based subsidy is provided, but does not cover the whole support need? See NDIS and Deayton
6. At what point does the cost of renting an allowable item surpass a similar disallowable item, and isn't this an odd quirk of the lists – see vehicle vs vehicle hire discussion in VHCQ?
7. Further work is needed to consider how to meaningfully integrate interface information, including compensation Schemes – see Santagada. So far as I have read, no public engagement has happened on this interface.

Recommendations:

a) Communicate to the public the unintended consequences of the lists; and
b) Deliberately co-design a trust-based, principles-based process to budgetary spending, akin to the vision of the 10 year review;
c) Provide a co-designed safety-net for unintended consequences (e.g. a generously scoped, functional & reviewable replacements process that can be green-lit either during the new Assessment process in New Framework Plans *and* as needs arise mid-plan via s47 variation/ existing pathway); and/ *or*
d) Be certain that the in-list and the out-list is exhaustive, clear, contemplates every CRPD article (especially Article 19), imagines all needs scenarios, is drafted in a broad, agile way to respond to external and judicial review, and will not have unintended consequences.

Disabled Persons and Carers Organisations have publicly called for option b). I recommend respecting their leadership on this matter. Option d) is neither feasible nor desirable given the intent of the Scheme. It asks too much of disabled people and of the Agency's Delegates. It will cost the government too much over time in foregone insurance outcomes. And it imagines a fixity of technology, evidence and support.

Who is Chris

Chris Coombes was appointed an Independent Expert Reviewer in 2023 to provide independent recommendations on complex NDIS matters that had been before the Tribunal for at least 12 months. Chris is a family member to person who daily uses the Scheme. Chris has a Master's Degree in Social Policy from the London School of Economics and — pending a cure to procrastination — will this year complete a Master's in Human Rights Law from Melbourne Law

School. Chris currently writes, consults and provides training to NDIS providers with Team DSC, but is writing this submission in a personal capacity.