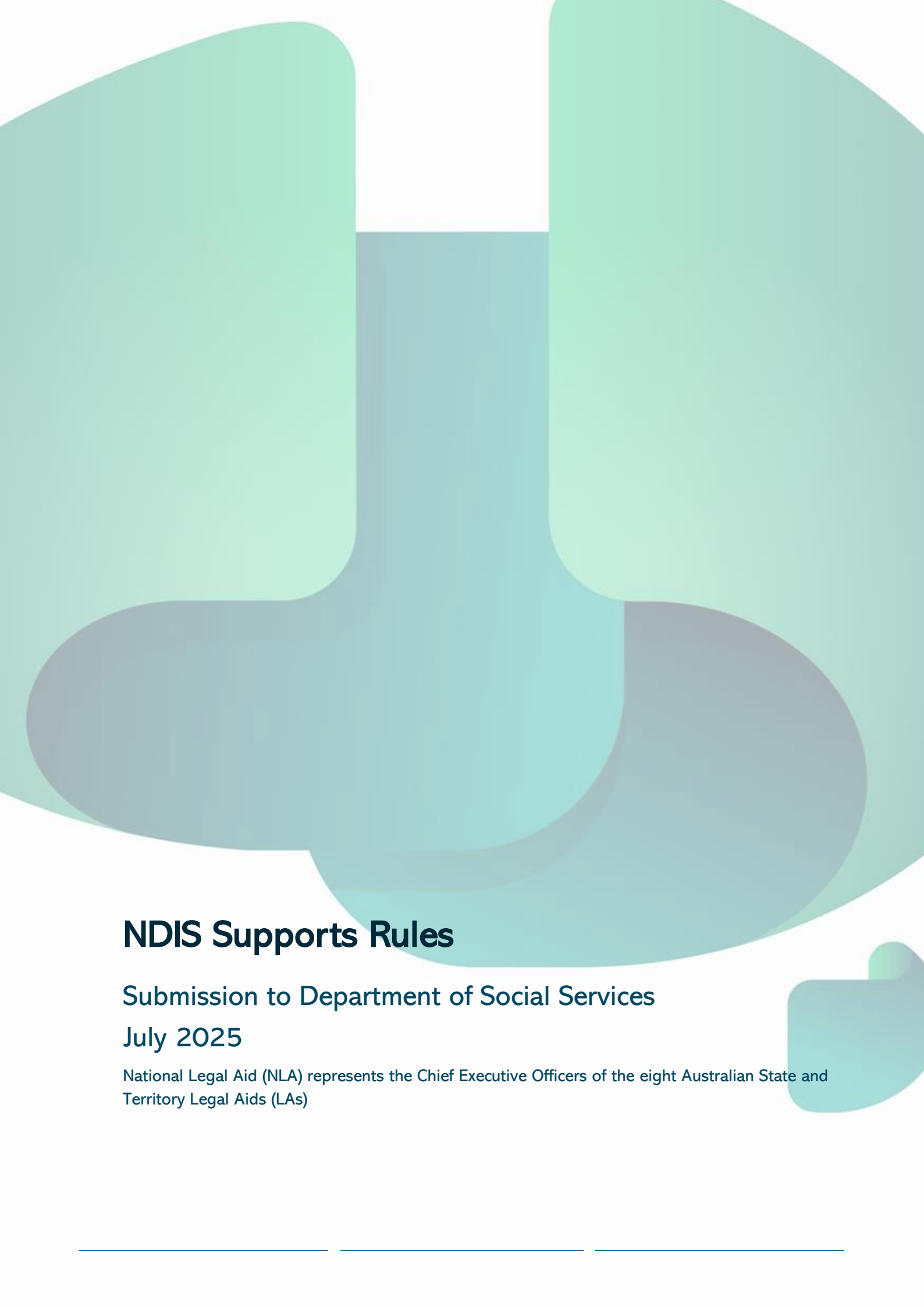




NDIS Supports Rules

Submission to Department of Social Services

July 2025

National Legal Aid (NLA) represents the Chief Executive Officers of the eight Australian State and Territory Legal Aids (LAs)

Acknowledgement of Country

National Legal Aid recognises the traditional custodians of the land on which we work and live. We acknowledge that sovereignty was never ceded and the struggle for land rights and self-determination is ongoing.

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Executive Summary

National Legal Aid (NLA) welcomes the opportunity to provide feedback on the NDIS Supports rules.

NLA represents the directors of the eight state and territory Legal Aids in Australia. Legal Aids support clients with disability to navigate the NDIS, including provision of legal advice, information and representation, particularly for those appealing NDIS decisions at the Administrative Review Tribunal.

NLA has concerns about the NDIS Supports rules and the complexity and inconsistency in how the rules operate, which affect all stakeholders, including clients, advocates, NDIS lawyers and NDIA staff.

We note that our clients may receive incorrect information from Planners, Plan Managers, and/or Support Coordinators, which may lead them to think a support cannot be sought or claimed when it can. Further, the possibility of a debt being raised against Plan Managers tends to make them quite conservative in interpreting what will be funded.

If clients cannot see what they need funded in the description of the supports in the NDIS Supports rules, they may believe it cannot be funded when the intention is for the supports list to not be exhaustive. We also see the NDIA, Plan Managers, Support Coordinators, and others similarly rely on the descriptions of a support category rather than approaching it as a non-exhaustive list.

Further detail is outlined below in response to the consultation questions.

How well do you understand the NDIS Support rules?

Legal Aid legal practitioners have a very good understanding of the NDIS Supports rules.

However, in many cases, the clients we support may not have engaged with the support lists at all or might not know how to describe a support in a way that reflects the language of schedule 1. Not knowing the language of the NDIS Supports rules can place participants at a disadvantage and result in supports being refused.

What would help make the rules easier to understand?

NLA recommends the following changes to help make the rules easier to understand:

- Ensure the included and excluded items on the two schedules are consistent with existing support rules. For example, no one item in schedule 1 (inclusions) matches what Supported Independent Living (SIL) provides, nor does it match the language used by the Agency, including the language in their SIL Operational Guideline and in NDIS plans.
- State up front that the support lists are not exhaustive in either direction, and that absence from a list does not determine whether a support will or will not be funded. Although the lists use the language “includes the following:”, indicating that they are non-exhaustive, in practice the NDIA tends to follow the lists closely. Plan Managers and Support Coordinators may similarly be conservative in their interpretation.
- Reduce ambiguity by using the same labels and headings throughout where descriptions are similar, so that people can compare whether items are likely to fall within inclusions or exclusions. For example, tablets appear in Item 2 of Replacement supports, while communication equipment/devices appear at Item 11 of Schedule 1 inclusions list and tablets appear again at Item 4 of Schedule 2 exclusions list. This makes it difficult for a participant to understand how something might be included or excluded as an NDIS support.
- Increase simplicity for users by moving away from a two-list system of what is and is not funded, to having a single list with items grouped by topic; e.g. mental health related supports. A single list with items grouped by topic would be a format suitable for fact sheets/publications/Operational Guideline/etc.
- Insert a clear user guide (include a plain-English guide for participants and a detailed guide for practitioners) about how to read the related lists to help with understanding. Navigating to the legislation is difficult and even finding a link on NDIA website is challenging. A good example is the [Social Security Guide](#) which has a clear user guide with examples and references to the correct section of the *Social Security Act and Social Security (Administration) Act*. We would recommend, as with the Social Security Guide, that an NDIS Supports rules user guide be highly scrutinised, well referenced, updated regularly, and refer to relevant case law (even if the case does not support the NDIA’s preferred decision). We note that Operational Guidelines have been challenged more than once for being inconsistent with the Act.

How have the lists of NDIS Supports helped to know what the NDIS can and cannot fund?

NLA finds the lists of NDIS supports to be confusing for participants and planners, rather than bringing clarity as to what will or will not be funded.

As indicated above, there is a misconception that a support must be described on the 'inclusions' list to be eligible for funding, even though this is not the case. When Legal Aid advises clients that certain items will be funded, they sometimes receive conflicting advice from their plan manager. Moreover, NDIA lawyers and staff will refer in a general sense to the 'exclusions' list when refusing a support or advising participants on what will/will not be funded. In many cases, we have seen a lack of explanation/specificity when suggesting something is not an NDIS support. This makes it difficult for clients to understand decisions.

What have clients found hard about using or understanding the lists for supports that are and are not NDIS supports?

A key concern for NLA is the lack of nuance to the lists or understanding of individual circumstances and experience of disability. Key examples to illustrate this are provided below.

- Similar items are treated in different ways by different lists. For example, Tasmania Legal Aid currently has a case before the Guidance and Appeals Panel (GAP) concerning a client seeking funding for adaptive exercise equipment to use at home. Under Schedule 1, exercise equipment for outdoor use such as a modified bicycle used for sport or recreation may be funded. However, similar equipment designed for indoor use in the home to support functional mobility is not clearly covered, even though it does not appear to be excluded under Schedule 2. This creates inconsistent access for participants who are unable to exercise outdoors or participate in sport, due to disability. Similarly, communication aids used across settings for children such as at home, in the community, and at school have been excluded under Schedule 2, Item 16, on the basis that they are 'education aids'. However, these aids are not designed specifically for education but to support the child's communication across all areas of life.
- Legal Aid clients have sought funding for therapeutic supports and have medical advice and academic evidence that such supports would assist with managing their disability

or rehabilitation, but find these supports are excluded under schedule 2. It would be helpful if the NDIS recognised items currently classified as day-to-day living costs that a participant would not be purchasing were it not for their disability and the advice of professionals.

- NDIS supports are currently restricted to items which are specifically adapted to a person's disability. This results in people not being able to access other supports they genuinely need because of their disability, just because they are available on the general market. For example, in schedule 2, item 1 under standard household items - noise cancelling headphones, automated gates, lights and locks are refused. Under groceries, the NDIA has refused wipes, gels, and sanitary products unless they are used to manage incontinence, which is confusing as previously these had been funded where they otherwise assist a person with disability. Refusal of a low cost and generally available item by the NDIA has sometimes required clients to seek more expensive support, which is costly for both the client and the NDIA. In these cases, Legal Aid is having to advise clients on convoluted ways to access the assistance they need.
- Greater clarity is needed around psychology supports the NDIS will or will not cover. For example, psychology supports which are "clinical in nature" are excluded in schedule 2 point 13. However, psychology supports that provide evidence-based therapy to help participants improve or maintain their functional capacity in areas such as language and communication, psychosocial functioning, interpersonal interactions (and others) are an NDIS support in schedule 1, point 34.
- For some items, it is the volume of the item that is refused, without consideration of how that will impact people with continuing or permanent disability.
- We also note that blanket exclusions (e.g. internet for Auslan communicators) do not align with the current objective referenced in the consultation document to not reduce supports.

What are some examples of things in the NDIS Supports lists that aren't clear?

Some of the responses above are also relevant to this question. Additional points are made below.

Where there is crossover between the lists, it can be difficult to work out which list something belongs in. An example might be Item 4 on the 'inclusions' list "Assistance to access and

maintain employment or higher education” vs Item 17 on ‘exclusions’ list “Higher education and vocational education and training.”

Similarly, under schedule 1, item 5, Supported Independent Living (SIL) is funded for assistance with or supervision of daily living tasks to participants in a shared living environment. No one item in the ‘inclusions’ list matches what SIL provides, nor does it match the language used by the Agency, including the language in their SIL Operational Guideline and in NDIS plans. Item 5 on the ‘inclusions’ list may refer to SIL and also refers to group or shared living arrangements only, whereas SIL can be provided to someone who lives alone. For example, Tasmania Legal Aid has some clients using the SIL support category for certain living arrangements but not for shared living arrangements. For these clients, cases have gone back and forth with the NDIA regarding what funding is allowed and what is refused.

Are there any areas of the NDIS Supports rules (or lists) you think need to be changed? This might include things that should be included in the lists.

Many of the items on Schedule 2 fail to consider the cost of accessing certain day-to-day living costs is higher for a person with disability as a direct result of their disability:

- Vacation care and swimming lessons are examples of where Schedule 2 fails to consider the reality that children with disability are often excluded from mainstream programs and the cost to families in accessing specialised programs is higher.
- Generic home modifications, noting while these may be common household features, some are necessary for people with disability (e.g. roller drawers for people with dexterity limitations). Exclusions might be redefined in a way that questions the function/purpose or benefit to a participant, rather than whether the item is specifically modified or adapted.
- General, non-specific disability items which have features that can improve independence and are relatively low cost tend not to be funded, requiring a convoluted route for people with disability to find a replacement. This process is inconsistent with the carve out within the new rule for day-to-day living costs related to disability.
- Having limited flexibility/the ability to make exceptions - e.g. XTHS and National Disability Insurance Agency (NDIS) [2025] ARTA 599 (20 May 2025) at 136: child frequently destroys his glasses as a result of his disability, but prescription glasses are on the exclusions list. The Tribunal expresses sympathy and notes “The only recourse

that appears to be available for the Applicant's family is to seek a change to the rules via their parliamentary representatives.”

- Replacement lists are rigid and non-reviewable. A positive change may be allowing clients to apply for/suggest their own replacement supports and make this a reviewable decision.

A final general comment is that NLA has encountered implementation problems with the NDIS Supports rules. Frequently, Legal Aids identify an item that would be allowed to be funded for their clients according to the schedule only to have plan managers advise it will not be approved, and the NDIA goes back and forth on whether the item will or will not be allowed. This ambiguity in the rules and inconsistency in interpretation makes it difficult for participants to navigate the process and receive NDIA approval. This complicates the day-to-day assistance Legal Aid provides to our clients.