PGT | Northern Territory Public Guardian and Trustee

Submission to the Department of Social Services

The National Disability Insurance Scheme (NDIS) Support Rules

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Northern Territory Public Guardian and Trustee

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Introduction

The Northern Territory Public Guardian and Trustee is an independent statutory authority responsible for protecting the rights and interests of adults with impaired decision-making capacity. This includes individuals affected by intellectual disability, mental illness, dementia, or acquired brain injury.

The Public Guardian and Trustee provides guardianship and financial management services, supporting people to make decisions about their personal lives and finances when they are unable to do so themselves. Guided by the *Guardianship of Adults Act 2016* and other legislation, the organisation promotes autonomy, dignity and inclusion. Its work is aligned with the principles of the United Nations Convention on the Rights of Persons with Disabilities, which recognises the right of all people to make their own choices and participate fully in society.

The Northern Territory has the highest rate of guardianship orders per capita in Australia. The Public Guardian and Trustee currently makes personal and lifestyle decisions for approximately 597 individuals, and financial decisions for around 748 people. Approximately 75% of those represented by both the Public Guardian and the Public Trustee identify as Aboriginal. Of the individuals represented by the Public Guardian for personal decision making, 438 are currently supported under the National Disability Insurance Scheme (NDIS). The Public Guardian and Trustee has attended nearly all initial and review NDIS planning meetings for these individuals, gaining significant insight into how people with impaired decision-making capacity navigate the scheme.

With offices in Darwin and Alice Springs, the Public Guardian and Trustee works in partnership with families, community organisations and government agencies to deliver responsive, rights-based services. Many of the people supported face multiple and complex challenges, including health issues, housing instability, involvement with the justice system, and limited access to appropriate services. Through its guardianship and financial administration functions, and its representation of a large cohort of people with disability accessing the NDIS, the organisation holds a unique insight into the systemic barriers that hinder individuals from living safely and independently. These include income insecurity, lack of accessible housing and employment pathways, and limited-service availability.

This experience places the Public Guardian and Trustee in a strong position to contribute to national and Territory-level reform. The organisation advocates for improvements in disability supports, inclusive employment, and fairer systems that enable people with impaired capacity to live with dignity, make informed choices, and participate fully in community life.

Northern Territory context

The unique geography and social conditions of the Northern Territory have made it more difficult to implement the NDIS effectively. Challenges seen in other parts of Australia are often compounded in the Territory. Harsh weather, long distances, and difficult terrain mean that health and disability services are limited in many areas. A high cost of living and a mobile population also make it hard for service providers to attract and keep skilled workers, resulting in inconsistent support and reduced service continuity for people with disability.

These complex issues mean that Territorians with disability often need tailored and flexible support solutions. Most people in the Northern Territory live in regional centres, but a large number live in remote or very remote areas. Approximately 30% of the Northern Territory's population is Aboriginal or Torres Strait Islander. Of this group, a significant majority live outside the larger urban centres of Darwin and Alice Springs. Approximately 59.7%[1] reside in smaller regional centres, such as Katherine, Tennant Creek and Nhulunbuy, 21.1% live in remote areas, and 19.2% in very

[1] As defined by the Australian Statistical Geography Standards, are based on distance from urban centres of 5,000+ people. These areas have reduced access to essential services, with *very remote* regions facing extreme isolation and minimal or no regular access to healthcare, education, or employment.

remote areas. This creates major challenges for both government and private service providers, as services need to reach small communities spread across vast areas.

The Public Guardian and Trustee continues to see that many represented people[2] living in remote and very remote areas struggle to access basic essential supports, including health care and NDIS-funded services. As a result, people are often required to move to regional centres to get the assistance they need. This can cause significant distress, as it separates people from their land, culture and family, all of which are central to Aboriginal identity and wellbeing.

Background

The NDIS Support rules (the Rules), which have been in place since October 2024, establish a three-tiered approach set in legislation. This is supported by three lists:

1. NDIS Supports, which are supports that will be funded (covering 37 support categories),
2. Non-NDIS Supports, which are supports that will not be funded by the NDIS covering (15 categories), and
3. Replacement Supports, which are mainstream supports that may be fundable if they meet disability needs more cost-effectively than traditional supports.

This represents a fundamental shift from the previous flexible, principles-based model to a rules-based structure. The Rules attempt to draw lines around what is and is not fundable, but in doing so, it oversimplifies a system that requires nuanced, context-specific decision-making.

Under Section 34 of the *National Disability Insurance Scheme Act 2013* (NDIS Act), for a support to be considered reasonable and necessary, it must now be listed as a support within the context of the Rules. By embedding this approach in legislation, it risks excluding participants from essential supports based on rigid lists rather than individualised assessments. The result is reduced flexibility and a diminished capacity to accommodate innovative or person-centred approaches.

Analysis of key issues

Exclusion of supports undermines flexibility and creates system inefficiencies

The blanket exclusion of items without consideration of participants' specific disability-related needs potentially undermines the NDIS's principles of choice and control. Such an approach may run the risk of preventing participants from accessing vital supports, while introducing costly inefficiencies into the scheme[3]. For example, when participants are unable to fund their preferred supports to address a disability-related need, that need does not disappear. Instead, they may be required to use "approved" supports listed under the 'NDIS support' categories, which – aside from being less effective in meeting individual needs – could be more expensive and less efficient. This not only increases overall expenditure for the NDIS but may also compromise the quality and effectiveness of the support provided.

The Rules of what the NDIS will or won't fund adopts unduly restrictive definitions that prioritises administrative convenience over participant outcomes. For example, a participant with a top-loading washing machine who, due to a change of circumstance, cannot physically reach into it due to their disability may need a front-loading machine. However, purchasing a washing machine to replace the top-loader is explicitly excluded as a NDIS support, despite being a necessary, disability-specific solution.

[2] For the purpose of this submission, represented person means a person who has a guardianship order and the Public Guardian is appointed with decision-making authority for this person.
[3] Adapted from: Justice and Equity Centre, *Submission to DSS Consultation on Draft Lists of NDIS Supports* (16 August 2024)

In contrast, a support worker to assist with the same task is listed as being funded by the NDIS and would likely be automatically approved. This creates a perverse incentive: a practical, cost-effective solution that promotes independence and capacity building may be rejected, while a more expensive, ongoing support is readily approved. The result is reduced participant choice and control, and higher long-term costs to the NDIS.

While the introduction of *Replacement Supports* is intended to offer more flexible, cost-effective alternatives, the list is not exhaustive and may not adequately reflect the nuance and diversity of participants' day-to-day lives. As such, even where a support is plainly more practical or empowering, its approval remains uncertain leading to inconsistency.

While structured lists can provide clarity, overly rigid application of the Rules, risks overlooking practical, cost-effective supports that meet disability-related needs. A more flexible approach grounded in the diversity of participants' daily lives, is essential to uphold the principles of choice, control, and person-centred support.

Recognising individual context in support determination

The creation of definitive "in" and "out" support lists, encourages broad assumptions that all participants have equal access to the same supports and require a uniform level of service. This approach fails to account for the diverse and often unique circumstances faced by all participants but particularly those in remote areas. While the NDIS may not explicitly define what constitutes ordinary supports for the average participant, the practical effect in creating an exhaustive set of "in" or "not" is a sweeping approach that removes the person centric nature of the NDIS. For example, individuals outside urban centres are assessed against implicit norms that do not reflect their individual circumstances and lived experiences. Consequently, participants whose needs call for different approaches to achieve equivalent outcomes are at risk of being disadvantaged.

For participants living in remote and very remote areas, market thinness, workforce scarcity, and geographic constraints mean that supports readily available in metropolitan areas are largely non-existent, inaccessible or unsuitable. Each participant's location, available services, and regional infrastructure creates unique circumstances that influence what constitutes reasonable and necessary support. However, the Rules may be reliant on the application of standardised support requirements uniformly across all environments.

Even within the Northern Territory, participants face unique regional challenges that affect their individual support needs.

- Participants requiring mobility equipment may find that options available and appropriate in urban Darwin are unsuitable for use in remote areas, due to harsh terrain, lack of paved footpaths and limited access to technical support. As a result, they may reasonably require both an indoor wheelchair for use at home as well as a robust 4WD wheelchair for safe and effective mobility in the community.
- Participants needing personal care may find that arrangements assuming 24/7 worker availability are unrealistic in small, remote areas with workforce shortages.
- Participants seeking community participation encounter vast distances, seasonal road closures, and limited public transportation that standard transport and funding models don't accommodate.
- Participants using equipment requiring technical support may face ongoing challenges when such services are unavailable locally.
- Participants may experience seasonal access limitations and geographic isolation that affect service delivery.

- Participants may require different equipment to access outdoors compared to inside their homes due to challenging terrain.

The Rules provide limited guidance on assessing supports that fall outside their scope, particularly in relation to individual context should be taken into account. Although they acknowledge the need for individualised supports, they do not consistently explain how personal circumstances influence what is considered reasonable. This creates uncertainty for participants in determining whether a support may be deemed excessive.

In the example above, where a participant may require additional or alternative mobility-related equipment, the nuance involved highlights uncertainty in how such a support would be assessed under the current Rules. If denied in the first instance a need would be created for an appeal and subsequent review by the NDIS to ensure that disability-specific needs are not dismissed as duplicative or unreasonable.

The process of appeal, under Section 10 of the NDIS Act, requires evidence that the new support replaces existing ones, is of equal or lower cost, and provides a better or equivalent outcome. Where such a process is required to consider individual circumstances, participants would face significant delays to much needed supports. Ultimately, it would also result in additional costs to the NDIS, particularly where allied health professionals must be engaged to provide supporting evidence, assuming this is available in a timely manner. The absence of clear guidance about how these provisions apply in geographically or environmentally challenging contexts places an unnecessary delay on participants and an administrative burden on guardians.

The goal is not stricter rules or tightened definitions, but rather recognition that participants have diverse needs shaped by their unique circumstances. Embracing flexible, community-designed, place-sensitive frameworks could better support equitable outcomes for participants whose individual contexts require different approaches. Effective support rules must recognise that every participant with disability navigates fundamentally different circumstances shaped by their unique geographic, cultural, personal and social context that acknowledges this diversity that strengthens person-centred approaches to support determination.

Aboriginal cultural considerations in the Northern Territory

Aboriginal participants, particularly those living in remote and very remote areas of the Northern Territory, face unique challenges that the current NDIS Rules do not adequately address. One of the most significant issues is disconnection from country, kin, and culture, which can reduce engagement with supports and negatively impact wellbeing. Return to country trips are vital for maintaining cultural, emotional, and community connections, yet they are often not funded, despite their importance for mental health and fulfilling cultural obligations. The requirement for multiple forms of evidence also creates barriers, especially in remote regions where access to culturally appropriate professionals is limited. Additionally, Aboriginal participants should be able to access funding for cultural consultants to ensure culturally respectful planning and communication.

It is critical that the Rules around supports recognise important cultural supports, such as return to country travel and cultural consultants as part of a participant's reasonable and necessary supports may improve engagement, service outcomes, and cultural safety for all Aboriginal participants.

Rules established around supports that are not considered to be NDIS supports, rely on presumptions about the availability and adequacy of mainstream supports, including the capacity of families to provide "reasonable care and support." This is particularly problematic in relation to the exclusion of "transport for children as part of their reasonable care and support provided by families or carers," which rests on assumptions about normative family capacity. In practice, what constitutes "reasonable" can vary significantly based on the intersectional impacts of disability, socioeconomic disadvantage, and geographic isolation. Furthermore, many state and territory governments currently lack the capacity to provide all mainstream supports, as ongoing reforms and service gaps persist in these areas.

The absence of clear and transparent guidance for NDIS planners on how to assess these factors may create uncertainty for participants and lead to inconsistent decisions across similar cases.

National Centre for Disability Advocacy's (NCDA) 2025 *Systemic Advocacy Insight Report*[4] exposes how such presumptions often fail in real life, especially for people without access to reliable support networks. Examples include individuals stranded or missing key appointments due to lack of funded transport.

These observations mirror our concerns: what is deemed "reasonable" for families to provide varies immensely depending on disability, socio-economic status, location, and available supports. NCDA advocates for clearer planning guidance to ensure consistent, equitable decisions that reflect the diverse realities participants face, so people aren't left without essential transport simply because assumptions about informal supports do not hold.

The interface between disability and mainstream sectors remains complex, particularly when determining which supports fall within the scope of the NDIS. For example, while the NDIS may rightly exclude supports whose primary purpose is educational attainment, such as curriculum modifications or teaching aides, it does fund disability-related supports that enable a student to access and participate in education on the same basis as others. However, the distinction between "educational" and "disability-related" supports is not always straightforward in practice. For example, therapies, behaviour supports, or assistive technology may serve both educational and functional purposes. In such cases, the lack of clear, accessible guidance for planners and participants could lead to inconsistent and inequitable decisions. As such, clarity is needed to ensure participants are not disadvantaged by differing interpretations of these boundaries. A focus on cost over participant outcomes risks excluding necessary supports, undermining independence and person-centred care.

Disability-relatedness assessment frameworks

It is often difficult to tell the difference between the supports that someone needs because of their disability versus support they need for general health reasons. This becomes especially difficult when people have multiple conditions or complex situations where it is unclear as to what is causing what.

The current rules indicate that health supports which are "directly related to someone's health status" are not considered to be disability supports. But this may miss how disability works in real life. For people whose disability affects things like planning, thinking clearly, or paying attention, managing their health might be genuinely difficult because of their disability – not because they have a separate health problem.

For example, let's consider diabetes management for someone with an intellectual disability or autism. They might struggle to manage their diabetes, not because diabetes is complicated, but because their disability makes it hard to plan, remember routines, or regulate their behaviour. The current system is not well equipped to manage overlapping issues, often resulting in fragmented support that fails to meet the person's needs and contributes to the breakdown of essential supports.

Employment and workplace support ambiguities

Within the rules, the exclusion of "work-specific aids and equipment required to perform a job" and "reasonable adjustments (including assistive products and workplace modifications)" firmly places these elements under employer responsibility. This creates an operational and conceptual gap between employer obligations and NDIS participant support. While the NDIS continues to fund assistance to access and maintain employment or higher education, the interface remains unclear

[4] **National Centre for Disability Advocacy**, *Systemic Advocacy Insight Report No. 2* (Report, June 2025) https://ncda.org.au/wp-content/uploads/2025/06/NCDA-Systemic-Advocacy-Insight-Report-2025-Final.pdf.

when distinguishing between what employers must provide and what is considered a disability-related support need. For example, workplace hoists, ergonomic workstations, or customised IT may be deemed outside the NDIS scope, even when essential for someone's safe and independent work.

The ambiguity around these boundaries can result in support gaps, where neither the employer, nor the NDIS accepts responsibility, particularly in cases where employers may lack awareness or capacity to provide certain accommodations, and participants are uncertain about how to navigate dual systems. Without a mechanism to address these grey areas, there is a risk that participants may be unable to take up or maintain employment, if no agency assumes responsibility for the supports required to perform their job safely and effectively. To uphold the principle of choice and control, the Rules must incorporate flexibility to allow for exceptions where rigid funding boundaries would otherwise result in disadvantage to the individual.

Housing and accommodation limitations

Access to home modifications is a critical support for many participants, enabling greater independence and safety within their living environments. However, the Rules have highlighted the significant limitations on eligibility for funding these modifications. The Rules continue the restriction of home modification funding to participants who either own their home or rent privately with documented landlord permission. Public housing providers are deemed responsible for accommodating disability-related modifications. Support eligibility hinges on housing tenure rather than on disability-related need. Individuals in public housing frequently experience barriers to obtaining necessary environmental adaptations.

The Public Guardian and Trustee advocates for all housing to be designed and built to meet accessibility needs. However, the policy principle that public housing authorities bear responsibility for providing necessary home modifications is also acknowledged. Where modifications are required, they must be highly person-centred and tailored to an individual's specific disability-related needs and this division of responsibility does create significant barriers. Participants residing in public housing frequently encounter lengthy delays and complex approval processes in securing essential modifications.

Without clearer guidance, improved coordination between the NDIS and housing providers, and streamlined processes, these individuals risk being left without critical supports necessary for their safety, independence, and wellbeing.

Aged care interface

The Public Guardian and Trustee has experienced confusion in interpreting the Rules as they relate to the interface with the aged care system. While the NDIS Support List states that daily living supports will be funded in aged care facilities, the list that documents the support that will not be funded states that basic aged care services such as personal care and cleaning will not be funded. This lack of clarity may create uncertainty around whether NDIS funding continues, once a participant enters aged care or ceases entirely. The confusion extends to a reference within the list of non-NDIS supports to "agreements" for individuals entering aged care before age 65 without any explanation of what these agreements involve, who determines them, or how they can be accessed.

Specific concerns with current exclusion list

Family and carer support

The exclusion of various family supports, including "travel or accommodation for parents visiting their children that are in out-of-home care (OOHC)" and general "parenting programs," may not account for additional disability-related complexities in family relationships and care arrangements.

There is often a need for the support of parents with a disability to effectively undertaken their parenting role due to their disability. For example, support to attend a general parenting program and then further support in the home to implement aspects of the parenting program in terms of developing and implementing new skills. This may include learning the new skill of how to effectively sterilise baby feeding equipment.

Families of children with disability often face additional challenges that extend beyond general parenting support needs. The categorical exclusion of family supports may not recognise when these become disability-related necessities. A person-centred and flexible approach is needed to ensure family supports are considered based on individual circumstances, recognising when they become essential due to disability-related complexities.

Replacement supports and innovation challenges

The *Replacement Supports* category represents both a significant opportunity for innovation and a major implementation challenge within the Rules. While the concept of allowing mainstream products and services to be considered as alternatives to traditional disability-specific supports is valuable, the implementation faces challenges with unclear criteria, potential varying assessment approaches, and limited guidance to support consistent decision-making.

The fundamental challenge with replacement supports lies in the assessment criteria used to determine when a mainstream item can be considered an appropriate alternative to traditional supports. The Rules requires that replacement supports meet disability needs more cost-effectively than traditional supports, but this requirement is poorly defined and subjectively applied. What constitutes "cost-effectiveness" varies significantly depending on how costs are calculated, what timeframes are considered, and what outcomes are valued. Cost alone is a poor indicator of outcomes for the individual.

Consider a participant who requires communication support and is considering a tablet with communication software versus a traditional communication device. The tablet may have a lower upfront cost, greater versatility, and better integration with other technologies, but the assessment of cost-effectiveness depends on numerous factors including software licensing costs, training requirements, durability, and ongoing support needs. Without clear criteria for assessing these factors, similar requests may receive different outcomes based on individual delegate interpretation and local availability of traditional alternatives.

The Rules, as they stand, may have limited capacity to fully keep pace with the rapidly evolving nature of technology and innovation in disability support. Traditional assistive technology has historically been developed specifically for disability markets, often resulting in expensive, limited-functionality devices that may not keep pace with mainstream technology developments. Modern mainstream technology increasingly offers features that can effectively address disability-related needs while providing greater functionality, better user experience, and more cost-effective solutions.

The assessment of replacement supports should not be limited to cost comparisons with traditional alternatives, particularly where the support in question offers significantly greater independence, autonomy, or long-term capacity-building outcomes for the participant. Innovative solutions such as emerging technologies may not always have direct comparators or established evidence bases, yet they can enable participants to live more independent and self-directed lives. The emphasis should remain on what is of most benefit to the individual in achieving their goals and aspirations, rather than focusing solely on upfront cost. Consideration should also be given to how a support contributes to the individual's goals and longer-term outcomes. Supports that promote greater independence, dignity, and social inclusion may, in some cases, justify a higher initial investment, particularly where they reduce reliance on other supports over time.

Recommendations

The reforms proposed in this submission are important steps toward addressing the challenges of implementing a rule-based approach and supporting the NDIS in delivering reasonable and necessary supports. They align with government priorities around participant-centred design, financial sustainability, and administrative efficiency, while also responding to the need for greater clarity, consistency, and integration.

Recommendation 1: The NDIS rules should be applied alongside individualised assessment approaches that consider a person's specific circumstances when determining whether a support is disability-related and appropriate, rather than relying solely on whether the support appears on a predetermined list.

While it is helpful to have a simple list of what's in or out of scope for NDIS funding, this should not override personalised assessments. Supports should still be considered on a case-by-case basis, considering how a person's specific circumstances make a support disability-related even if that support falls outside general categories.

Recommendation 2: Clear interface protocols with mainstream services should be established, including processes that allow the NDIS to provide supports when mainstream services are unavailable, inaccessible, or inappropriate due to a participant's disability needs. Importantly, individuals should not be disadvantaged because of gaps between mainstream and NDIS systems. A flexible approach is needed to ensure participants can still access reasonable and necessary supports when other service systems are unable to meet their needs.

Recommendation 3: Recognition of the interdependence between disability, health and mental health is required, particularly where cognitive, behavioural, or motivational challenges are closely linked to a person's primary disability. Rather than applying rigid criteria, the system should adopt a more flexible and nuanced approach to assessing disability-relatedness in complex presentations. This is essential to ensure that people with multifaceted needs are not unfairly excluded from support.

Recommendation 4: A clear distinction is required between what employers are obligated to provide under workplace laws and what the NDIS should fund. While no single document will provide a one-size-fits-all solution, the success of any reform will depend heavily on how these boundaries are implemented in practice. Clear, accessible guidance for participants, providers, and employers will ensure shared understanding of responsibilities and uphold a person-centred approach.

Recommendation 5: Housing tenure limitations should be removed on home modification supports, thereby ensuring all participants can access necessary environmental modifications regardless of accommodation type, pending their disability specific need and liaison with the appropriate authority.

Home modifications should be available based on need, not ownership. Participants in public housing should be eligible for disability modifications if there is cooperation from the landlord or housing provider.

Recommendation 6: While formal interface agreements between the NDIS and mainstream systems, such as aged care, health, and education may help define roles and reduce service gaps, their effectiveness will ultimately depend on how they are implemented.

The focus must remain on delivering person-centred, disability-specific supports in practice, rather than relying solely on documentation. Clear accountability and coordinated action across service systems are essential to ensure participants are not disadvantaged when responsibilities shift between service sectors.

Recommendation 7: Implement regular review mechanisms for excluded support categories, including pathways for reconsidering exclusions based on emerging evidence or changing participant needs.

A more person-centred approach to the Rules is required, an approach that responds to the real-life complexity of a participant's circumstances, particularly when multiple needs are interlinked. Exclusions, such as what the NDIS does not cover, should not be set in stone; there must be a process to revisit and update these over time in response to emerging research, evolving community expectations, or shifting participant needs, so the scheme remains relevant, fair, and responsive.

Conclusion

The Rules represent a significant shift toward structured support determination. The Rules themselves are not inherently problematic – the critical issue is how they are applied to real people's lives.

The evidence presented demonstrates that participants face vastly different circumstances shaped by geography, culture, family structure, and the nature of their disabilities. Rigid application of the Rules risks excluding people from essential supports based on where they live or their individual circumstances rather than their disability-related needs.

The NDIS was established on the principle that people with disability should have choice and control over their supports. The success of the Rules will be measured by whether participants can access the supports they need to live fulfilling lives in their communities, not by administrative convenience or the financial viability of the scheme as the central drivers for reform.

This requires implementation that recognises each person's unique situation while working within the structure the Rules provide. Without this person-centred approach, the Rules risk undermining the very principles the NDIS was built upon.