

Submission

NDIS Supports Rules

July 2025



DANA Disability Advocacy
Network Australia

About DANA

DANA is the national representative body for a network of independent disability advocacy organisations throughout Australia.

Our Vision

DANA's vision is of a nation that includes and values people with disabilities and respects human rights for all.

Our Purpose

DANA's purpose is to strengthen, support and provide a collective voice for independent disability advocacy organisations across Australia that advocates for and with people with disability.

We achieve this by:

- promoting the role and value of independent disability advocacy
- providing a collective voice for our members
- providing communication and information sharing between disability advocacy organisations
- providing support and development for members, staff and volunteers of disability advocacy organisations
- building the evidence base to demonstrate the value of disability advocacy
- promoting the human rights, needs, value and diversity of people with disabilities

Contact:

Cherry Bayolsis, Director of Policy and Advocacy

Email: cherry.bayolsis@dana.org.au

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Executive Summary

In August 2024 DANA made a submission to the draft Section 10 Supports list consultation, expressing concerns regarding the potential of a list-based system to pose risks to people with disability, including by forcing NDIS participants to engage more costly and restrictive services, by increasing risk of participant debts due to a lack of clarity, and by reducing the capacity of people with disability to exert autonomy in decision-making in their daily lives.¹ For this reason, DANA submitted that a principles-based approach would more fully support the rights of people with disability.

Unfortunately, many of these concerns have been borne out since the introduction of the support list system. While it is understood that the Government position is that a principles-based approach is not feasible under the current legislation, significant changes to the existing list-based approach are required to bring it into alignment with the stated goals of the NDIS.

A key area of concern is the practice of using two lists; one 'yes' which identifies allowable supports, and one 'no' list which specifies prohibited expenditure. This submission argues that this two-list system has added more administrative burdens for many people using the NDIS, consistently leading to poorer outcomes.

Advocates supporting people through the lists have found that their discussions with the NDIA tend to focus on the 'no' list to exclude items that have a right to be used in a plan. This includes prohibitions on 'day-to-day living expenses', cosmetics, short-term accommodation, travel costs, cultural supports, and other issues.

If a list-based approach is to continue, the NDIS should develop and use a single list detailing what is allowed (and what conditions apply), rather than maintaining two lists. A single list detailing what is allowed emphasises the functional role of supports and their suitability for participants' needs. The existence of a 'no' list is actively counterproductive to the goal of functional support provision, as it provides absolute prohibitions which cannot be contextualised in terms of individual needs. In practice, this leads to significant harms which prevent participants from accessing supports where there is significant documented need.

This submission presents examples and cases where the list structure has adversely impacted NDIS participants through prohibiting supports which have been assessed as necessary, and has created costly complexities and contradictions which bar participants from accessing supports which were permitted.

Systemically, the existence of a two-list approach is counterproductive in meeting the aims of the NDIS as a scheme, in that it encourages a rigid and blanket approach that imposes additional constraints while reducing independence. Moving towards a single-list model will improve quality of support for NDIS participants while improving and streamlining internal Agency processes, reducing the need for appeals while maintaining a focus on real lived outcomes for people with disability in their daily lives.

¹ <https://dana.org.au/wp-content/uploads/2025/01/NDIS-Supports-draft-lists-DANA-Submission-2024-Final-240820-2.pdf>

List of Recommendations

Structure of the Lists & Further Consultation

Recommendation 1: Consolidate the 'yes' and 'no' list into one list focused on what supports are permissible (and what conditions will apply).

Recommendation 2: Develop clear guidelines outlining responsibilities between federal and state/territory bodies for services, which:

- Utilise DSS's work on developing foundation supports (FS) to invest/ensure that there are systems in place to track service capacity of FS. This then may be used to provide referrals to services. In this, we also suggest that the navigation program will be key in collecting such data, and will be responsible in spelling out what is available.

Recommendation 3: A second phase of consultation with draft final rules should be undertaken by the Department of Social Services or the Department of Health, Disability and Ageing, once the Foundational Supports system has been implemented. This will allow for a whole-system assessment that ensures people do not fall through gaps in the system, especially during a period of transition.

Recommendation 4: To ensure that the revised list is fit for purpose based on available evidence, ongoing reviews of the lists every 12 months for at least the next 5 years of scheme transition are recommended. Review processes should encompass internal review by DSS, and feedback or consultative phases to ensure that these systemic changes are meeting community need.

Issues experienced so far

Recommendation 5: Remove the prohibition on day-to-day living expenses from the list of inadmissible support. This would vastly increase clarity, reduce costs to participants' plans and the NDIS as a whole, and increase participants' capacity to exert autonomy and independence in their daily lives.

Recommendation 6: Remove prohibitions on travel from 'no' rules, and ensure categories in the yes lists (including short-term accommodation and cultural supports) explicitly permit travel for service delivery.

Recommendation 7: Remove the prohibition on cosmetic items in the 'no' list. This category encourages punitive 'hair splitting' which arbitrarily differentiates aspects of support activities, thereby providing added barriers for participants who require supports around hygiene and specialist personal care.

Recommendation 8: Include provisions in a 'yes' list for Vehicles, Parenting Supports ,and Home Batteries and Generators.

Recommendation 9: Redefine the exclusions of 'standard household items' to centre whether an item offers a 'distinct functional benefit' to a participant.

Recommendation 10: Provide a simplified pathway for approving replacement supports that cost less than \$1500 in plans. This should operate similarly to low-cost low-risk Assistive Technology purchases and be flexible within a plan budget (i.e. not require the trade-in of funding).

Replacement supports

Recommendation 11: Increase the debt threshold in the miscellaneous rules to \$5,000 and ensure people are shielded from debt proceedings when acting on advice from the NDIA.

Recommendation 12: Widen types of support that can be replaced, beyond individual pieces of assistive technology, to replace worker hours, including providing for circumstances where services are not practically available locally.

Recommendation 13: Make replacement support decisions a reviewable decision under section 99 and section 100 of the *NDIS Act* for the rollout of new framework plans. Given this requires legislative change, introduce an internal review process within the rules in the meantime.

Structure of the Lists & Further Consultation

DANA's August 2024 submission to the draft Section 10 Supports list consultation expressed concerns regarding the potentially restrictive and punitive nature of a list-based system, instead advocating for a principles-based approach to more fully support the rights of people with disability.² Unfortunately, many of these concerns have been borne out since the introduction of the support list system.

A key area of concern is the practice of using two lists; one 'yes' which identifies allowable supports, and one 'no' list which specifies prohibited expenditure.

This submission argues that this two-list system is not fit for purpose, in that it consistently delivers poorer practical outcomes for NDIS users, imposes greater administrative burdens, reinforces and compounds areas of disadvantage, and reflects a view of 'day-to-day' life that is consistently not aligned with actual lived experiences and daily needs of people with disability.

There remains significant scope for the existing list-based approach to be refocused to emphasise the principles underlying it more fully and clearly, by moving towards a single-list system focused on allowable supports.

Building out a single 'Yes' List

The remainder of this submission responds to the terms of reference contained in DSS's briefing note, identifying the ways in which the list has added more administrative burdens for many people using the NDIS.

Advocates supporting people through the lists have found that their discussions with the NDIA tend to focus on the 'no' list to exclude items that have a right to be used in a plan. This is discussed further below as we describe the issues observed by many on the ground, particularly as it relates to prohibitions on 'day-to-day living expenses', cosmetics, short-term accommodation and other issues.

This process is as or more confusing than the process before the introduction of the new definition, and has not simplified things for people looking to use the NDIS. In practice, advocates have found that the process to figure out if something is in line with the lists has become more lengthy and complex, with several steps:

1. Find if the support is listed, or can be lined up with, one of the entries on the 'yes' listed.
2. Weigh up all of the entries on the 'no' list that could conceivably be used to deny a support.
3. Find if the support meets the other steps in section 34 of the act (the 'reasonable and necessary' test)

In our previous submission to the transitional determination, we also said that the power to exclude things from the NDIS lists should be used be 'limited and very specific.'³ This was because too broad a 'no' could create doubt over supports thought to be non-controversial from NDIA staff, plan managers, support co-ordinators and users who want to avoid debts that can easily run into the tens of thousands.

² <https://dana.org.au/wp-content/uploads/2025/01/NDIS-Supports-draft-lists-DANA-Submission-2024-Final-240820-2.pdf>

³ Pg. 20

Having a list that establishes the broad categories of supports people can use is better than one that already has those broad categories, but forces every ordinary use of supports to an entire secondary step of often arbitrary and imprecise set of conditions in the 'no list'. As we detail below, particular issues have arisen around the exclusions of day-to-day living expenses, cosmetics, and standard household items. Their inclusion, among others, in a no list has specifically created uncertainty over many uncontroversial approved items in the 'yes' list, as discussed below.

These are detailed below. In the first instance, we believe that a single list that details what people can spend their NDIS Plans on (and what conditions apply) work much more effectively than forcing each user to run the gamut of each possible prohibition and talk them out of supports that will make a difference for them.

Recommendation 1: Consolidate the 'yes' and 'no' list into one list focused on what supports are permissible (and what conditions will apply).

Interface between the NDIS and Foundational Supports

An area that requires more support and structure is the interface between foundational supports and NDIS supports. At the moment, people are regularly stuck between different service systems who argue about whose responsibility it is to provide support. This was an issue before the introduction of the NDIS support lists.

A regular pressure point is getting supports in place when someone is discharged from hospital. One advocate has supported a case in which a person couldn't be discharged from hospital because they weren't able to do their post-surgery care independently without additional specialist supports. The person lives in a rural area and could not draw in staff from his SIL team with the relevant expertise to help keep on top of the tasks needed to keep him out of hospital, and the NDIA advised that support should be sought from the health system. Health system supports for post-discharge care tend to be limited and standardised, reflecting a normative expectation of patient capacity, and may not necessarily have sufficient flexibility or funding to encompass complex and additional support needs for the specific post-surgical requirements of a patient's specific disability. The hospital was pushing to have them discharged despite warnings from the person and their advocate about this, but the NDIS refused to the extra supports themselves to make a safe transition back home. It took direct outreach to the minister to resolve the situation – but the person was still stuck in hospital for several extra weeks until safe to be discharged.

This also plays out in settings beyond a hospital. One common refrain from the Agency, both during and after the lists being implemented, is that people are directed to access a mental health care plan for psychology services rather than claiming those supports through an NDIS plan. In those cases, the NDIA usually seeks to advance a claim that 'treatment' is best served by the Health system despite the person accessing the scheme under a permanent psychosocial disability. In practice, this can mean that NDIS participants simply are barred from accessing necessary services or are pushed into using alternative systems which are ill equipped to support their specific needs.

There was an attempt to address these issues with the Applied Principles and Tables of Support (better known as APTOS), implemented between the states at the start of the scheme. These lists offered little in the way of concrete direction for people using the scheme and were a significant point of concern on the rollout of the 'back on track' bill in 2024 before the legislation was changed to use these lists.

Broadly, the situation with navigating these issues, remain the same since the rollout of the scheme. Different levels of government cannot agree on where a support is provided and

people are left in the gap. This is particularly acute in areas where services are scarce, such as rural and remote Australia.

We recognise that the absence of robust data that can track the availability and capacity of services in particular locales poses difficulties. As a starting point we suggest that:

Recommendation 2: Develop clear guidelines outlining responsibilities between federal and state/territory bodies for services, which:

- Utilise DSS's work on developing foundation supports (FS) to invest/ensure that there are systems in place to track service capacity of FS. This then may be used to provide referrals to services. In this, we also suggest that the navigation program will be key in collecting such data, and will be responsible in spelling out what is available.
- Uses available data to specifically identify and communicate where people can turn for particular services.
- Considers actual availability of services (particularly in rural and remote areas to ensure people do not go without because they live in a rural or remote area.
- Ensures people can use NDIS supports as a fallback where foundational services are not available or accessible in their area.

Further Consultation and Review Periods

While the basis of this consultation is based on the lists as they are implemented in the temporary ministerial direction, a further opportunity for review before a new set of rules is finalised with the states and territories. The ultimate formulation of the rules in a more permanent instrument needs another round of scrutiny especially given the uncertainty around the impact of FS on the current support system. This process of review will also allow for harmonisation of the NDIS and Foundational Support systems in scope, potentially improving efficiency.

Recommendation 3: A second phase of consultation with draft final rules should be undertaken by the Department of Social Services or the Department of Health, Disability and Ageing, once the Foundational Supports system has been implemented. This will allow for a whole-system assessment that ensures people do not fall through gaps in the system, especially during a period of transition.

Once those rules are finalised, there should also be an ongoing process to ensure that those rules are subject to community feedback and consultation, given the many shifting elements that inform these rules (including new framework planning processes, the continued implementation of impairment notices, and the rollout of foundational supports). Given that the NDIS Review recommended a 5 year transition this is a suitable timeline for a higher level of scrutiny.

Recommendation 4: To ensure that the revised list is fit for purpose based on available evidence, ongoing reviews of the lists every 12 months for at least the next 5 years of scheme transition are recommended. Review processes should encompass internal review by DSS, and feedback or consultative phases to ensure that these systemic changes are meeting community need.

Issues experienced so far

These issues are those reported by advocates supporting people through NDIS processes. This typically takes place at the Administrative Review Tribunal (ART) and at the initial planning process. As a result, this is not an exhaustive list and there are other issues with these lists that are not detailed here.

Prohibition on Day-to-Day Living Expenses

In reflecting on the rules 9 months after implementation, one advocate said:

All parts of the list create uncertainty and fear with participants, plan managers along with Support Coordinators. Many unwilling to risk purchases thereby not accessing needed resources, added layer of administrative burden to seek approvals all round - lists aren't in essence with purpose of NDIS. [The] lists are punitive, restrictive and are creating less choice and control.

As we flagged in our initial submission to Government last year, the prohibition on Day-to-Day Living Costs has been the biggest area of concern for advocates.

Short Term Accommodation

The prohibition on day-to-day living expenses has also had an impact on the use of Short-Term Accommodation (STA), which is often used to support informal care arrangements. While STA has been identified in the past as an area where unethical providers have previously exploited participants' plans, the current restrictions on STA use are unduly impacting legitimate support needs and restricting independence, disproportionately impacting younger NDIS participants and those in rural areas.

Several advocates observed that claims for STA have grown more restrictive under the new rules. One person being supported by advocates had organised their own suitable travel and accommodation separate from their informal supports, alongside their typical support worker team, but were advised that because the travel and property could be conceived as a 'day-to-day' living expense they could not be paid out of the plan. This is an instance where the mere potential interpretation of an item as being on the 'no list' was used to justify a refusal.

The person was advised that using a full STA package from a major provider would sidestep this issue, as would being driven the same distance by a support worker, despite providing almost entirely the same service at a higher cost. Similarly, the Agency representative apologies for the disruption and noted that while this was less expensive it was how the rules were being implemented. Because this person lives in a rural area the costs involved in travel alone were simply out of reach if they had to pay out of their own pocket. We are concerned that this is a small example of the impact of less flexible rules, where people living in remote areas will experience compound disadvantage by being unable to cover costs of travel to access the supports they need, which may not be available locally.

Other advocates have also observed this pattern impacting younger people still living with parents, and note that larger STA services, particularly for younger people, can structurally replicate group homes and drastically limit their independence. By encouraging the use of these services over and above more flexible and independent options, young people attempting to exert more autonomy and independence are functionally prevented from doing so by the current narrow interpretation of the lists. This lack of flexibility fails on both sides: it leaves a person worse off compared to the previous rules by restricting them arbitrarily to

supports that poorly align with their needs, and forces them towards supports that are more expensive to the scheme at large.

Return to Country

Following advocacy from First Nations Disability Network on the transitional rules a section on cultural supports was included in the 'yes' lists – a very positive development. Advocates have also detailed how these prohibitions have prevented the use of the category in the 'yes' list for cultural supports.

A DANA member has been supporting a First Nations person who needs to live off-country to receive the disability supports they need. Efforts to arrange a supported return to country trip have also been blocked by travel costs being conceptualised as a 'holiday' in line with the 'no' list, when they are in fact a crucial support under the definition in the 'yes' list. This is another example where positive inclusions in the 'yes' list can be disrupted by the process of working through the broad prohibitions on the 'no' list, and should be removed in any path forward.

The presence of a blanket travel prohibition which could be applied in this case indicates that the section on cultural supports in the 'yes' list cannot provide sufficient protection for First Nations people. It also indicates that the 'no' list definitions were not formulated with active reference to the needs of First Nations people with disability regarding on-country travel and supports and that the addition of the cultural supports to the 'yes' list did not lead to consideration of how cultural supports might intersect with other categories on the lists.

This highlights the fundamental problem of the 'no' list, in that by virtue of creating blanket and abstract categories which are never permissible, it fails to reflect the breadth of the disabled community's potential needs, and errs on the side of denying support rather than facilitating it.

The explicit prohibition of day-to-day living expenses and travel fails to recognise the breadth of lived experience of disability, and the way in which support needs are fundamentally entwined with the day-to-day experiences (and expenses) of people with disability.

Recommendation 5: Remove the prohibition on day-to-day living expenses from the list of inadmissible support. This would vastly increase clarity, reduce costs to participants' plans and the NDIS as a whole, and increase participants' capacity to exert autonomy and independence in their daily lives.

Recommendation 6: Remove prohibitions on travel from 'no' rules, and ensure categories in the yes lists (including short-term accommodation and cultural supports) explicitly permit travel for service delivery.

Prohibition on Cosmetics

The current list includes a prohibition on cosmetic items, which only serves to stymie access to otherwise uncontroversial supports by introducing doubt and encouraging arbitrary distinctions to be drawn within support categories.

A DANA member organisation reported that they have provided advocacy to a participant seeking to access continence aids after these were deemed to be cosmetic. The person supported in that case used barrier creams and body foams for cleanliness while using the bathroom, but found that despite their use being justified by a continence assessment from an Occupational Therapist, the NDIA had struck out those items because it deemed that these particular hygiene items served a cosmetic purpose. The advocate said that this was

part of a pattern of Agency review where continence assessments were being screened for some of the above items and found requests for funding being denied. In this case, the NDIA has functionally overridden the assessment of the Occupational Therapist on the individual's hygiene needs, in order to selectively interpret which aspects of continence support could be deemed 'cosmetic' purely in order to disallow them coverage.

The presence of the cosmetic category on the 'no' list encourages NDIA staff to differentiate selectively rule key aspects of personal hygiene and continence support processes as out of scope, even where those disallowed items are integral to the overall process for which support is being sought. The underlying attitude behind the presence of this category on the 'no' list is counter to the stated goals of the NDIS to support the dignity of people with disability: by encouraging Agency staff to undermine support for personal hygiene, restrict support for continence aids, and selectively reclassify basic hygiene tasks as being unduly aesthetic and therefore essentially as being optional for those participants seeking support in these areas.

Recommendation 7: Remove the prohibition on cosmetic items in the 'no' list. This category encourages punitive 'hair splitting' which arbitrarily differentiates aspects of support activities, thereby providing added barriers for participants who require supports around hygiene and specialist personal care.

Outstanding areas of action for a 'yes' list

In our submission to the initial set of draft rules proposed last year, we outlined several additional areas that were out of step with community expectations and decisions of the then Administrative Appeals Tribunal (AAT). These issues are still outstanding and need to be addressed before we shift towards a final set of rules. These include:

Vehicles

The 'no' list maintains a prohibition on funding vehicles, despite previous decisions to fund those supports at internal and expert review.⁴ One advocate said when the lists were initially proposed:

I know there are cases where things like a motor vehicle may be funded in exceptionally rare circumstances and actually in circumstances where if you do the maths and you are familiar with the participants situation the cost saving to the scheme... the funding of a one-off motor vehicle with modifications is an astronomical saving... [The list is] actually not going to assist them in that goal of meeting those cost savings, because if a lot of these supports are taken off the list that need is still there and it just means that need is going to have to be met with a NDIS support which I think in most cases is going to be a support worker - that's going to run at a really huge demand into the already very thin markets that are available for the [...] So I think that if these changes go ahead, there is going to be a limited scope of innovation and that's going to put more demand on that very thin market.⁵

As is consistent with the above cases, this point raises the fundamentally counterproductive approach to cost under the scheme which is governing the culture of greater restriction and disallowal which is being seen under the current list system. Even where the overall cost to the scheme can be significantly lower to provide a more flexible degree of support that

⁴ Barling and NDIA [2021] AATA 4358 (24 November 2021)

⁵ DANA, Submission: Section 10 – Draft Lists of NDIS Supports <<https://dana.org.au/wp-content/uploads/2025/01/NDIS-Supports-draft-lists-DANA-Submission-2024-Final-240820-2.pdf>>, 15. See also pages 24-25

facilitates greater independence and autonomy, the current list model encourages more expensive workarounds which provide participants less control over their mobility while providing less tailored, more generic and therefore less fit-for-purpose forms of travel support.

Parenting supports

The 'no' list maintains a prohibition on general parenting programs for parents with disability. As advocates identified in our original submission on the lists:

...their kids are being taken off them unfairly by...Child Protection and by the courts because they have had no support. If they'd had support through their NDIS supports, or, in fact, if they had been on the NDIS I think in some cases they are not, then they could have kept their kids.⁶

The current attitudes to parenting supports reflect a narrow and unrealistic idea of how disability can impact daily life including parenting. Defining parenting related activities as outside of the realm of disability impact is not reflective of an evidence-based position by the Agency. Moreover, by excluding supports for parents with disability, participants who may benefit from these programs are effectively set up to fail, and functionally are being discouraged from more proactively developing their skills and support networks.

Batteries and Generators

Some people on the NDIS are reliant on a consistent power supply for life-preserving devices and temperature regulation. Several AAT cases prior to the lists detailed that, in certain circumstances, people could be eligible for batteries or generators to make sure these devices keep working in a power outage. These items are not permitted in the no list, explicitly excluded by way of being classified as a 'standard household item.' We are deeply concerned that this exclusion will leave many under threat, particularly in a changing climate.⁷ Reconciling the discrepancy between the current exclusions and the AAT decisions on these matters, by removing the prohibition on backup power sources such as batteries and generators, would allow participants to meaningfully be able to rely on the services they need.

All of the above areas would benefit from being specifically included in a 'yes' list, with an indicative list of relevant conditions detailed as a starting point to help guide users of the scheme in utilising supports.

Recommendation 8: Include provisions in a 'yes' list for Vehicles, Parenting Supports, and Home Batteries and Generators.

Standard Household Items

Other issues identified in our initial submission, including on standard household items,⁸ rent contributions and bonds⁹ are maintained and inform our submission that a single-list system detailing allowed supports is more fit for purpose than the current two-list system.

⁶ Ibid, page 29. See also: DANA submission to the DRC: Advocates Zoom In On... Child Protection Systems – 9 November 2020: [Voices of Advocacy | Disability Advocacy Network Australia](https://dana.org.au/voices-of-advocacy-disability-advocacy-network-australia) (dana.org.au)

⁷ DANA, <<https://dana.org.au/wp-content/uploads/2025/01/NDIS-Supports-draft-lists-DANA-Submission-2024-Final-240820-2.pdf>> 25; MKXX and NDIA [20-24] AATA 805 (19 April 2024).

⁸ Ibid, 15.

⁹ Ibid, 26.

In the months since the lists were implemented, the prohibition on standard household items has attracted significant attention at the Administrative Appeals Tribunal. Early interpretations of the prohibition at the Tribunal have construed that a funded support must require some adaption or modification for the particular person that uses it.¹⁰ However, this interpretation reinforces the issues with classification outlined above, by forcing participants to engage more expensive specialist supports that may be less fit for purpose and by discouraging adaptive use. As one advocate noted: “every day items can be used differently for people with Disability, and do not need to have specific modifications or expensive applications added.”

The Justice and Equity Centre submission to this Consultation recommends that in response to this issue:

“Where the Permanent Rule seeks to prevent NDIS funds being used to purchase standard items for people with disability, the relevant exclusion should be framed to only exclude those items that do not deliver a distinct functional benefit to the person with disability.”¹¹

Our submission concurs with this recommendation, as this framing reflects a more functional assessment of how supports are used by participants, and aligns more fully with the goal of providing substantive and meaningful support in the context of daily life. This functional-benefit-oriented approach would allow greater autonomy for participants, more genuine and substantive support in terms that meet individual needs, and would do so at potentially lower cost to the Agency both in terms of funded supports and management of appeals.

Recommendation 9: Redefine the exclusions of ‘standard household items’ to centre whether an item offers a ‘distinct functional benefit’ to a participant.

Finally, we also wish to note that the circumstances here are not an exhaustive list. Other organisations, including several DROs, have made further submissions detailing how these lists affect these communities. In particular we want to draw attention to Down Syndrome Australia’s submissions on Dysphasia and feeding supports, Inclusion Australia on services for one, as well as People With Disability Australia’s submissions on therapy supports.

Replacement supports

Ultimately, we hope that other changes mitigate the need for a replacement support process for most cases. Our view is that the replacement support process should not have to be the default part of getting the support that you need, and should really only be there as a measure of last resort. Further reform efforts should be directed on ensuring that people do not have to engage with the replacement supports process wherever possible.

As of March, only 1500 applications had been made for a replacement support.¹² Of those who made applications, about 60% were approved and about 40% were denied.¹³ As a result very few advocates have supported someone to go through this process thus far. Those who have, however, have found the process frustrating. Some advocates have gone

¹⁰ See Justice and Equity Centre Submission, NDIS Supports, July 2025.

¹¹ Justice and Equity Centre, “Submission to NDIS Supports rules consultation”, 25 July 2025.

¹² National Disability Insurance Agency, FOI 24/25-1532, Available at: https://www.righttoknow.org.au/request/13125/response/41355/attach/6/FOI%2024.25%201532%20Document%20Disclosure%20Log.pdf?cookie_passthrough=1

¹³ Ibid.

through the process in conjunction with an unscheduled plan review, only to find that the Agency wants to 'trade-in' those supports and reduce the overall funding package for the participant they are supporting. In one case, an entirely unrelated set of supports (in the region of thousands of dollars) was nearly taken away from a participant before advocate involvement.

To that end, we recommend the replacement supports have a similar approach to the current Assistive Technology policy and offer a similar 'low-cost low risk' approach to item purchases under \$1500. We believe, given the policy's current focus on devices replacing support workers, that this would capture many applications made for replacement supports. This process to identify a support that is otherwise not included on the lists, their replacement and only minimal requirements to prove it is as or more effective.

Recommendation 10: Provide a simplified pathway for approving replacement supports that cost less than \$1500 in plans. This should operate similarly to low-cost low-risk Assistive Technology purchases and be flexible within a plan budget (i.e. not require the trade-in of funding).

Given the need for those provisions to change to facilitate more flexible funding, there is also an opportunity to consider the suitability of rules that have been implemented regarding debts. People are not penalised for the first instance of a breach where the support costs less than \$1500. While this approach does align well with a low-cost, low-risk model above, the threshold should also be raised.

As we've detailed above the lists are uncertain, contradictory, and even good-faith interpretations or misconduct by providers can lead to non-compliance with the lists and put people in the cross-hairs for a debt. One person, supported by advocates, was advised that their service provider had an invoice rejected by the NDIA because it no longer complied with the NDIS lists. The amount in question was approximately \$15,000. They attempted to reach out to the Agency to clarify but could not find any further information.

Disability supports, as monetised through the NDIS, are expensive for the lay person. Using a disallowed therapy support, for example, could quickly blow through the current \$1500 threshold for an educational approach rather than a debt being raised in just a few weeks. Advocates also relayed how this change has increased the fear in purchasing supports, and the cumulative effects this can have how willing people are to spend their plan when they don't have the money to pay any debt that could come up.

Recommendation 11: Increase the debt threshold in the miscellaneous rules to \$5,000 and ensure people are shielded from debt proceedings when acting on advice from the NDIA.

We are confident that the proposed changes to lists and a streamlined low-cost process can ensure replacement supports only needs to be used as a last resort.

That said, we can expect further demand on this part of the NDIS to increase with the rollout of new framework plans later this year. The impact of a broader pool of funding to draw from, rather than individually constructed supports under section 34 of the Act, will increase the reliance on lists as the main tool to regulate supports. While the specifics will change based on the needs assessment rules expected later this year there will be an even greater focus on NDIS supports.

In our submission on the lists last year, we recommended that a replacement support process have broad flexibility to respond to issues including the availability of supports in rural and remote areas. The current rules however only provide a narrow set of circumstances in which a claim can be lodged, which are almost entirely related to technology and items rather than to replacement services. Few advocates responded that

they had used this process in its current form, primarily because it was so narrowly drawn. This indicates that the current definition is overly restrictive such that it is not practical for participants to engage.

Recommendation 12: Widen types of support that can be replaced, beyond individual pieces of assistive technology, to replace worker hours, including providing for circumstances where services are not practically available locally.

Current rules also do not enshrine a concrete right of review, either internally or externally. Those rules also place a prohibition on further applications for 12 months after an application is made. While most people are on so-called 'old framework' plans, issues with this are currently less severe. This is because provided that these participants, can align with a plan review or change of circumstances request, they have some scope to raise issues through the planning process and case conference. This will change with the broader rollout of new framework plans and as these become a larger proportion of the participant base overall. Ensuring an appropriate system is in place prior to this shift in demographics will reduce pressure on the system and on participants, and will provide greater transparency.

Recommendation 13: Make replacement support decisions a reviewable decision under section 99 and section 100 of the *NDIS Act* for the rollout of new framework plans. Given this requires legislative change, introduce an internal review process within the rules in the meantime.