



**Submissions to the  
Department of Social Services  
on**

***The NDIS Supports Rules***

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**About Villamanta Disability Rights Legal Service Inc.**

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990.

We want an equal Victorian community for people with disability. We promote laws and systems that protect human rights. We work alongside people with disability to advocate on legal problems.

We want to see these outcomes.

- More people with disability, especially those with cognitive impairment, get legal advocacy.
- People with disability feel more confident to self-advocate.
- Legal services get better at being easy to use.
- Laws and systems do a better job at making the community equal for people with disability.

We are funded to provide advocacy under the National Disability Advocacy Program; NDIS Appeals and the National Legal Assistance Partnership Agreement.

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## Executive Summary

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*People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and planning and delivery of their supports. People with disability have the same right as other members of Australian society to be able to determine their own best interests.<sup>1</sup>*

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We thank the Department of Social Services for the opportunity to provide this feedback about the effectiveness and appropriateness of the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (Cth) (**NDIS Supports Rules**) and the lists of:

- Supports that are NDIS supports unless otherwise provided (**Yes list**)
- Supports that are generally not NDIS supports (**No list**)

As a community organisation we conducted a community forum to gather the views of our constituents and NDIS participants. In short they:

- Are overwhelmed generally with the level of change occurring in the NDIS space, including lengthy delays for reviews following funding cuts, and the introduction of funding periods without notice. Many participants are not confident they understand what the new requirements are or who they can ask;
- Have great difficulty with the restrictive lists which do not reflect the way they live their lives; and
- Feel punished by the introduction of these lists, rather than supported.

We have assisted those participants who requested it to make their submissions directly to the Department, and do not use individual stories in our submissions below due to the agreed terms of the forum conducted.

Following the community feedback, we provide our submissions from the perspective of a Community Legal Centre whose work involves NDIS participants every single day, as well as being a Disabled Persons Organisation with over half of our Board and staff being people with disability. In short they recommend:

- Ensuring the rules comply with the Objects and Principles of the enabling legislation;
- Separating out the questions of “would fund” and “can use funding for”;
- Redrafting materials to focus on the lived experience of end users and how they use supports; and
- Using guidance materials specific to different contexts to educate and explain, rather than complex lists.

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<sup>1</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 4 “General principles guiding actions under this Act”, sub sections (4) and (8)

## Community Feedback

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*3.5 The National Disability Insurance Agency should allow greater flexibility in how participants can spend their budget, with minimal exceptions.*

*3.6 The National Disability Insurance Agency should adopt a trust-based approach to oversight of how participants spend their budget, with a focus on providing guidance and support.<sup>2</sup>*

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### METHODOLOGY

We are aware of the work of other organisations who have conducted surveys to collect high volume quantitative data in response to this consultation for those individuals who like to provide feedback in this way.

Given our roots in working with people with cognitive impairment, our approach is generally low volume qualitative data relying on peer support to understand and process the issue and discuss real life impacts. For this reason, we conducted an initial community forum on 19 May 2025, and then a more detailed workshop and forum on 4 July 2025.

When enrolling for this event, individuals were asked to indicate the topics of most interest to them, and this data formed the basis of our focus groups within the workshop.

The context of the rules and the consultation was discussed with all 85 participants, and then individuals self-selected focus groups to attend where our NDIS-participant facilitators encouraged in depth discussion of particular aspects of the rules.

### CONTEXT

Before commenting on the feedback about the Lists, it is important to note that participants in our workshop and forum did not all know about the Lists and did not confine their discussion to the Lists. There appeared to be a collective trauma response to the events of the past 12 months, with participants reporting:

- Significant cuts in funding, leading to internal and external reviews, which were stressful and lengthy;
- Reassessment of eligibility and the threat of having their access to the scheme itself revoked; and
- Implementation of funding periods into plans with no notice and no consultation, causing significant difficulty utilising funding.

### DO THE LISTS IMPLEMENT THE RECOMMENDATIONS OF THE NDIS REVIEW?

No. The Lists considerably reduce flexibility and are received by participants as a sign that they are not trusted.

### DO THE LISTS PROVIDE CLARITY?

No. The disability community did not state that they feel more confident about what can be funded and how they can use their funding as a result of the Lists. There was overwhelming feedback that

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<sup>2</sup> NDIS Review recommendations, 2023

the Lists are confusing and that participants have been adversely affected by the change. Those participants with high and complex support needs were most adversely affected.

There was some agreement that the No List did clarify what supports would not be funded, but this was not considered to be a positive, given that it severely narrowed the ways they could use their funding to meet their individual support needs. Specific feedback included:

- This is a “step back in time” for disability rights;
- “Mental gymnastics” are required to interpret the Lists and especially compare the Yes and No Lists which have similarities;
- Plan managers have been refusing to process invoices if items are not on either List. This is highly problematic because no list can include absolutely everything that will ever be required as a support and leaves people unable to access supports, or out of pocket. It also creates a lot of extra work checking in advance whether something will be paid;
- The new level of uncertainty is stressful because of the potential for a debt to be raised if someone disagrees with an interpretation;
- The attempt to make the List “black and white” cannot accommodate all people with disability. Each person with a disability will have specific support needs;
- The Lists exclude “out of box” thinking for individual circumstances. A range of people with disability described that their lives have worsened due to the removal of necessary supports; and
- The Lists are making things more expensive due to needing additional allied health reports to clarify the need for supports.

### **“DISABILITY SPECIFIC”**

There was considerable frustration with the Lists seeking to differentiate between disability specific items and items that the rest of the community use. Disabled people are not a separate category of people; they are members of the community and often use widely available items for a disability specific reason.

More specifically, there is history of technology that was developed for disabled people being commercialised because it is useful. Examples include:

- The typewriter (and later keyboard), designed to allow a visually impaired person to write a letter;
- Footpath curb cuts, designed for wheelchair users to move from footpath to road and back, but useful for cyclists, and people pushing prams or any other wheeled device;
- Touchscreens, designed for an individual with a physical impairment;
- Audio books, created for visually impaired people; and
- The pedestrian crossing sound was developed for blind people to know when to cross, but are useful for many people (and their dogs!)

**Excluding an item simply because of the way it is used by the broader community doesn’t reflect the way disabled people have used these products for disability specific needs.**

Examples include:

- Noise cancelling headphone are marketed as a travel item. However, this can be important for autistic participants with sensory needs; and
- Many people use iPads for personal use including games and entertainment. This doesn’t mean that a person with disability who relies on an iPad as a speech and communication tool is not using it as a disability specific support.

Participants noted that disability specific generally means more expensive, more difficult to access, fewer features and slower service.

Prior to the NDIS, participants experienced how lack of competition (and business, due to funding constraints) impacted the performance of disability equipment providers by disincentivising improvements in efficiency, customer service, and innovation. A return to this scenario is expected to have significant impacts on the quality of life experienced by participants.

An additional layer of confusion and stress is that “disability” is now a term which is very loaded and relies on the information that the NDIA holds about a participant. Impairment notices have not been provided to existing participants, so they cannot know what the NDIA’s database says about their disability.<sup>3</sup> It seems likely that attempts by participants to access this information has led to a significant increase in information requests, resulting in long delays in response from the NDIA.

### ALTERNATIVE APPROACHES

Some participants stated that the Yes and No Lists are not fit for purpose and should be suspended for revision or scrapped entirely.

Other participants suggested alternatives including:

- Applying a principles-based approach to the NDIS Support Rules;
- Adopt the Australian Taxation Office use of private and public rulings to declare items as NDIS supports, so that individuals have more clarity and the same questions do not have to be answered multiple times;
- Applying a broad definition of what supports are funded by the NDIS; and
- Implementing a “but for” test to ensure the supports are reasonable and necessary for their disability.

### THE NO LIST

#### Individual Circumstances

The title of the No List is “Supports that are generally not NDIS Supports”, suggesting that there may be circumstances where they are NDIS Supports. However, there is no consideration of how that could happen, and who can make that decision. The Replacement Support Determination applies to only a very small proportion of the No List and clearly is not intended as the means by which this consideration would occur. As implemented the word “generally” is of no effect, despite the clear intent that it would ameliorate some of the harshness of the List.

#### Replacing APTOS

One function of the No List is to replace the Applied Principles and Tables of Supports (**APTOS**) which differentiated the separate roles of the NDIS and other systems, including:

- Health
- Mental Health
- Early Childhood Development
- Child Protection and Family Support
- School Education

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<sup>3</sup> As an aside to this, Villamanta have had multiple reports of people’s “disability” recorded in the system being changed since October 3. Some have described this as “removed”, NDIA staff have confirmed that conditions have been “end dated”, which effectively removes them from the system.

- Higher Education and Vocational Education and Training
- Employment
- Housing and Community Infrastructure
- Transport
- Justice
- Aged Care

This document included Applied Principles to explain the concepts behind the different responsibilities. This was followed by a table detailing the supports that the NDIS will be responsible for and the supports which the other systems are responsible for.

The No List incorporates the supports which the NDIS will not be responsible for, but the supports which the NDIS will be responsible for are only somewhat incorporated into the Yes List.

## **DAY-TO-DAY LIVING COSTS**

The fact that a non-disabled person has access to an item does not equate to the List's presumption that it can never be used as a disability support. Again, noting the word "generally" in the title of the List, the authors of the List must have had some awareness of this, but it is not incorporated into how the List functions, which is to rule out any of these supports from being funded or purchased. Examples (with rationale given in brackets) included:

- Participants with dysphagia unable to access texture modification liquids (food and groceries) and water aerators (household) that they rely on for difficulty swallowing; and
- Participants being unable to access sensory supports for emotional regulation (lifestyle, food and groceries).

The Lists lead users to categorise items according to where they come from rather than what they do.

Examples included:

- A custom splint that is required to prevent dislocations must be made by a jeweller. The plan manager refuses to pay for this on the basis of the "jewellery" exclusion; and
- A participant was told by the NDIA planner that a shower chair is an everyday item because Bunnings sells shower chairs.

## **HEALTH AND MENTAL HEALTH**

Participants reported that they already had ongoing issues with the intersectionality of health and disability, and the level of understanding that NDIA staff demonstrate around this. An example given was the difference between the health condition of diabetes and the disability supports some individuals need to safely manage their diabetes. There was discussion regarding the messaging from the NDIA being confusing and individuals receiving inconsistent advice.

Participants with a psycho-social disability have expressed concern that they would only be provided with supports that they do not want or need.

### **Non-Evidence Based Exclusions**

Participants have consistently stated that this part of the list is confusing, particularly in relation to who decides whether a therapy is evidence based.

Participants described this category as "shadow banning" because there is pushback from some NDIS planners regarding art therapy and osteopathy, despite them not being explicitly banned under the list. Participants talked about losing access to "proven effective" therapies and services they have relied on for years.



## **JUSTICE**

Participants discussed that the Lists do not reflect the previous policy position articulated in APTOS and that this could lead to a loss of supports which are crucial to avoiding further justice interactions.

## **CHILD PROTECTION**

While APTOS included the NDIS funding “disability specific family supports” and “disability specific and carer parenting training programs” the List does not incorporate this but simply excludes “parenting course/program”.

Participants stated that this removes the supports which reduce the risk of child protection involvement, especially for people with intellectual disability or neurodivergence, who are over-represented in child protection.

## **REPLACEMENT SUPPORT**

There had not been a great deal of engagement with the Replacement Support process, likely for two reasons:

- Participants do not know how to access it; and
- They don’t have supports they can substitute for the replacement.

The requirement that the support replaces another is problematic when the participant needs both:

- Participants with dysphagia report that they are unable to purchase a blender (everyday household item) to prepare a pureed food diet. A blender would enable them to prepare their food independently, but it does not remove the need for a support worker entirely.
- A participant has used a smartwatch as a fall detection device for four years. It needs replacing.
- A participant uses food delivery to enable the most efficient use of support worker time. The level of support worker hours funded does not allow for them to reduce these hours.

More general feedback about the Replacement Support provision included:

- The replacement support list needs to be considerably expanded.
- There is no contemplation of replacing approved replacement support if the item is at end of life or has broken down.
- No services are currently available for replacement support.

Participants stated that the substitution rules could have a simplified test, including:

- Adopting “Universal design” under article 2 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- Including a provision of “exceptional circumstances” to make the replacement support work, as the current rule is too difficult to apply.
- Consideration of how day-to-day living costs are not covered by the substitution rules but could reduce the reliance on support workers.

Participants raised concerns that this provision is not a reviewable decision.

## Villamanta submissions

### OBJECTS AND PRINCIPLES OF THE ENABLING LEGISLATION

It is our view that the Lists, and indeed any prescriptive approach to what supports can be funded and can be accessed using NDIS funding do not comply with the following objects and principles of the *National Disability Insurance Scheme Act 2013 (NDIS Act)*:

#### **Section 3 Objects**

- (e) *enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and*
- (g) *promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and*

#### **Section 4 General principles guiding actions under this Act**

- (3) *People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.*
- (4) *People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.*
- (8) *People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives.*
- (9) *People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.*
- (9A) *People with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity.*
- (11) *Reasonable and necessary supports for people with disability should:*
  - (a) *support people with disability to pursue their goals and maximise their independence.*
- (15) *In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted. (emphasis added)*

We offer suggestions below as to how a better balance can be struck between the definition of NDIS supports and the choice and control of participants which is at the heart of the Scheme. However, it is our view that a definitive list, whether it be a Yes or No List, cannot be enabled under the above provisions.

### TWO DIFFERENT QUESTIONS – “CAN FUND” AND “CAN USE FUNDING FOR”

The Lists as they stand conflate two quite different questions. The question of what the NDIA can fund is a question about the responsibility to fund reasonable and necessary supports as required by the NDIS Act. The NDIA cannot be expected to know every single support a participant may need over the life of their plan and can only stipulate a funding level that is reflective of the best recommendations of allied health professionals.

Further, when new framework plans are implemented under the Act, the level of funding will not be tied to line items but will be based on something – it has to be!. The question of what the NDIS can fund is a question of what supports it will price into an NDIS plan and also considers the decisions that were formerly articulated by APTOS. Broad guidelines of what these supports are should be sufficient for this activity, given that this is technically already occurring when the NDIA relies on a “Typical Support Package”.

However, the issue of what the participant uses the funding for is an entirely different question and is where “choice and control” is enlivened. Aside from the prohibition to prevent spending funding on illegal items, the fact of the support being necessary due to the participant’s disability ensures both that:

- It is literally impossible to be definitive about all the items this could include; and
- The sheer diversity of people, their lives, their disabilities and their circumstances make this a question to be answered at the individual level.

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*It makes no difference to scheme sustainability nor public confidence if a wheelchair user gets their wheel repaired at a bicycle shop. It can however make all the difference to the person getting on with their life instead of waiting three weeks for the disability equipment provider to return the item. Meanwhile they may well have to spend additional funding to hire a replacement chair, or be absent from work, study or other plans. A focus on the **purpose** of the expense redirects attention to the lived experience of scheme participants and how they work with the both mainstream and disability systems to achieve optimal outcomes.*

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There is a Commonwealth agency that operates within this level of complexity and has an entirely different approach. The Australian Taxation Office (**ATO**) operates on the basis of individuals and businesses self-reporting their income and relevant deductions and provides a range of materials that provide guidance about decision making in that context. In terms of the NDIS Review recommendations, this type of approach is trust-based and focuses on providing guidance and support.

## FOCUS ON LIVED EXPERIENCE

In the same way that the ATO provides guides for different industries and different occupations (see for example, this information for hairdressers: [Hairdressers and beauty professionals – income and work-related deductions | Australian Taxation Office](#)), there is opportunity for the NDIA to work with NDIS participants to develop similar guides for major disability groups to walk through the thinking of what a disability support is likely to be, and why.

### **Example: compulsory uniform with logo**

Mike, a barber, has to wear shirts his employer provides. Each shirt has his employer's company logo embroidered on it. As part of his uniform, he also has to wear black pants and black shoes.

Mike can't claim a deduction for the cost of:

- the shirts as his employer provides these at no cost to him
- buying or cleaning his black pants or shoes as they are conventional clothes, even though his employer tells him to wear them and he only wears them at work.

Mike can claim a deduction for the cost of laundering the shirts as they are:

- distinctive items with the employer's logo
- compulsory for him to wear at work.<sup>4</sup>

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<sup>4</sup> [Hairdresser or beauty professional expenses A–K | Australian Taxation Office](#)

While this is still not a one-size-fits-all, the important element is the reasoning applied, not the outcomes. This unequivocally provides a means of explaining when an everyday item is a disability support, and when it is not. It also allows an exploration of why it may be for some people, but not for others, and can take into account different contexts and circumstances.

Such a resource can be made accessible for people with cognitive impairments (which the Lists do not) and can be used as an educational resource. Separating out the two questions makes this achievable within the current legislative constraints.

Guidance and explanation also implies a level of trust that the Lists simply do not. The Lists threaten participants with sanctions such as debts, unpaid invoices or restrictions in the way their funding is managed, if they get it wrong. The Lists have been seen to make NDIS planners and plan managers more conservative in their reading of the language, increasing the loss of choice and control.

## REDUCING THE BURDEN ON INDIVIDUALS

Another feature of the ATO's approach is the availability of private and public rulings.<sup>5</sup>

Issue
Are the costs incurred in training a guard dog to protect business premises deductible under section 8-1 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997)?
Decision
No. The training costs are not deductible under section 8-1 of the ITAA 1997.
Facts
The taxpayer purchased a dog for use solely as a guard dog to protect equipment and supplies at the taxpayer's business premises.
The taxpayer incurred expenses in having the dog complete guard dog training.
Reasons for Decision
A guard dog used to provide security for business premises is considered to be a working beast or plant, as it serves a productive function of the business. Consequently, the guard dog is a capital asset of the business.
Under section 8-1 of the ITAA 1997, expenditure incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for the purpose of producing assessable income, is deductible if it is not capital or of a capital, private or domestic nature.

The Lists do not provide a means by which participants can seek an official NDIS interpretation where they are unclear, but rely on the interpretation of the reader. This requires every participant with the same question to make their own decision without guidance, and very likely come to different conclusions. A system like the ATO ruling would provide more certainty and reduce the burden on individual participants, planners and plan managers to correctly interpret whether something is or is not an NDIS support under the legislation.

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<sup>5</sup> Example below is from [ATO ID 2011/18 | Legal database](#)