

**Senate Community Affairs Legislation Committee**  
Public Hearing – 25 July 2024  
NDIS Amendment (Getting the NDIS Back on Track No.1) Bill 2024  
ANSWER TO QUESTION ON NOTICE  
National Disability Insurance Agency

**Topic:** Disability Representative and Carer Organisations

**Question reference number:** NDIA IQ24-000035

**Question asked by:** Jordon Steele-John

**Type of Question:** Spoken. Hansard Page: 61

**Date set by the Committee for the return of answer:** 31 July 2024

**Question:**

Senator STEELE-JOHN: What's the conclusion date? It's quite urgent, so you must be giving people a time envelope for how long you've got to do this.

Ms Shannon: I think this work is really shaping the early thinking, and then, as I think I flagged, there will be a process of public consultation. The decision around the timing of that is a matter still being settled.

Senator STEELE-JOHN: So you haven't given them any guidance as to how long their engagement will be required for?

Mr Swainson: That's not in the evidence. We don't have that information at the table. We can give it on notice.

Ms Shannon: Yes.

Senator STEELE-JOHN: Alright. Please, if you could take it on notice, that would be good—that is, precisely, which groups you have engaged to this point and how many you intend to engage with. And, if you can, please do table for us the content that you've been sharing with these groups—the materials, the agenda et cetera.

Mr Swainson: Yes.

Ms Shannon: We will take that on notice. I'm just a little bit cautious because we are actually in a process of working with states and territories on this and so just need to be a bit careful about being able to proceed in good faith. Obviously, we're having robust and sensitive discussions on these things. Let us come back to you on that. I appreciate the interest.

**Answer:**

As at 4 August 2024, the following groups have been consulted:

- Ability First
- Australian Autism Alliance
- Australian Community Industry Alliance
- Australian Federation of Disability Organisations
- Autism, Aspergers Advocacy Australia
- Autistic Self Advocacy Network of Australia and New Zealand
- Better Planning Working Group (a National Disability Insurance Agency (NDIA) working group including members the following Disability Representative and Carer Organisations (DRCO))
  - National Ethnic Disability Alliance
  - Every Australian Counts
  - Deaf Australia
  - Summer Foundation
- Blind Citizens Australia
- Brain Injury Australia
- Carers Australia
- Children and Young People with Disability Australia
- Community Mental Health Australia
- Deafblind Australia
- Deafness Forum Australia
- Disability Advocacy Network Australia
- Disability Intermediaries Australia
- Down Syndrome Australia
- Every Australian Counts
- First Peoples Disability Network
- Inclusion Australia
- Independent Advisory Council
- JFA Purple Orange
- Mental Health Australia
- National Disability Services
- National Mental Health Consumer and Carer Forum
- Participant Reference Group
- People with Disability Australia
- Physical Disability Australia
- Re-Imagine Australia

- Self Advocacy Resource Unit
- Women with Disabilities Australia
- Young People in Nursing Homes National Alliance

As at 4 August 2024, the following Consultations are scheduled but not yet undertaken:

- Mental Health Carers Australia
- National Mental Health Consumer Alliance
- Deaf Australia
- Participant focus groups
- Employees with Disability Network (NDIA staff who identify as people with disability)
- Neurodegenerative, Palliative Care and Rare Disease Reference Group
- National public consultation (Department of Social Services)

### Consultation timeframe

The NDIA has not discussed engagement timelines in these sessions.

### Consultation materials shared:

Consultation pack	Materials	Shared with
<b>Section 33 consultation pack</b>	<b>Attachment A</b> – Section 33 Easy-Read <b>Attachment B</b> – Section 33 scenarios <b>Attachment C</b> – Section 33 consultation	<ul style="list-style-type: none"> <li>• Better Planning Co-design Working Group</li> <li>• DRCO</li> <li>• Independent Advisory Council (IAC)</li> </ul>
<b>Section 33 consultation pack for providers</b>	<b>Attachment D</b> - Section 33 Legislation Reform presentation	<ul style="list-style-type: none"> <li>• Provider focus group attendees</li> </ul>
<b>Section 10 consultation pack</b>	<b>Attachment E</b> - Section 10 Legislation Reform Easy-Read <b>Attachment F</b> – Section 10 Consultation sessions with DRCOs <b>Attachment G</b> – Section 10 NDIS Supports consultation <b>Attachment H</b> – Section 10 Changes to the NDIS Act Easy-Read <b>Attachment I</b> – Section 10 Legislation Reform NDIS Supports	<ul style="list-style-type: none"> <li>• DRCO</li> <li>• IAC</li> </ul>
<b>Combined consultation pack</b>	<b>Attachment J</b> – Legislation Reforms combined Consultation Pack Presentation <b>Attachment K</b> – Legislation Reforms combined Consultation Pack Easy-Read	<ul style="list-style-type: none"> <li>• Participant Reference Group</li> <li>• Industry Chief Executive Forum</li> </ul>

## Changes to the NDIS Act



This Easy Read information has been prepared for the Independent Advisory Council (IAC).



It has information and questions about changes to the **NDIS Act**.



The NDIS Act is a law. It says how the NDIS works.

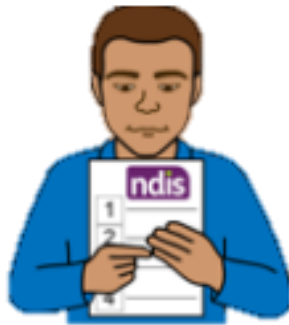
The laws about the NDIS might change.



Section 33 is part of the NDIS Act.

Section 33 is about **NDIS plans**.

The NDIS plan is a document that has information about:



- you and your goals
- the supports you need
- the **funding** the NDIS gives you.

Funding is the money from your plan that pays for the supports you need.



If the law changes, it would mean the NDIA can:

- say how much money is in a NDIS plan.



- say how much can be spent on different types of supports.



- say how much money you can spend at one time.

This means participants cannot use all their money at once.

## Why the law is changing?



Some participants spend all their NDIS money before the plan ends.

Then they do not have money for supports they need.

Your funding must support you for your whole plan.



We need to make sure we manage the NDIS well, now and in the future.




We want to help people understand their funding and manage it carefully.

## We have some questions.



1. How can we help participants spend the money in their plan carefully?

	
1	_____
2	_____ ←
3	Set limit
4	Set time limit

2. What do we need to do to help us prepare people for these changes?



3. Some participants might ask us to say how much money they can use:
  - at one time
  - on one type of supports.

What do you think about this?



4. How can plan managers and support coordinators help participants stop spending too much in their plan?



5. What else can planners do to help participants spend the money in their plan carefully?



# Section 33 scenarios

## Plan inflation – scenario 1

### Situation:

- Participant is 45 years of age and has an acquired brain injury.
- Their annual plan value is \$125,000.
- Core Support budget is Plan Managed.
- The participant used more than half their total Core Support funding in the first three months of their plan.
- If the participant continues to use their funding at this rate, their Core Support funding would be used up at around halfway point of their plan (e.g. 6 months into a 12 month plan).

### Assessment:

- Participant is using funding for daily living supports and community access.
- The participant is using community access supports at 1:1 ratio on weekdays and weekends in the evenings. They are using more hours each week than was funded. Funding was for less hours, at lower daytime rates.
- Over the last 2 plans, the participant has had an average plan duration of 8 months. Their past funding was used up considerably earlier than the plan expiry date.
- Participant is at risk of being without supports for the last 6 months of their plan.

## Plan inflation – scenario 2

### Situation:

- Participant is 56-years of age. They are using significant amounts of funding for Short Term Accommodation.
- Their yearly budget is \$117,000.
- Nearly half of their total plan funding has been used in less than 3 months. At the current rate, funding will be used up halfway into their 24-month plan.
- All Core Supports in the plan are plan managed.

### Assessment:

- Participant requested funding for Short Term Accommodation for respite purposes.
- Plan didn't include funding for Short Term Accommodation. The plan includes daily living supports to help the participant achieve their goal of living independently in their home. The participant does not have informal supports.
- The rate at which funding is being used means the participant is at risk of not having access to necessary daily living supports.
- Participant has had plan continuations for their previous two plans.
- Support Coordinator said they weren't aware of the intent of the funding included. The Support Coordinator helped the participant to flexibly use their Core Supports.
- Plan manager said that they thought their role is to claim and pay invoices. They said their role isn't to support the participant to understand their funding or whether it may be used up early.
- Short Term Accommodation provider told the participant they could engage supports flexibly and could request a plan reassessment if their funds were used up before the end of their plan.

## Plan inflation – scenario 3

### Situation:

- Participant is 50 years of age and has an intellectual disability.
- Yearly plan value is \$90,000.
- Participant is currently using \$12,000 of funding per month.
- At this rate, their funding will be used up around month 15 of a 24-month plan.

### Assessment:

- Participant is using Core Supports more often and to engage in more community activities than what was funded.
- The participant didn't budget for the higher cost due of support on weekends.
- Participant said they really get along well with the support worker. They want to spend more time with them in social environments.
- Participant also lives with back pain and a shoulder injury. They use their Capacity Building budget for weekly physiotherapy.
- Funding wasn't included to manage back and shoulder conditions. Capacity Building funding was included to assist the participant with independent living skills and social community and engagement.
- Capacity Building funding will be used up within the first 12 months of a 24-month plan. Having regular physiotherapy for their back and shoulder will use the funding.
- There is a high risk the participant will be without supports for around the last 4 months of their plan.

# Pre-reading: plan utilisation and section 33

## Overview

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is changing. The *Getting the NDIS Back on Track No. 1 Bill 2024* (2024 Bill) is based on recommendations from the Independent Review of the NDIS (NDIS Review).

Section 33 of the NDIS Act is about the information that must be in a participant's plan.

The 2024 Bill says we should add provisions to section 33. These proposed changes to the NDIA Act would let us specify:

- a total funding amount for all reasonable and necessary supports funded in a participant's plan
- a total amount of funding provided for a class or classes of reasonable and necessary supports funded in a participant's plan
- funding will be provided for reasonable and necessary supports during specified periods.

These changes are intended to support Scheme sustainability by reducing overutilisation in some participant plans. Overutilisation means a participant is likely to spend all their funding before their scheduled plan reassessment date.

We want to support these possible changes by helping all participants make the best use of the funding in their plans.

What is the issue we want to discuss?

We want to support participants overutilising the supports in their NDIS plans to better manage their budget.

We want to help participants understand what over-utilisation means, why it is important to not overutilise their supports and give them the tools and resources to stay within their plan budget.

We want to help all participants understand how to make the best use of the supports in their plan and to understand these new funding limits.

We want to understand what actions we need to take before we implement any of these funding limits in a participant's plan.

## What can we do about this issue?

### Questions to discuss:

- How can we better support participants to spend within their plan budget?
- What do we need to do before we set a funding limit or release funding in intervals?
- Should participants be able to ask us to apply these limits to their funding?
- How can we help plan managers and support coordinators reduce plan over-utilisation?
- How can we improve plan implementation meetings and check-ins to support participants manage their funding?

### Out of scope:

- Wording of Section 33 changes to the NDIS Act and Ministerial Instrument
- Changes to how we develop plans
- Changes to access process
- Funding limits in new framework plans



# Plan utilisation

Legislative changes to section 33

July 2024

ndis



## Acknowledgement of country

I would like to acknowledge the traditional owners and their custodianship of the many lands on which we all meet today. I want to pay my respect and gratitude to the Ancestors and their descendants who continue cultural and spiritual connections to Country.

I extend my respect to all of you and the lands you are on, and any Aboriginal and Torres Strait Islander people with us today.

Aboriginal artwork by artist Terri Bean depicting Many People working together.



# Housekeeping

- This meeting will be recorded for note taking purposes only. The recording will not be shared under any circumstance.
- We will have a 10 minute break after 1 hour.
- Please use the 'raise hand' option if you have a question.
- Please use the 'mute' option when you are not speaking.
- Please say your first name when you start to speak.
- You can use the 'chat' function to ask questions.



# What is changing

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is changing. The *Getting the NDIS Back on Track No. 1 Bill 2024* (2024 Bill) is based on recommendations from the Independent Review of the NDIS (NDIS Review).

Section 33 of the NDIS Act is about the information that must be in a participant's plan.

The 2024 Bill says we should add provisions to section 33. These proposed changes to the NDIA Act would let us specify:

- a total funding amount for all reasonable and necessary supports funded in a participant's plan
- a total amount of funding provided for a class or classes of reasonable and necessary supports funded in a participant's plan
- funding will be provided for reasonable and necessary supports during specified periods.

# Why is this change needed?

These changes are intended to support Scheme sustainability by **reducing the risk of overutilisation in participant plans**. Overutilisation means a participant is likely to spend all their funding before their scheduled plan reassessment date.

We want to support participants at risk of overutilising the funding in their NDIS plans by helping to better manage budgets. We want to help participants understand what over-utilisation means, why it is important to not overutilise their supports and give them the tools and resources to stay within their plan budget.

We want to make **plans and budgets easier to manage**, and as much as possible provide **longer term budgets**.

For example, a participant with a five-year plan may have funding allocated in yearly periods. This would provide clear guidance on their funding allocation over each period, support effective financial management and still allow flexibility in how they purchase supports and services.

# What will this mean for participants?

The planning process will not change significantly for participants.

We will introduce a new version of the NDIS Plan soon – co-design with participants.

We want to continue to improve how we explain what is in a plan and how to use a budget. This might include adding more information about how we came up with the total funding amounts.

We will continue to have conversations about how we can better help participants manage their budgets – this includes through improvements to check-ins, the portal and app and resources about plan implementation.

# Discussion

- How can we better support participants to spend within their plan budget?
- How can we help plan managers and support coordinators reduce plan over-utilisation?
- What are the operational consequences of this change for providers?

# Questions



- How can we better support participants to spend within their plan budget?
- What do we need to do before we set a funding limit or release funding in intervals?
- Should participants be able to ask us to apply these limits to their funding?
- How can we help plan managers and support coordinators reduce plan over-utilisation?
- How can we improve plan implementation meetings and check-ins to support participants manage their funding?

## National Disability Insurance Agency

 1800 800 110

 [ndis.gov.au](http://ndis.gov.au)

 [enquiries@ndis.gov.au](mailto:enquiries@ndis.gov.au)

 Find us on Facebook/NDISAus


 Follow us on Twitter @NDIS

## For people with hearing or speech loss

 TTY: 1800 555 677

 Voice Relay: 1800 555 727

## For people who need help with English

 TIS: 131 450

## Slide 1 - Legislation reforms – NDIS supports

June 2024

### Slide 2 – Before we begin

#### Recording the meeting

We would like to record the meeting, to help with our note taking. The recording will not be shared without your permission.

Do you give consent for us to record the meeting?

#### Scheduled breaks during the meeting

I will check in to see if anyone would like a 5 minute break after the first section of the meeting, before we start our discussion.

### Slide 3 - NDIS Supports – introduction

Section 10 enables the making of a new NDIS Rule that outlines what is and is not a NDIS Support.

This rule will take time to develop through consultation with participants, sector and community, and agree with State and Territory Governments.

In the meantime, a transitional instrument will be in place outlining what is and is not a NDIS Support until a new permanent rule is in place.

This transitional instrument is what we are providing further information on today and is based on existing guidance and agreements about what are and are not NDIS Supports, including the Support for Participants Rule, APTOS and 'Would We Fund It' guides.

### Slide 4 - NDIS Supports

#### Supports that are NDIS Supports

Supports that are NDIS supports will be generally described and align with descriptions of supports used for the purposes of provider registration and regulation. The broad description of supports is intended to allow the greatest level of flexibility possible for participants in purchasing supports that they determine meet their disability related needs.

#### Supports that are not NDIS Supports

Supports that are not NDIS supports will be non-exhaustive and very specifically described goods and services that the NDIA currently considers a participant should not spend NDIS amounts on because they do not align with the Supports for Participant rules, including supports that are:

- likely to cause harm to the participant or pose a risk to others
- never related to a persons disability

- day-to-day living costs
- duplicating other supports provided under alternative funding through the NDIS
- income replacement
- not value for money
- not effective, beneficial or current good practice
- always to be reasonably provided by family, carer or other support
- never most appropriately funded or provided through the NDIS and is more appropriately provided through a mainstream service system such as health or education.

#### Slide 5 - Why is this change needed?

A definition of NDIS supports is needed to make sure NDIS funding follows the laws of the Constitution.

#### Constitutional requirement

- The definition makes clear the constitutional basis for the new budget-based planning framework recommended by the NDIS Review and provides clarity and consistency across the NDIS Act.

#### Participant feedback

- We have heard consistently, particularly from self-managers, that it is not clear what they can spend their funding on.
- Making it clear what NDIS funding can and can not be spent on will help participants make more informed choices about what they can use their funds for.

#### Supporting plan flexibility

- Clarifying spending rules will support the introduction of more flexible budgets.
- We know people with disability know their own support needs best, so this will give participants upfront guidance about how to make informed spending choices about the supports that work best for them.

#### Scheme integrity

- NDIS funds are being used to purchase supports that were never intended to be funded by the NDIS. We know there are individuals and providers purchasing supports, services and items that are not appropriate.
- Having a clear definition of what is, and is not, appropriate to purchase with NDIS funding will strengthen the integrity of the Scheme and protect participants from unscrupulous providers.

Our intent is to make this change in a way that also:

- helps participants understand what they can spend their funding on
- makes sure NDIS funds are only used to purchase appropriate supports
- helps us introduce more flexible budgets
- protects the integrity of the Scheme



#### Slide 6 - What will this mean for participants?

Access and planning will not change significantly for participants and prospective participants.

We will focus on communicating, educating and supporting participants, plan nominees, child representatives, plan managers and support coordinators, and providers to understand how to spend NDIS amounts only on NDIS supports.

When participants spend NDIS funding on non-NDIS supports, we may delay or cancel a payment.

#### Slide 7 – Discussion

- Do you have any feedback or concerns with the proposed transitional rules?
- What issues may these definitions pose to participants?
- Will these rules cause any unintentional consequences to services and supports participants currently receive?
- Are there concerns specifically for participants and nominees? Self-managers?
- What will participants, nominees and providers need to support them in understanding and compiling with transitional rules?

## Meeting agenda

### Section 10: Consultation sessions with DRCOs

Item		Topic	Session Led By
1	5 mins	Welcome and Acknowledgement of Country	Acting General Manager Co-design and Engagement
2	25 mins	Overview of proposed changes <ul style="list-style-type: none"> <li>• Section 10 changes</li> <li>• Introduction of 'NDIS Supports'</li> <li>• Need for transitional rule</li> <li>• What is and is not a NDIS support (lists)</li> </ul>	Deputy CEO Service Design and Improvement
	5 mins	Optional break	
3	45mins	Discussion <ul style="list-style-type: none"> <li>• Feedback or concerns with the proposed transitional rule</li> <li>• What issues may these lists pose to participants?</li> <li>• Will these lists cause any unintentional consequences to services and supports participants currently receive?</li> <li>• What will participants, nominees and providers need to support them in understanding and compiling with transitional rule?</li> </ul>	All
4	5 mins	Wrap up and close	Acting General Manager Co-design and Engagement



# Legislation reforms – NDIS Supports

# Before we begin

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# NDIS Supports – introduction

Section 10 enables the making of a new NDIS Rule that outlines what is and is not a NDIS Support.

This rule will take time to develop through consultation with participants, sector and community, and agree with State and Territory Governments.

In the meantime, a transitional instrument will be in place outlining what is and is not a NDIS Support until a new permanent rule is in place.

**This transitional instrument is what we are providing further information on today and is based on existing guidance and agreements about what are and are not NDIS Supports, including the Support for Participants Rule, APTOS and ‘Would We Fund It’ guides.**

# NDIS Supports

## Supports that are NDIS Supports

Supports that are NDIS supports will be generally described and align with descriptions of supports used for the purposes of provider registration and regulation. The broad description of supports is intended to allow the greatest level of flexibility possible for participants in purchasing supports that they determine meet their disability related needs.

## Supports that are not NDIS Supports

Supports that are not NDIS supports will be non-exhaustive and very specifically described goods and services that the NDIA currently considers a participant should not spend NDIS amounts on because they do not align with the Supports for Participant rules, including supports that are:

- likely to cause harm to the participant or pose a risk to others
- never related to a persons disability
- day-to-day living costs
- duplicating other supports provided under alternative funding through the NDIS
- income replacement
- not value for money
- not effective, beneficial or current good practice
- always to be reasonably provided by family, carer or other support
- never most appropriately funded or provided through the NDIS and is more appropriately provided through a mainstream service system such as health or education.

# Why is this change needed?

**A definition of NDIS supports is needed to make sure NDIS funding follows the laws of the Constitution.**

## **Constitutional requirement**

- The definition makes clear the constitutional basis for the new budget-based planning framework recommended by the NDIS Review and provides clarity and consistency across the NDIS Act.

## **Participant feedback**

- We have heard consistently, particularly from self-managers, that it is not clear what they can spend their funding on.
- Making it clear what NDIS funding can and can not be spent on will help participants make more informed choices about what they can use their funds for.

## **Supporting plan flexibility**

- Clarifying spending rules will support the introduction of more flexible budgets.
- We know people with disability know their own support needs best, so this will give participants upfront guidance about how to make informed spending choices about the supports that work best for them.

## **Scheme integrity**

- NDIS funds are being used to purchase supports that were never intended to be funded by the NDIS. We know there are individuals and providers purchasing supports, services and items that are not appropriate.
- Having a clear definition of what is, and is not, appropriate to purchase with NDIS funding will strengthen the integrity of the Scheme and protect participants from unscrupulous providers.

## **Our intent is to make this change in a way that also:**

- **helps participants understand what they can spend their funding on**
- **makes sure NDIS funds are only used to purchase appropriate supports**
- **helps us introduce more flexible budgets**
- **protects the integrity of the Scheme**



## What will this mean for participants?

Access and planning will not change significantly for participants and prospective participants.

We will focus on communicating, educating and supporting participants, plan nominees, child representatives, plan managers and support coordinators, and providers to understand how to spend NDIS amounts only on NDIS supports.

When participants spend NDIS funding on non-NDIS supports, we may delay or cancel a payment.



# Discussion

- Do you have any feedback or concerns with the proposed transitional rules?
- What issues may these definitions pose to participants?
- Will these rules cause any unintentional consequences to services and supports participants currently receive?
- Are there concerns specifically for participants and nominees? Self-managers?
- What will participants, nominees and providers need to support them in understanding and compiling with transitional rules?

## Changes to the NDIS Act



We prepared this Easy Read information for when we talk to people about NDIS supports.



It has information and questions about changes to the **NDIS Act**.



The NDIS Act is a law. It says how the NDIS works.

The laws about the NDIS might change.



Section 10 is part of the NDIS Act.

If changes are made to section 10, we need a new rule to explain what an NDIS support is.

The rule will say what you can buy with the money in your NDIS plan. This rule is new.



We call the things you can buy **NDIS supports**.

Examples include support workers and wheelchairs.



The new rule will say what you cannot use your NDIS money for.

Examples include a washing machine.

## Why is the law changing?



People with disability and families told us they are confused about what supports they can buy.



We need a new rule to make sure that the money in NDIS plans follows the law.

We also want to give participants better information about what they can use their NDIS money on.



You can still use your NDIS money.

The new rule says what you can use your NDIS money for.



We will ask people what they think about the new rule.

This will help us be ready if the law changes.

## We have some questions.



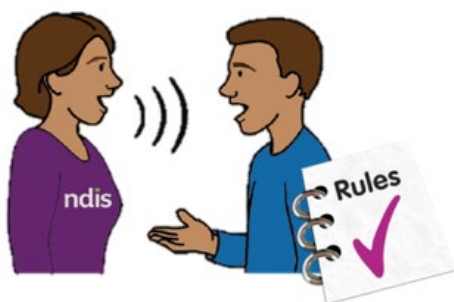
1. What do you think about the new rule?



2. What information would be good to have?



3. What problems could there be with the new rule?



4. How can we help people understand the new rules?



5. What can we do to make it easier for people to get the supports they want?



There are some things we will not talk about.

We do not get to choose

- the words in the law
- if the law is changed.

# Legislation reforms – NDIS supports

## Overview

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is changing. The *Getting the NDIS Back on Track No. 1 Bill 2024* (2024 Bill) is based on recommendations from the Independent Review of the NDIS (NDIS Review).

Section 10 of the NDIS Act includes what is and is not a NDIS support. The 2024 Bill adds a new definition of 'NDIS supports'.

A new NDIS rule is needed to define what a 'NDIS Support' means. This new rule needs to be in place right away if the Bill becomes law.

The new rule needs to be developed with participants, the disability community and agreed to by state and territory governments. Because this will take time, a transitional rule is needed. We will use the transitional rule until we have the new rule.

The transitional rule will list what participants can use their NDIS funding for. We will base the transitional rule on current arrangements.

## What is changing?

The proposed change is to define 'NDIS supports'. This includes introducing new lists of what is considered a NDIS support and what is not.

Changes to NDIS supports won't significantly change access and planning.

## Why is this change needed?

A definition of NDIS supports is needed to facilitate flexible funding and make sure NDIS funding follows the laws of the Constitution.

Our intent is to make this change in a way that also:

- helps participants understand what they can spend their funding on
- makes sure NDIS funds are only used to purchase appropriate supports
- helps us introduce more flexible budgets
- protects the integrity of the Scheme.

## Transitional rule

It will take time to develop new rules about 'NDIS supports'. The new NDIS Rules will be developed in consultation with people with disability, their representatives, and must be agreed by State and Territory Governments.

Before the new rules are made, a transitional rule will be in place. This transitional rule will be used until all governments agree on the final NDIS Rule.

We want to discuss the transitional rule.



# NDIS Supports

Below is **current guidance on NDIS supports**. The transitional rule will be based on current guidance.

## Supports that are NDIS Supports

Supports that are NDIS supports will be generally described and align with descriptions of supports used for the purposes of provider registration and regulation. The broad description of supports is intended to allow the greatest level of flexibility possible for participants in purchasing supports that meet their disability related needs.

## Supports that are not NDIS Supports

Supports that are not NDIS supports will be non-exhaustive and very specifically described goods and services that the NDIA currently considers a participant should not spend NDIS amounts on because they do not align with the Supports for Participant rules, including:

- The support is likely to cause harm to the participant or pose a risk to others
- The support is never related to a person's disability
- The support is a day-to-day living cost
- The support duplicates other supports provided under alternative funding through the NDIS
- The support consists of income replacement
- The support never represents value for money
- The support is not effective and beneficial and current good practice
- The support should always be reasonably provided by family, carer or other support
- The support is never most appropriately funded or provided through the NDIS and is more appropriately provided through a mainstream service system such as health or education.

## What is in the new rule?

The transitional rule will be made up of two draft lists which set out:

- What NDIS funding should be spent on.
- What NDIS funding should not be spent on.

## Where did the lists come from?

The draft lists have been developed based on current information, including:

- Support categories described at section 20 of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018, which explain what services providers can register to deliver under the NDIS.
- National Disability Insurance Scheme (Supports for Participants) Rules 2013 which describe some of what the NDIS will and will not be responsible for funding.
- Current guidance from the NDIA, including Our Guidelines and Would We Fund It advice.
- Agreements that are in place between governments that explain what the NDIS will fund and what other government services are responsible for providing, including the Applied Principles and Table of Supports and Memorandums of Understanding.

The lists bring together in one place existing advice and reflects current practice.

There are some items in the proposed exclusions that relate specifically to products, supports and services that are not effective and beneficial, or are daily living costs of living that were never intended to be part of the Scheme.

## What will this mean for participants?

We will focus on communicating, educating and supporting participants, plan nominees, child representatives, plan managers and support coordinators, and providers to understand how to spend NDIS amounts only on NDIS supports.

When participants spend NDIS funding on non-NDIS supports, we may delay or cancel a payment.

# Discussion

## Questions to discuss:

- Do you have any feedback or concerns with the proposed transitional rule?
- What issues could this transitional rule create for participants?
- Will this rule cause any unintentional consequences to services and supports participants currently receive?
- Are there concerns specifically for:
  - participants?
  - nominees?
  - self-managers?
  - providers?
- What supports will participants, nominees and providers need to understand and follow the transitional rule?

## Out of scope:

- Wording of changes to the NDIS Act.
- Proposed changes to the NDIS Bill.



# Legislation reforms – NDIS Supports and Plan utilisation



# Acknowledgement of Country

I would like to acknowledge the Traditional Owners and Custodians of the Country on which we meet today, and their continuing connection to land, sea, and community. I pay my respects to their Elders, past and present.

I would like to extend that acknowledgement and respect to any Aboriginal and Torres Strait Islander peoples here today.

# Before we begin

## Recording the meeting

We would like to record the meeting, to help with our note taking. The recording will not be shared without your permission.

Do you give consent for us to record the meeting?

## Scheduled breaks during the meeting

I will check in to see if anyone would like a 5 minute break after the first section of the meeting, before we start our discussion.



# NDIS Supports – introduction

Section 10 enables the making of a new NDIS Rule that outlines what is and is not a NDIS Support.

This rule will take time to develop through consultation with participants, sector and community, and agree with State and Territory Governments.

In the meantime, a transitional instrument will be in place outlining what is and is not a NDIS Support until a new permanent rule is in place.

**This transitional instrument is what we are providing further information on today and is based on existing guidance and agreements about what are and are not NDIS Supports, including the Support for Participants Rule, APTOS and ‘Would We Fund It’ guides.**

# NDIS Supports

## Supports that are NDIS Supports

Supports that are NDIS supports will be generally described and align with descriptions of supports used for the purposes of provider registration and regulation. The broad description of supports is intended to allow the greatest level of flexibility possible for participants in purchasing supports that they determine meet their disability related needs.

## Supports that are not NDIS Supports

Supports that are not NDIS supports will be non-exhaustive and very specifically described goods and services that the NDIA currently considers a participant should not spend NDIS amounts on because they do not align with the Supports for Participant rules, including supports that are:

- likely to cause harm to the participant or pose a risk to others
- never related to a persons disability
- day-to-day living costs
- duplicating other supports provided under alternative funding through the NDIS
- income replacement
- not value for money
- not effective, beneficial or current good practice
- always to be reasonably provided by family, carer or other support
- never most appropriately funded or provided through the NDIS and is more appropriately provided through a mainstream service system such as health or education.



# Why is this change needed?

**A definition of NDIS supports is needed to make sure NDIS funding follows the laws of the Constitution.**

## **Constitutional requirement**

- The definition makes clear the constitutional basis for the new budget-based planning framework recommended by the NDIS Review and provides clarity and consistency across the NDIS Act.

## **Participant feedback**

- We have heard consistently, particularly from self-managers, that it is not clear what they can spend their funding on.
- Making it clear what NDIS funding can and can not be spent on will help participants make more informed choices about what they can use their funds for.

## **Supporting plan flexibility**

- Clarifying spending rules will support the introduction of more flexible budgets.
- We know people with disability know their own support needs best, so this will give participants upfront guidance about how to make informed spending choices about the supports that work best for them.

## **Scheme integrity**

- NDIS funds are being used to purchase supports that were never intended to be funded by the NDIS. We know there are individuals and providers purchasing supports, services and items that are not appropriate.
- Having a clear definition of what is, and is not, appropriate to purchase with NDIS funding will strengthen the integrity of the Scheme and protect participants from unscrupulous providers.

## **Our intent is to make this change in a way that also:**

- **helps participants understand what they can spend their funding on**
- **makes sure NDIS funds are only used to purchase appropriate supports**
- **helps us introduce more flexible budgets**
- **protects the integrity of the Scheme**



## What will this mean for participants?

Access and planning will not change significantly for participants and prospective participants.

We will focus on communicating, educating and supporting participants, plan nominees, child representatives, plan managers and support coordinators, and providers to understand how to spend NDIS amounts only on NDIS supports.

When participants spend NDIS funding on non-NDIS supports, we may delay or cancel a payment.

## Discussion

- Do you have any feedback or concerns with the proposed transitional rules?
- What issues may these definitions pose to participants?
- Will these rules cause any unintentional consequences to services and supports participants currently receive?
- Are there concerns specifically for participants and nominees? Self-managers?
- What will participants, nominees and providers need to support them in understanding and compiling with transitional rules?

# Plan utilisation – introduction

Section 33 of the NDIS Act is about the information that must be in a participant's plan.

The proposed changes to the NDIA Act would let us specify:

- a **total funding amount** for all reasonable and necessary supports funded in a participant's plan
- a **total amount of funding provided for a class or classes of supports** funded in a participant's plan
- funding will be provided during **specified periods**.

# Why is this change needed?

These changes are intended to support Scheme sustainability by **reducing the risk of overutilisation in participant plans**. Overutilisation means a participant is likely to spend all their funding before their scheduled plan reassessment date.

We want to support participants at risk of overutilising the funding in their NDIS plans by helping to better manage budgets. We want to help participants understand what over-utilisation means, why it is important to not overutilise their supports and give them the tools and resources to stay within their plan budget.

We want to make **plans and budgets easier to manage**, and as much as possible provide **longer term budgets**.

For example, a participant with a five-year plan may have funding allocated in yearly periods. This would provide clear guidance on their funding allocation over each period, support effective financial management and still allow flexibility in how they purchase supports and services.

# What will this mean for participants?

The planning process will not change significantly for participants.

We will introduce a new version of the NDIS Plan soon – that was a result of co-design with participants.

We want to continue to improve how we explain what is in a plan and how to use a budget. This might include adding more information about how we came up with the total funding amounts.

We will continue to have conversations about how we can better help participants manage their budgets – this includes through improvements to check-ins, the portal and app and resources about plan implementation.

# Discussion

- How can we better support participants to spend within their plan budget?
- What do we need to do before we set a funding limit or release funding in intervals?
- Should participants be able to ask us to apply these limits to their funding?
- How can we help plan managers and support coordinators reduce plan over-utilisation?
- How can we improve plan implementation meetings and check-ins to support participants manage their funding?



# Legislation reforms – NDIS Supports and Plan utilisation

Plain text version

## Slide 1 – Legislation reforms – NDIS Supports and Plan utilisation

[ndis.gov.au](https://www.ndis.gov.au)

June 2024

## Slide 2 – Acknowledgement of Country

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## **Slide 5 – NDIS Supports**

### **Supports that are NDIS Supports**

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### **Supports that are not NDIS Supports**

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- helps us introduce more flexible budgets
- protects the integrity of the Scheme

## **Slide 7 – What will this mean for participants?**

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## **Slide 8 – Discussion**

- Do you have any feedback or concerns with the proposed transitional rules?
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## **Slide 12 – Discussion**

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