



Submission: Consultation on the NDIS Support Rules (section 10)

27 July 2025

About the Submitter

JFA Purple Orange is an independent, social-profit organisation that undertakes systemic policy analysis and advocacy across a range of issues affecting people with disability and their families.

Our work is characterised by co-design and co-production, and includes hosting a number of user-led initiatives.

Much of our work involves connecting people with disability to good information and to each other. We also work extensively in multi-stakeholder consultation and collaboration, especially around policy and practice that helps ensure people with disability are welcomed as valued members of the mainstream community.

Our work is informed by a model called *Citizenhood*.

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1. Recommendations

We recommend:

Recommendation 1: The Federal Government should not proceed with entrenching prescriptive lists of NDIS supports and exclusions in the final Section 10 rules. Instead, it should develop (in co-design with people with disability) a clear set of principles to guide decisions about what constitutes a reasonable and necessary funded support, given each individual's needs and circumstances. These principles should be embedded in the NDIS rules, providing both clarity and flexibility, and should replace the current lists-based approach.

2. Introduction

As an independent, social-profit organisation that undertakes systemic policy analysis and advocacy on issues affecting people with disability and their families, JFA Purple Orange has a strong interest in the National Disability Insurance Scheme (NDIS). We are committed to ensuring the NDIS delivers the best outcomes for participants, while strengthening the Scheme's sustainability. We acknowledge the need to improve how the Scheme operates and appreciate the steps being taken to reform the NDIS.

However, it is critically important that any reforms uphold the NDIS's original intent and promise, as envisaged in its founding principles. We remain concerned about the approach to implementing Section 10 of the *NDIS Amendment (Getting the NDIS Back on Track No. 1) Act 2024*. In our August 2024 submission, we raised serious reservations about the proposal to use prescriptive lists of "NDIS supports" and exclusions. That initial legislative change was introduced without co-design or prior consultation with NDIS participants, and it was unclear to what extent alternative approaches were considered.

Since then, the Government proceeded to establish transitional lists of supports in October 2024, and has been seeking further input on how these rules should operate. We acknowledge that the current consultation process is more extended and includes accessible materials, reflecting a response to previous feedback that the original consultation was too rushed. Nonetheless, we strongly believe the Federal Government should fundamentally rethink its approach to Section 10. There are better ways to clarify what the NDIS will fund than static lists.

Section 10 refers to "rules," not lists – meaning it is possible to design the rules in a form other than exhaustive lists, while still providing clarity and legal certainty. We acknowledge the Discussion Paper's objection to a principles-based approach, but in this submission we will re-assert, with further clarity, why the lists approach is a folly. A rigid list based approach, we will argue, is one of the main reasons big systems fail.

3. Problems with a lists based approach

The implementation of blanket lists of permitted and excluded supports on a Scheme-wide basis prevents proper consideration of what supports will achieve the best and most cost-effective outcomes for each participant's individual needs and circumstances. Under a lists approach, it is very likely that some participants will be prevented from accessing essential supports solely because those supports are on an exclusion list, even if they would be reasonable and necessary in that person's situation.

Conversely, other participants may receive supports simply because they appear on an "allowed" list, without adequate consideration of whether those supports are actually needed or optimal in their case. This could especially occur in high-pressure planning environments. The Section 10 "substitution" process which allows requests to swap an excluded item for an allowed alternative is a cumbersome, restrictive mechanism introduced to mitigate the rigidity of the lists. At best, that process makes the lists approach slightly less harmful than it otherwise would be, but it remains an inadequate workaround. This has already been evident in practice: for example, participants wishing to purchase a low-cost item that is technically "not allowed" have had to navigate an onerous replacement request, adding red tape for both participants and the NDIA.

An unintended consequence of the lists is that NDIA planning may become a "tick-and-flick" compliance exercise rather than a person-centred, outcomes-focused process. There is a risk that planners simply check supports against the allowed list, and participants too might treat the lists as a shopping catalogue. Such list-centred planning undermines the quality of decision-making and ultimately jeopardises Scheme sustainability. It encourages a transactional view of the NDIS – focusing narrowly on what can be purchased – rather than a transformational approach aimed at achieving meaningful life improvements. This could further erode the Scheme's ability to support long-term outcomes, which are crucial for both participants' wellbeing and the Scheme's financial sustainability.

No set of lists can ever be exhaustive. The range of potential disability supports is vast and

constantly evolving. Inevitably, new or unique supports will arise that do not fit neatly into the predefined categories. This means NDIA staff must continually interpret which list (if any) a given item falls under, leading to inconsistent decision-making and widespread participant confusion. Many participants and providers have already reported confusion about what certain listed terms actually include. For example, as the Discussion Paper notes, terms like “standard household items” and “day-to-day living costs” have proven ambiguous. A person with sensory disability might benefit from noise-cancelling headphones to reduce anxiety and participate in the community, but it is unclear whether such headphones are considered a disallowed “household electronic” or could be justified as a disability-related aid.

The Government could attempt to continuously update the lists to specify every possible item (e.g. explicitly adding noise-cancelling headphones to an allowed category), but this would result in an endless, unwieldy process of naming items. No sooner would the lists be updated than new gaps or ambiguities would emerge; a magical pudding of ambiguities. This piecemeal approach is not a sustainable way to provide clarity.

Crucially, the “transitional” nature of these lists may become effectively permanent. History demonstrates that temporary measures, once implemented, tend to become entrenched. The Section 10 transitional rule was introduced in October 2024 with the intention that it be revisited after further consultation, which is now occurring. We raised this concern last year, and it remains salient: nearly a year on, the Scheme is still operating under the lists, and the current consultation implies that a lists-based model is still the assumed basis for “final” rules. It is imperative not to let a hasty solution made under pressure solidify into the long-term policy default.

It is also questionable whether the Section 10 lists will achieve their intended cost containment goals. We understand the Government feels it is under political pressure to ensure the Scheme’s financial sustainability. However, there is little evidence that restricting funding categories via lists will significantly reduce costs, especially compared to other drivers of cost escalation. As we noted previously, much of the waste or inefficiency in the

NDIS has been attributed to immature NDIA systems, inconsistent decision processes, and inadequate oversight of service providers. Blanket exclusions do nothing to address those issues of fraud, misuse, or poor value services.

Early feedback from the disability community suggests the lists may inadvertently increase costs in some cases. Stakeholders have pointed out that the current rules sometimes stop participants from accessing innovative, low-cost solutions that could meet their needs more cheaply than traditional supports. For example, as noted in the Discussion Paper, if a simple household product or off-the-shelf smart device could substitute for a more expensive “disability-specific” support, the lists might prohibit funding the cheaper item on the grounds that it is a personal cost – forcing the participant to use their budget on costlier formal supports or go without. This kind of perverse outcome is already a real concern. Similarly, by excluding certain categories of ordinary living expenses entirely, the Scheme may miss opportunities to fund preventative or capacity-building supports that save money in the long run. A one-size-fits-all list can cut out low-cost, high-impact investments, only to see higher costs emerge elsewhere.

The experience since the lists’ publication has revealed that the lists approach can create significant confusion and anxiety among participants. The Department’s own summary of feedback notes that while some people found the idea of clearer rules helpful, many others found the lists too restrictive and unclear, particularly regarding items like household goods, animal-assisted interventions, and everyday living costs. The NDIA was forced to issue multiple clarifications after the fact, because the initial lists were not easily understood by all. This reactive clarification underscores that the approach is not inherently user-friendly or transparent. By contrast, participants consistently say they want clarity and flexibility: an understanding of what can generally be funded, but with room to have their personal circumstances taken into account. The lists-only method has so far struggled to deliver that balance. For these reasons, we urge the Government to reconsider, despite its stated refusal, the lists mechanism itself, rather than simply refining which supports go on which list. We submit that a more principles-based approach, developed in genuine

partnership with people with disability – would better achieve the goals of clarity, fairness, and sustainability.

4. A Principles-Based Alternative to Lists

We respectfully propose that the Section 10 rule be recast from a lists-based scheme into a clear, principles-based framework for determining fundable supports. In essence, instead of trying to pre-emptively enumerate every allowable or disallowed item, the rules would articulate a set of governing principles or criteria to guide decisions about what the NDIS will fund. Such an approach would provide clarity on the boundaries (through well-defined principles), while retaining the flexibility to consider individual circumstances. It would align with the NDIS Act’s existing requirements (the “reasonable and necessary” criteria and the general supports purpose) but give them sharper definition in the rules without resorting to rigid lists. Importantly, this approach could be implemented under Section 10 as rules (not lists) that carry the same authority in law, thereby still giving the NDIA clear funding powers that are not open to legal challenge, but in a less prescriptive form.

To be successful, a principles-based model must be co-designed with people with disability, their families, and other stakeholders. We are pleased to see the Department engaging in more consultation now, and we strongly encourage a genuine co-design process to develop the content of any new rules. Notably, multiple disability representative organisations have echoed the call for a principles-driven approach in place of lists. For example, the Disability Advocacy Network Australia (DANA) argued in its submission that the draft lists were “completely out of step with the spirit and intent of the NDIS”¹ and that a consistent use of principles would better handle the complexities of support needs. People With Disability Australia (PWDA) likewise recommended replacing the lists with clear NDIA-issued guidance for support categories alongside the existing reasonable and necessary test, rather than

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

hard-coded lists.² This broader sector support for a principled approach reflects a common concern: the need to preserve flexibility and personalisation in the NDIS, while still improving consistency and understanding.

A well-designed principles-based rule can provide **overall clarity and budget certainty** without micromanaging individual line items in participants' plans. We note that under the amended Act, the NDIA is moving toward setting plan budgets in more flexible ways (for instance, describing total plan funding and broader categories rather than line-by-line approved items). This creates an opportunity: if each participant has an overall *reasonable and necessary* budget for their plan (determined by fair and robust planning methods), then principles can govern what choices the participant makes within that budget. The role of Section 10 rules should be to outline the characteristics that any **NDIS-funded support** must have, or must not have, to be considered valid. In other words, instead of "You can buy X, Y, Z but not A, B, C," the rules would say "Your NDIS funds must be used on supports that meet the following principles... (and cannot be used on supports that violate these principles)."

The participant, in collaboration with their planner, would then have discretion to select specific supports that fit their life, guided by these principles. This approach would inherently account for individual needs and the "grey areas" between obviously included or excluded supports, because the principles provide a framework for judgment rather than a blunt yes/no for each possible item. It is an approach focused on *decision-making consistency* rather than an inflexible catalogue of supports.

From a participant's perspective, principles-based rules can still offer clarity. The principles would be clearly enumerated in the rules, and the NDIA would inevitably develop operational guidance and precedents on how they apply (just as it has interpretive materials for the current lists). Over time, as thousands of planning decisions are made, a rich body of

² <https://www.miragenews.com/draft-lists-of-ndis-supports-1301811/>

examples would inform what is typically allowed or not under each principle. This could be captured in user-friendly guidance (“Would we fund it?” style resources), providing the transparency and predictability people seek. The difference is that there would always be an avenue to consider individual context: if a participant can make a strong case that a particular support meets the principles (even if it’s unconventional or normally considered a personal cost), the NDIA could fund it; especially since doing so would not increase the person’s overall budget (it would just be a different use of their fixed funding).

Conversely, if someone proposes to use their funds on something that clearly violates the principles, it would not be allowed. This way, participants maintain choice and control within fair boundaries, and planners maintain a degree of professional discretion and accountability. Importantly, this approach encourages conversations about outcomes and value, rather than a simplistic “allowed vs not allowed” checkbox. It keeps the focus on *why* a support should be funded (does it help the person in meaningful ways consistent with the NDIS goals?) instead of what label the support has.

We propose that each funded NDIS support should be required to satisfy one or more of the following four core principles (and conversely, supports that clearly breach these principles would not be funded). These draft principles are grounded in fundamental Scheme values and priorities, and they also inherently address the key concerns that the lists aim to deal with (such as ensuring supports are disability-related, not duplicative of other systems, represent value for money, and are safe and legal). A support should not be allowed if it *unduly undermines* any of the principles. Most valid supports will align with multiple principles, while something really inappropriate would likely fall foul of one or more.

4.1. Principle 1: Support Advances or Maintains Participant's Independence, Enhances Choice and Control

Principle 1: The support advances or maintains the participant's independence, and enhances the participant's choice and control over their own life.

Enabling personal independence and choice is a foundational goal of the NDIS and a core principle of the NDIS Act. NDIS-funded supports should assist participants to move forward in their lives by building skills, autonomy, and self-determination, rather than keeping them in a state of dependency or segregation. What constitutes “independence” or an exercise of choice will vary greatly from person to person, so decisions must be contextual. A one-size-fits-all list of approved supports cannot account for these nuances. For instance, one participant might achieve greater independence through assistive technology and minimal personal care hours, while another might need intensive support at first to build capacity for future independence. A rigid list may approve or deny supports without recognizing these trajectories. This principle ensures that supports are judged by their impact on the person's autonomy and control, rather than by arbitrary categories. It also guards against funding things that inherently diminish independence or choice.

For example, a support that unnecessarily institutionalises or limits a person (such as placement in a new segregated setting) would conflict with this principle and thus be excluded, even if it might appear “disability-related” on paper. Conversely, if a mainstream item or service would greatly increase a person's independence, it could be considered for funding even if it's not traditionally a “disability” support, provided it meets the other criteria.

We know in consultations there has been much discussion of how the current lists explicitly exclude smart phones and smart watches as “ordinary” items. It is a useful illustrative example. For some participants, a smartphone or smart watch is a critical enabling tool, effectively functioning as assistive technology. It can allow a person to communicate, control their home environment, receive health and safety alerts (e.g. fall detection,

medication reminders), navigate the community, and manage daily tasks independently. A smart device in such instances is not a mere luxury: it is a gateway to choice and control.

Under the principles approach, funding such a device *could* be allowed if it's demonstrated to substantially increase the participant's independence (Principle 1) and perhaps also meets other principles like value for money. By contrast, the blanket exclusion in the lists does not account for these individual circumstances. The result of the lists rule is often counter-productive: participants who cannot get a modest piece of technology that would help them be independent end up requiring more paid support hours, which is both more costly and less empowering. Applying Principle 1 would lead to smarter, more individualized funding decisions, whereas the lists approach has already shown instances of denying supports that clearly promote independence, undermining one of the NDIS's core purposes.

4.2. Principle 2: Support Advances Participant Into Meaningful Roles in Mainstream Community Life

Principle 2: The support facilitates the participant's social and economic participation by advancing them into meaningful roles in mainstream community life – including opportunities for employment, education, community, civic and cultural engagement – and does not involve placing the person in a new segregated or exploitative setting.

The NDIS was envisioned not just as a funding mechanism, but as a means to help people with disability participate fully in Australian society. Improving social and economic participation is explicitly one of the NDIS Act objectives. This principle directs that NDIS funds should be used in ways that help participants build relationships, engage with their community, enter employment or education, and generally take up valued roles in mainstream life. It also explicitly warns against funding supports that, even if well-intentioned, lead to further segregation (for example, creating or reinforcing separate, disability-only activities that isolate participants from community life).

By applying this principle, planners would consider whether a support is truly helping the person integrate and advance in society, or whether it might inadvertently “keep them in a bubble.” This principle also counters a known issue in current practice: the NDIA at times has funded supports that do *not* effectively foster genuine participation; often because of a misapplication of the idea of disability related need. For example, it has been observed that some participants who express a desire for community involvement (such as joining a local art class or sports club) are instead steered into one-to-one sessions with a therapist or support worker in that domain, on the grounds that the latter is a “disability support” whereas the mainstream activity is considered an ordinary cost . Such decisions can be shortsighted.

While a tailored therapy session might address certain immediate skills, it often doesn’t provide the social engagement or real-world integration that a mainstream activity would and it’s usually far more expensive. Over-reliance on specialist segregated services when a mainstream alternative is available is a long-standing concern. A principles-based rule would push back against that tendency: if a mainstream option can achieve the participant’s goals for inclusion (with appropriate support if needed), it should be favored, as it clearly better meets Principle 2.

For example, if a participant wants to improve their fitness and social connections, they could either get funding for a personal trainer (1:1 sessions, disability support) or to join a local gym with an accessible group class. Under the list approach, gym memberships or mainstream classes might be labeled “ordinary living costs” and denied funding, whereas a personal trainer or exercise physiologist might be funded as a therapy. However, attending the local gym class would likely increase the participant’s community presence and natural social network, contributing to long-term inclusion and health – fulfilling Principle 2 – and it might cost the Scheme less than ongoing 1:1 sessions.

By rigid rule, the lists don’t accommodate this nuance, but with principles, an NDIA planner could agree to the mainstream class fee if it demonstrably advances the participant’s inclusion and personal goals. Over time, supports that build a person’s informal networks

and skills can reduce reliance on paid supports, which is a win-win for participant outcomes and Scheme costs. Principle 2 works hand in hand with sustainability: supporting community participation leads to improved well-being and often a decrease in formal support needs in the long run. The lists approach, by contrast, tends to encourage short-term, isolated solutions and could promote learned helplessness or ongoing dependence on paid support in segregated settings, which is neither desirable for participants nor sustainable for the Scheme.

4.3. Principle 3: Support is Value for Money and not Manifestly Unreasonable

Principle 3: The support represents value for money in the context of the participant's plan and is not manifestly unreasonable relative to the benefits it delivers. In considering value, a support that is expected to reduce the need for other, more expensive supports (either now or in the future) may be deemed reasonable even if it has upfront costs.

Value for money is already one of the legislated criteria for NDIS funding, but this principle would foreground a plan-level and long-term perspective on value. Rather than focusing on the cost of each item in isolation, the question is whether a support is a prudent use of funds within the participant's overall budget and whether it contributes to containing costs by offsetting other supports. The lists approach attempts to enforce value by banning whole categories (under the assumption that they are personal or not effective), but this can be too blunt. Principle 3 allows for a more nuanced assessment: an expensive item might be justified if it significantly improves outcomes and reduces future costs, whereas a cheaper item might still be unjustified if it provides negligible benefit or duplicates other funding.

The aim is to ensure each dollar is well spent for that individual's goals, rather than enforcing uniform rules that might save money in one case but waste money in another. This principle also speaks to a concern raised by many: consistency and fairness. The Government and community rightly want to avoid wildly inconsistent plans where two similar individuals get very different levels of support. However, consistency should not be misconstrued as giving everyone the same set of supports. True consistency is about

applying the same decision criteria to each case. Under a principles framework, every participant's requested supports would be tested against value for money (and the other principles) but the outcome may differ because each situation differs. This is appropriate and expected in a personalised scheme. In fact, trying to standardise supports via lists can create false equivalences and injustices, because no two participants' needs are exactly the same.

Emphasizing value for money within individual context ensures fairness without rigidity. It also might encourage innovation: if a participant finds a creative solution that achieves an outcome cheaper than standard methods, the NDIA could approve it on value-for-money grounds, even if it's unconventional. Under strict lists, there is little room for such innovation. The current excluded list bars the NDIS from paying for rent or other housing costs, viewing them as ordinary living expenses. On its face, that makes sense, as the NDIS is not meant to replace personal income or mainstream housing assistance. However, consider a scenario where a participant could safely and happily live in a shared house arrangement with a housemate who provides some informal support in exchange for the participant contributing to rent or board. If the NDIS were allowed to fund a portion of that arrangement (e.g. a stipend to a host or covering some rent difference), the participant might avoid needing 24/7 support staff or a group home placement. This can dramatically reduce paid support hours and costs, while also giving the person a more typical living situation.

Because the rules flatly exclude rent, the NDIA often defaults to funding Supported Independent Living (SIL) in group homes, which in many cases costs significantly more and may offer a poorer quality of life. A principles-based approach could handle this differently: funding housing-related costs would normally *not* meet Principle 3 unless it clearly enables a substantial saving in support costs or a markedly better outcome. In the shared house case, there is a strong value argument (less formal support needed, more independence). The planner could approve an innovative arrangement as value for money, whereas under the list it would be disallowed out of hand.

This illustrates how Principle 3 could unlock cost-saving innovations that a rigid exclusion currently blocks. It's important to note that applying this principle doesn't mean anything goes; it must still be within the participant's overall budget and reasonable. For instance, the NDIA would still ensure that any support is provided at a reasonable cost relative to alternatives. We are not advocating paying for off-the-line luxury items when a standard alternative achieves the same result. What Principle 3 does is allow a broader view of costs and benefits, encouraging solutions that yield the best outcomes per dollar over time. In contrast, the lists approach tends to foster short-term or siloed thinking by funding what falls in the right category even if it's not truly cost-effective, and by rejecting what falls outside even if it might save money in context.

4.4. Principle 4: Support is Legally and Ethically Acceptable

Principle 4: The support is legally and ethically acceptable: it must not be unlawful in Australia, and it must not be likely to cause harm to the participant or others beyond what is a reasonable dignity of risk.

This principle addresses concerns that have been raised about ensuring NDIS funds are used responsibly and do not facilitate abuse, fraud, or harm. In public debates, there have been anecdotes of NDIS funds allegedly being spent on inappropriate items. The lists approach responded by explicitly naming things like alcohol, tobacco, gambling as non-NDIS supports. We agree that NDIS money should not fund illegal or overtly harmful purchases, and Principle 4 encapsulates that safeguard in a general way. By embedding this principle, the rules would maintain a prohibition on clearly unacceptable uses of funds.

We emphasize that in applying Principle 4, the concept of "dignity of risk" must be respected, which means participants, like all adults, are allowed to take some risks and make choices, but the Scheme should not bankroll something that is foreseeably dangerous or has no redeeming benefit. This principle would exclude, for instance, paying for recreational drugs or reckless activities, while still allowing reasonable risk in pursuit of growth (like trying a new activity with proper support). It aligns with the existing idea that

NDIS supports should not cause harm and should be safe. By including this in the principles, we ensure that moving away from lists does not open the door to misuse of funds on frivolous or dangerous things.

In our view, any support funded should meet at least one of Principles 1–3 **and** not violate Principle 4 or undermine the other principles. This layered check provides a robust filter against misuse. Notably, Principles 3 and 4 address much of what the excluded lists cover while Principles 1 and 2 address what the included supports should achieve. Together, they create a balanced framework. The NDIA could develop detailed guidelines under each principle with examples, much as it attempted with the lists, but these guidelines would be interpretive, not absolute dictates, allowing flexibility. Over time, as planners apply these principles, a set of precedents and norms would emerge. This would enhance consistency and transparency: participants could refer to published guidance on how principles have been applied in various cases, which is far more informative than the name of an item on a list. Furthermore, because principles would be applied within the context of a participant's fixed plan budget, planners can afford to err on the side of the participant's preference in grey-area cases without fear of ballooning costs. If a support choice is a bit unconventional but arguably meets the principles, approving it doesn't increase the plan cost, it just allocates the budget differently, and can be evaluated at plan review for its effectiveness.

This dynamic use of flexibility can actually make the Scheme more sustainable: it fosters personal ownership and responsibility, as participants, knowing they have a set budget, will prioritise what truly matters to them. It also means the NDIA can hold providers to account if they exhaust funds on low-value supports, because the focus is on outcomes achieved per plan. A principles-driven approach can marry accountability with flexibility, whereas the lists approach currently delivers neither optimal accountability, since people can still find ways to misuse funds, within allowed categories, nor meaningful flexibility.

We recognise that shifting to a principles-based model would be a significant change in approach, and it may initially cause some uncertainty or anxiety among participants accustomed to more granular rules. It will be essential to manage this change carefully:

through clear communication, guidance, and support during planning conversations. Over the long term, however, we firmly believe that establishing clear principles will best serve participants and the Scheme. Participants will have greater freedom to pursue the supports that genuinely make a difference in their lives, within fair parameters, and the Scheme will benefit from more creative, cost-effective solutions that emerge from person-centred planning. It will also refocus the narrative of the NDIS on the outcomes we want to see rather than on policing shopping lists. This focus on outcomes and principles can actually enhance public confidence in the NDIS: it shows that funds are used for purposeful, life-improving ends, not just for a checklist of items.

Recommendation 1: The Federal Government should not proceed with entrenching prescriptive lists of NDIS supports and exclusions in the final Section 10 rules. Instead, it should develop (in co-design with people with disability) a clear set of principles to guide decisions about what constitutes a reasonable and necessary funded support, given each individual's needs and circumstances. These principles should be embedded in the NDIS rules, providing both clarity and flexibility, and should replace the current lists-based approach.

5. A Systems Perspective: Section 10 Lists as an “Accountability Sink”

Beyond the practical concerns discussed, it is useful to consider the Section 10 lists through the lens of cybernetics and systems governance. Recent analyses of large systems suggest that mechanisms like the NDIS support lists can function as what economist Dan Davies calls “accountability sinks.” According to Davies’ research, an accountability sink is a structure in which decision-making is effectively delegated to a complex rule-book or procedure, with the result that it becomes impossible to pinpoint responsibility when mistakes or poor

outcomes occur.³ The system's design absorbs or obscures accountability. This concept is relevant to the NDIS Section 10 approach.

By codifying funding decisions into an impersonal list of allowed and disallowed items, the mechanism dilutes personal accountability for those decisions. If a participant is denied a support that would truly benefit them, the frontline staff can say, "It's not on the list, so my hands are tied." Conversely, if a questionable support is approved simply because it appears on the allowed list, even if it might not be appropriate in context, the decision-maker can similarly deflect responsibility: "That's what the rules permit." In either case, the outcome for the participant might be negative, but no individual or agency feels answerable. The "system" is blamed. The decision disappears into a bureaucratic black box.

This is emblematic of an accountability sink, where rules substitute for judgment in such a way that accountability for outcomes evaporates. Why does this matter? It matters because when accountability is diffused, learning and improvement are stifled. In a well-functioning system, especially one as complex as the NDIS, feedback loops are essential: planners and policy-makers need to learn from cases where the outcomes were poor or the decisions didn't make sense, and then adjust practice or rules accordingly. But if every decision is justified by "the list," the feedback loop is broken. Participants have limited avenues to challenge or appeal because the issue is a matter of rule, not discretion. Planners have little incentive to think outside the box or advocate for a participant's unusual needs, because their performance is measured by adherence to rules.

Over time, this can lead to a kind of bureaucratic paralysis or systemic inertia – the system keeps churning out decisions, some of which "no one likes" or that serve no one's interest, yet no one within the system feels empowered to change the underlying process. Davies notes that in many large organisations, such accountability sinks lead to outcomes that not

³ <https://press.uchicago.edu/ucp/books/book/chicago/U/bo252799883.htm>

even the system's architects intended or desire. There is a risk of the NDIS becoming such a machine, an "unaccountability machine", if it relies too heavily on rigid, centralised rules in lieu of human-centric decision-making.

From a cybernetic perspective, drawing on the work of thinkers like Stafford Beer, a healthier approach to system design is feedback-rich and accountability-first. That means creating structures where front-line decisions are guided by principles and real-time information, and decision-makers are accountable for interpreting and applying those principles wisely. In the context of NDIS supports, a principles-based framework inherently demands that NDIA planners exercise judgment and provide justification: they would need to explain how a requested support meets (or fails) the principles, and that rationale could be reviewed or questioned. This maintains a line of accountability because it is clear who decided and why. If a poor decision is made, it can be traced and addressed (through review processes, supervision, or training), and the principles or guidance can be refined if needed.

In contrast, under a list, the rationale is often just "rule says no." There is less room to examine why that rule might not fit the case or whether the rule itself is flawed, because the decision-maker's scope to deviate is virtually nil. The accountability is shifted upward to the rule itself, but a rule cannot defend or adapt itself; it is static until changed from on high. This makes the whole system less responsive to ground-level reality. The NDIS has already seen an example of this with the need to create a "replacement supports" list to patch the rigidity of the initial lists. While this was an acknowledgment that the first set of rules was too inflexible, but the fix was to add another layer of rules, increasing complexity and possibly confusion.

In a cybernetic sense, the system is becoming more complicated, but not necessarily more adaptive. It is also worth noting that when accountability is obscured, trust erodes. Participants encountering the lists often feel they are engaging with a faceless algorithm rather than a supportive agency. They might feel powerless, which undermines the very ethos of choice and control. On the other side, NDIA staff may feel disempowered as professionals, reduced to enforcers of rules rather than problem-solvers. This dynamic

can corrode morale and the quality of service delivery.

In the NDIS context, the “black box” would be a situation where participants can’t understand why their plan looks the way it does because “it’s just the rules”, and even NDIA officials struggle to navigate the tangle of lists and exceptions. This is not what we want for a Scheme that is fundamentally about tailored support and empowerment. By applying a systems thinking lens, we strongly suggest that the Government be wary of creating an overengineered rules machine that loses sight of individuals. The Section 10 lists approach, especially if made permanent, could inadvertently institutionalize an unaccountable mode of operation.

In contrast, a principles-based approach, combined with robust training, oversight, and participant involvement, would keep the system’s users and administrators, accountable and engaged in continuous learning. It would transform Section 10 from a compliance exercise into a governance framework that asks at each decision: “Is this support the right thing for this person, and does it align with the Scheme’s goals and rules of thumb?” That question inherently carries accountability, someone must answer it, rather than deflecting responsibility to an impersonal list.

We offer this analysis to illustrate that the method by which policy is implemented has deep implications for the culture and efficacy of the NDIS. We urge policymakers to consider not just the immediate political or financial factors, but also the long-term system dynamics. A Scheme that is flexible, feedback-responsive, and accountable will likely outperform one that is rule-bound and rigid in terms of participant outcomes, cost-effectiveness, and public confidence. The NDIS was meant to be a pioneering social insurance scheme. Let it pioneer smart policy design as well, rather than falling into the trap of bureaucratic over-regulation. In designing the final Section 10 rules, we have an opportunity to avoid creating an accountability sink and instead create a vessel of shared accountability, where participants and the Agency work together within principled guidelines to achieve the Scheme’s aims.

6. Conclusion

Thank you once again for the opportunity to contribute to this important consultation. We remain hopeful that the feedback from participants, families, and advocates will be taken on board to refine the approach to Section 10 in a way that strengthens the NDIS for everyone. JFA Purple Orange stands ready to assist in any further co-design processes or working groups to develop the principles and practical guidance proposed in this submission. We believe that by working collaboratively, the Government and the disability community can co-create a solution that provides clarity on NDIS funding decisions without sacrificing personalisation or fairness. This would truly get the NDIS “back on track” in line with its original vision.

We are available to discuss the ideas presented in this submission in more detail. Please do not hesitate to contact us if we can provide further information or clarification. To arrange a discussion, you can reach out to Tracey Wallace, Strategy Leader of JFA Purple Orange, on (08) 8373 8326 or via email at Traceyw@purpleorange.org.au.