

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the National Disability Insurance Scheme

*National Disability Insurance Scheme Act 2013*

*National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1)  
(NDIS Supports) Transitional Rules 2024*

### **Purpose**

This *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (the Instrument) provides a transitional definition of 'NDIS support' which is a key concept inserted into the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The definition of NDIS support clarifies what supports are provided through the National Disability Insurance Scheme (NDIS, Scheme) in a manner that is consistent with the original intention of the Scheme. It also reinforces the constitutional basis for the supports that are funded and provided under the Scheme, which is necessary as the NDIS transitions to a new budget-based planning framework.

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act and will only remain in place until permanent NDIS rules are made under section 209 of the NDIS Act.

Unless otherwise stated, a reference in this explanatory statement to a provision of the NDIS Act should be read as a reference to that provision as amended by the Amending Act (if applicable).

### **Background**

#### The Amending Act

On Tuesday 18 October 2022, the Government announced there would be an independent review into the NDIS to improve the wellbeing of Australians with disability and the Scheme's sustainability (NDIS Review). The Terms of Reference for the NDIS Review provided 3 overarching objectives:

- put people with disability and their families back at the centre of the NDIS to create a more personal experience
- restore trust and confidence
- ensure the long-term sustainability of the NDIS.

The NDIS Review, which was co-chaired by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM, delivered its final report 'Working together to deliver the NDIS' in December 2023. It included 26 recommendations with 139 integrated actions which were intended to provide a blueprint to renew the promise of the NDIS and deliver a more accessible and inclusive Australia.

The Amending Act addressed priority recommendations from the NDIS Review and represented the first tranche of amendments to the NDIS Act to improve participant experience. It followed agreement by National Cabinet that the Commonwealth would work with State and Territory governments to implement legislative and other changes to return the NDIS to its original intent of supporting people with permanent and significant disability, within a broader ecosystem of supports.

These changes made by the Amending Act are critical to improving the experience of people with disability participating in the Scheme while ensuring the long-term sustainability of the NDIS, so that it is available to support Australians with disability for many years to come.

One of the key NDIS Review recommendations implemented by the Amending Act was a move towards a more flexible budget-based planning framework. With the move away from the current planning approach, which includes an assessment of individual 'reasonable and necessary supports' (that must by their nature be supports of a particular kind that are appropriately funded or provided by the NDIS), it is necessary to include a legislative definition of the supports capable of being funded by the NDIS. The definition of NDIS support will guide participants on how they may spend their flexible budget.

#### Purpose of NDIS supports

As noted above, one of the key changes made by the Amending Act was to insert a new concept of 'NDIS support' into the NDIS Act. This concept of NDIS support appears in numerous places throughout the Amending Act and is central to the operation of the future of the NDIS in a number of ways.

The definition will provide greater clarity around the supports that can be funded by the NDIS and those that cannot. This approach is consistent with the original intention of the Scheme to provide supports to people with significant and permanent disability and people who are in need of early intervention supports. It is also consistent with the recommendations of the NDIS Review in that it focuses on the needs of a participant, rather than a diagnosis.

For the sake of consistency and simplicity across the entirety of the NDIS Act, the concept has been adopted in key areas, particularly where references to supports being appropriately funded by the NDIS already existed. Most critically, these include:

- section 34: This section deals with reasonable and necessary supports for old framework plans. A new requirement was inserted that a reasonable and necessary support must be an NDIS support.
- section 46: This section was repealed and replaced so that NDIS amounts can only be spent on supports that are NDIS supports.

Defining NDIS supports will make it easier for participants and other members of the disability community to identify what is appropriately funded by the NDIS, and what NDIS funding can be used to purchase.

The general descriptions of the kinds of supports that are NDIS supports in the Instrument and in participant's plans will continue to provide participants with choice and control over how they spend their plan while also returning the NDIS to its original intent, consistent with the recommendations of the NDIS review.

In the current planning framework (now known as the 'old framework'), the definition of NDIS support clarifies the boundaries of what supports are reasonable and necessary under section 34 of the NDIS Act. This is an essential step to ensure that participants are able to continue receiving the supports they need as a result of their disability for many years to come.

In the new budget-based planning framework, reasonable and necessary supports will be replaced by reasonable and necessary budgets. This means the definition of NDIS supports has an even more important role in guiding participants to understand the supports that are able to be funded by the NDIS, as most supports will no longer be identified in participant's plans.

In addition to clarifying what is and is not appropriately funded by the NDIS, the concept of NDIS support reinforces the constitutional basis for the NDIS, which is necessary for new framework (budget based) plans. This includes by implementing Australia's obligations under the *Convention on the Rights of People with Disability* (CRPD).

### Power to make the Instrument

Section 10 of the NDIS Act allows the Minister to make NDIS rules declaring what supports are, and are not, NDIS supports. These rules are Category A NDIS rules made under section 209 of the NDIS Act. Items 124 and 138 of Schedule 1 to the Amending Act allow the Minister to make a transitional rule for the purposes of section 10.

The Instrument is not an NDIS rule, but rather a transitional rule that will remain in place only until NDIS rules are made for the purposes of section 10 under section 209. It is necessary to have a transitional rule in place for a period of time to allow time to develop and agree the final NDIS rule.

Before making rules declaring what supports are NDIS supports, the Minister must be satisfied of the following:

- the support is appropriately funded by the NDIS, and
- the declaration of the support as an NDIS support implements Australia's obligations under the CRPD or another agreement with one or more countries, or the declaration of the support enables the provision of 'sickness benefits'.

Before making rules declaring what supports are not NDIS supports, the Minister must be satisfied that the support is not appropriately funded or provided through the NDIS.

In addition to declaring what is and is not an NDIS support, the Minister may also prescribe supports that are subject to a 'substitution process', which allows a

participant to request that a support that is declared not to be an NDIS support be considered an NDIS support for them in specific circumstances.

### Outline of instrument

The Instrument sets out the supports that are declared to be NDIS supports, including whether they are NDIS supports for participants generally, or only when the support is specifically stated in a participant's plan. These supports are described generally to ensure that participants continue to have choice and control over how they use their plans.

It also includes transitional arrangements that ensure a support specifically stated in a participant's plan at the commencement of the Amending Act will continue to be an NDIS support for the duration of the participant's current plan. This ensures that participant's will receive continuity of support. Similar transitional arrangements are in place for supports that the Administrative Appeals Tribunal (Tribunal) has found to be reasonable and necessary for a participant.

The Instrument also declares supports that are not NDIS supports. It is important to note that a support will not be an NDIS support if it is declared not to be, even if that support could otherwise fall within one of the categories of supports that are declared to be NDIS supports.

In addition to the supports that are declared not to be NDIS supports, subsection 10(9) of the NDIS Act provides that a support is not an NDIS support if the support consists of the provision of:

- sexual services
- alcohol
- drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Finally, the instrument prescribes the supports that are declared not to be NDIS supports but may be substituted for other supports that are in particular circumstances.

### **Commencement**

The Instrument commences on the later of the day after it is registered and the day that the Amending Act commences. The Amending Act commences on 3 October 2024.

### **Consultation**

The design of the Amending Act has been a collaborative exercise, relying heavily on substantial contributions made by the disability community through the NDIS Review.

The NDIS Review heard consistently, particularly from participants, that it is not always clear what NDIS funding can be spent on. The NDIS was always intended to only fund disability supports that are the responsibility of the NDIS. It was never intended to fund

supports that are the responsibility of other service systems or that relate to day-to-day living costs unrelated to a participant's support needs.

The NDIS Review recommended providing more clarity to participants about what is and is not funded under the NDIS to help guide participants on how they can spend NDIS funding.

The National Disability Insurance Agency (NDIA) conducted a series of targeted engagements from August to September 2024 and heard from over 100 stakeholders including:

- Disability Representative and Carer Organisation members
- Independent Advisory Council members
- Participant Reference Group members
- Industry Chief Executive forum members
- Participant focus groups
- Self managers
- Child representatives
- Rural and remote
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group
- NDIA Board members

In early August 2024, the Department of Social Services released draft lists of NDIS supports for public consultation. Feedback was provided through survey responses and email submissions with over 7,000 responses received. The Government welcomes the significant engagement both from the disability community and the broader Australian community.

The public consultation process was undertaken from 4 August 2024 to 25 August 2024 via the Department's DSS [engage.dss.gov.au](https://engage.dss.gov.au) website. A discussion paper outlining the purpose of the Instrument and consultation process, as well as the draft lists of NDIS supports were published on the DSS Engage website.

The feedback from the disability community has been vital to help clarify the supports that can be funded by the NDIS and those that cannot.

A number of overarching themes were raised through the public consultation, consistent with written submissions received from peak and disability representative organisations including:

- Preference for a principles-based approach over a list-based approach

- The use of 'carve outs' created confusion and a lack of clarity
- The need for an exception process
- Concerns about prioritising specialised goods and service supports over generally commercially available goods and services
- fear about participants unknowingly purchasing something that NDIS funding cannot be used for resulting in debts being owed
- the need for time to understand what the new definition of NDIS Supports means for participants without the risk of incurring a debt.

A detailed consultation report outlining the views of the community on the draft lists of NDIS supports was prepared to inform the Schedules to the Instrument. The report has been published on the DSS Engage website and can be accessed using the following link:

<https://engage.dss.gov.au/consultation-on-draft-lists-of-ndis-supports/consultation-on-the-draft-lists-of-ndis-supports-report>

In addition to engagement with the disability community, there has been significant consultation with States and Territories from July through September 2024 utilising established governance arrangements under the Disability Reform Ministerial Council.

The Instrument is intended to reflect existing intergovernmental agreements and as such engagement across state and territory government on the development of the Schedules to the Instrument has been critical to ensuring that all services systems work together to meet the needs of participants. The effective shared governance of the Scheme is critical to achieving reform envisaged by the NDIS Review.

### **Regulation Impact Analysis (RIA)**

The Office of Impact Analysis has agreed to the use of the Final Report of the Independent Review of the NDIS delivered to Governments in December 2023 as an Impact Analysis Equivalent. A link to the report can be found on the NDIS Review website - <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>.

## **Explanation of the provisions**

### **Part 1 – Preliminary**

#### **Section 1 – Name**

This instrument is the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

#### **Section 2 – Commencement**

This instrument commences on the later of the day after the instrument is registered and the day on which Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act) commences. The Amending Act commences on 3 October 2024

#### **Section 3 – Authority**

This instrument is made under item 138 of Schedule 1 to the Amending Act.

#### **Section 4 – Definitions**

The Instrument provides a number of definitions for terms used in the Instrument. The key definitions are as follows:

***eligible assistance animal*** means a dog or other animal that is:

- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or
- (b) accredited by an animal training organisation prescribed in regulations made under section 132 of the *Disability Discrimination Act 1992* for the purposes of paragraph 9(2)(b) of that Act; or
- (c) provided by an NDIS provider who is registered to provide assistance animals under section 73E of the NDIS Act; or
- (d) trained to assist a person with a disability to alleviate the effect of the disability and to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

Some participants use assistance animals (most commonly dog guides) as a disability support. These animals must have special training, and generally specific accreditation. This definition is consistent with the definition of assistance animal in the *Disability Discrimination Act 1992*, with the addition of an animals provided by certain registered NDIS providers.

In addition to meeting the eligibility requirements set out in the definition, an assistance animal must be trained to actively perform at least 3 tasks or behaviours which mitigate the effects of a participant's disability. The tasks are things that the animal wouldn't naturally do to help a participant manage their disability and mean that the participant needs less assistance or other funded supports. These requirements do not form part of the definition of an eligible assistance animal as they are specific to each individual

participant. They will be matters are taken into consideration by the NDIA in determining whether to include funding for an assistance animal in a participant's plan.

**cultural activity** means a cultural activity for a participant or prospective participant person who is an Indigenous person, and includes practices, ways of understanding the world, and methods of expression such as language, celebrations, and events. For this purpose, it is noted that:

- (a) individual Aboriginal and Torres Strait Islander cultures have specific spiritualities and lore, and therefore obligations or responsibilities, that are connected to Country and community; and
- (b) this Connection to Country, Lore and Spirituality is a way of understanding life, identity and connection with others, or kinship.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) included 13 specific recommendations to improve services and supports for First Nations people with disability including the need to improve how the NDIS works for First Nations participants. The Royal Commission recognised that participation in cultural life is essential to social and emotional wellbeing for First Nations people with disability. In particular recommendation 9.7 recommended support to participate in cultural life.

To support the implementation of this recommendation, certain categories of NDIS supports provide participants with assistance to access and/or participant in cultural activities.

First Nations cultural activities are not only about preserving the past but actively revitalising, living and expressing culture in contemporary settings. They foster resilience, identity, and connection while supporting community well-being and the right to self-determination.

First Nations cultural activities include traditional practices, ways of understanding the world, and methods of expression such as language, celebrations, and events. Individual Aboriginal and Torres Strait Islander cultures have specific spiritualities, lore and therefore obligations or responsibilities that are connected to Country and community. Country refers to an area of land or sea on which First Nations people have a traditional or spiritual association. This Connection to Country, Lore and Spirituality is a way of understanding life, identity and connection with others, or kinship. Culture and spirituality can be expressed through many contemporary and traditional forms of activities including language, dress, kinship, social norms, stories, music, song, dance, visual art, literature, and film. Through these practices, culture can provide a sense of belonging and identity that contributes to individual, family and community wellbeing. Domains in which cultural activities can fall are Connection to Country, Beliefs and Knowledge, Language, Family, Kinship, and Community, Cultural Expression and Continuity, Self-determination, and Leadership.

Although the term 'First Nations' is generally used and understood, for consistency across the statute book, and with amendments made to the NDIS Act, reference is made to participants who are 'Indigenous persons'. The definition of an Indigenous person is a member of the Aboriginal race of Australia or a descendant of an Indigenous inhabitant of the Torres Strait Islands.



**Hearing Services Program** means the program under which hearing services (within the meaning of the *Hearing Services Administration Act 1997*) are provided by:

- (a) contracted service providers in accordance with agreements entered into under Part 3 of that Act; or
- (b) without limiting paragraph (a)—Australian Hearing Services under the *Australian Hearing Services Act 1991*.

The Hearing Services Program is a Commonwealth funded program that funds service providers to provide hearing services – including assessments, rehabilitation and devices – to eligible Australians with hearing loss. The program’s 2 components are the:

- voucher scheme – a network of more than 300 hearing providers who deliver services across 3,000 locations Australia-wide
- Community Service Obligations – Hearing Australia provides services for people who are aged under 26 years, eligible Aboriginal and Torres Strait Islanders and people who need specialist services or live in a remote area.

The NDIS does not fund hearing supports for participants who are eligible to receive services through the Hearing Services Program. The NDIS may provide additional supports not provided by the Hearing Services Program, such as complementary technology, payment of a maintenance agreement and other services. Further information about the Hearing Services Program can be found on the Department of Health and Aged Care’s website (<https://www.health.gov.au>).

**high intensity daily personal activities** mean the following activities:

- (a) complex bowel care;
- (b) enteral feeding and management;
- (c) severe dysphagia management;
- (d) tracheostomy management;
- (e) urinary catheter management;
- (f) ventilator management;
- (g) subcutaneous injections;
- (h) complex wound management.

A note to the definition advises the reader that information about high intensity daily personal activities could in 2024 be viewed on the Commission’s website ([www.ndiscommission.gov.au](http://www.ndiscommission.gov.au)).

High intensity daily personal activities present some of the highest risks for participants. Many of these supports are intensely personal in nature and require workers to communicate and work closely with the participant to understand when and how to deliver supports safely in ways that meet the participants’ preferences and daily routines. For most of the high intensity daily personal activity supports, worker training is delivered by an appropriately qualified health practitioner or a person with the relevant skills to carry out the activities.

**specialised vehicle driving instructor** in relation to driver training means a person who:

- (a) is registered or licensed as a driving instructor in the State or Territory in which the driver training is to occur; and
- (b) has experience and training in providing driving instruction to people with disability.

Specialised driver training provides driving lessons required due to the impact of a participant's disability and must be provided by a specialised vehicle driving instructor. The driver training is based on a driving training assessment by an occupational therapist who has completed specialist post graduate training in conducting driving assessments.

To meet the definition of specialised vehicle driving instructor, the instructor must be registered or licensed as a general driving instructor in the State or Territory where the driver training is to occur. They must also have particular training and experience in working with people with disability. The instructor must have also been involved in discussions with the occupational therapist who completed the driving training assessment. This aspect of the requirement is not included in the definition as how this will look and operate will be individual to each participant.

***standard item*** for a person means an item that is not modified or adapted to address the person's functional impairments.

There are a number of items that are declared not to be NDIS supports because they are 'standard', meaning that they will not be funded by the NDIS because they are not modified or adapted to address a participant's functional impairments. The NDIS does not fund standard products that are the responsibility of any person to purchase for themselves.

## **Part 2 – What supports are NDIS supports**

### **Section 5 – What supports are NDIS supports – general rule**

Section 5 provides a general rule for what supports are NDIS supports.

Subsection 5(1) declares supports for the purposes of subsection 10(1) of the NDIS Act, being supports that are NDIS supports. It provides that a support covered by column 2 of an item in the table in clause 1 of Schedule 1 is an NDIS support for:

- (a) participants specified in column 3 of the item who have old framework plans; and
- (b) prospective participants specified in column 3 of the item, other than prospective participants who, if they were participants, would be required to be given notice under subsection 32B(2) of the NDIS Act (participants that are to have new framework plans).

This means that all participants who have old framework plans, or prospective participants who will have an old framework plan, can identify what supports are NDIS supports for them by reviewing the table in Schedule 1 (and in particular columns 2 and 3). This table is discussed further below.

Subsection 5(1) is subject to subsections 10(4) and (9) of the NDIS Act and subsection 5(2) of the Instrument. This means that supports prescribed for the purpose of subsection 5(1) will not be NDIS supports if they are covered by subsection 10(4) or 10(9) of the NDIS Act or subsection 5(2) of the Instrument. Each of these provisions prescribes supports that are not NDIS supports.

To assist the reader in understanding how subsection 5(1) operates, there are two legislative notes at the end of subsection 5(1). Those notes remind the reader of:

- subsection 10(4) of the NDIS Act, which allows supports to be declared to not be NDIS supports for participants or prospective participants. The note also advises the reader that those supports are declared under subsection (2) of this section in the Instrument.
- subsection 10(9) of the NDIS Act, which provides that a support is not an NDIS support for a participant or prospective participant if the support consists of the provision of:
  - (a) sexual services; or
  - (b) alcohol; or
  - (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Subsection 5(2) declares supports for the purposes of subsection 10(4) of the NDIS Act, being supports that are not NDIS supports. It provides that a support covered by column 2 of an item in the table in clause 1 of Schedule 2 is not an NDIS support for any participant or prospective participant. For participants, this is subject to subsection 10(6).

To assist the reader in understanding how subsection 5(2) operates, there are two legislative notes at the end of subsection 5(2). Those notes:

- remind the reader of subsection 10(6) of the NDIS Act, which allows the CEO, on application by a participant, to determine that a support is taken to be an NDIS support for the participant if, among other things, the CEO is satisfied that the support would replace one or more other supports that are NDIS supports for the participant.
- advise the reader that determinations under subsection 10(6) of the NDIS Act are referred to in this instrument as replacement support determinations. This note also advises the reader that section 7 of the Instrument includes additional rules about replacement support determinations.

Subsection 5(3) is an interpretive provision. It provides that a reference in section 5 to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the Amending Act. A legislative note is included at the end of subsection 5(3) to remind the reader that item 124 provides that, until the first NDIS rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 has effect as if a reference to NDIS rules are a reference to rules made under item 138 of Schedule 1 to the amending Act.

This provision is required as a result of the Instrument being of a transitional nature, rather than the permanent Category A section 10 rules. It ensures that the provisions

of the Amended Act, the NDIS Act and the Instrument are all interpreted consistently with each other.

## **Section 6 – Transitional rule for certain pre-commencement plans**

Section 6 provides a transitional rule for some participants. In effect, it will ensure a participant who has a support stated in their plan can continue to access that support after commencement if it is not an NDIS support. It will also ensure participants who have received a decision from the Tribunal that identifies a particular support as reasonable and necessary for them can continue to access that support if it is not an NDIS support. This will apply for as long as the relevant plan is in effect.

Subsection 6(1) provides that this section applies for a participant who has a plan in effect that includes a statement of participant supports approved before the Amending Act commenced.

Subsection 6(2) provides that a support specified in a participant's plan as a reasonable and necessary support, for the purpose of paragraph 33(2)(b) of the NDIS Act, is taken to be an NDIS support in some circumstances. Those circumstances are if:

- (a) the support is expressed in the participant's plan to be a stated support; or
- (b) the Tribunal made a decision to the effect that the particular support should be specified in, or funded under, the plan as a reasonable and necessary support. This may occur as part of a decision by the Tribunal to:
  - (i) vary the statement of participant supports;
  - (ii) set aside the previous statement of participant supports and approve a new statement in its place; or
  - (iii) remit the approval of the statement of participant supports for reconsideration by the CEO.

In the case of a remittal, subsection 6(3) confirms that it does not matter whether:

- (a) the Tribunal remitted the decision in accordance with any directions or recommendations of the Tribunal; or
- (b) the Tribunal also set aside the decision.

This provision is important to ensure that participants can continue to access supports that are not NDIS supports if they have been specifically identified as reasonable and necessary for the participant prior to the Amending Act commencing. This will provide continuity of supports for a period of time while the participant becomes familiar with the list of supports that are NDIS supports and is able to select alternatives, if applicable.

Paragraph 6(2)(b) is included as a safeguard for participants who have received a Tribunal decision, because their plan will not always state each individual support as reasonable and necessary. This provision will ensure any support assessed as

reasonable and necessary by the Tribunal will continue to be available until the participant receives their next plan. It will also capture supports that are included in a participant's plan as a result of a remittal under section 42D of the *Administrative Appeals Tribunal Act 1975*, whether those supports are specifically stated in the participant's plan or not.

Subsection 6(4) provides that subsection 6(2) applies:

- (a) despite subsection 10(4) of the NDIS Act and subsection 5(2) of the Instrument; but
- (b) subject to subsection 10(9) of the NDIS Act.

To assist the reader in understanding how subsection 5(2) operates, there are two legislative notes at the end of subsection 5(2). Those notes remind the reader of:

- subsection 10(4) of the NDIS Act, which allows supports to be declared to not be NDIS supports for participants or prospective participants. The note also reminds the reader that those supports are declared under subsection 5(2) of this instrument, and
- subsection 10(9) of the NDIS Act, which provides that a support is not an NDIS support for a participant if the support consists of the provision of:
  - (a) sexual services;
  - (b) alcohol; or
  - (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

This means that a support covered by subsection 6(2) will be an NDIS support for a participant even if it is expressly prescribed in the Instrument to not be an NDIS support. However if the support is one captured by subsection 10(9), which are listed above, it will not be an NDIS support regardless of whether it was specifically identified as reasonable and necessary for the participant prior to the Amending Act commencing.

### **Part 3 – Replacement support determinations**

#### **Section 7 – Replacement support determinations**

Section 7 relates to 'replacement support determinations' which is something provided for in subsection 10(6) of the NDIS Act. In effect, this allows the CEO to deem that something is an NDIS support for a participant if some circumstances.

Subsection 10(6) provides that the CEO may determine, in writing, that a support is taken to be an NDIS support for a participant if:

- (a) the support is prescribed by NDIS rules;
- (b) the support would, apart from subsection 10(4), be an NDIS support for the participant;
- (c) the participant applies to the CEO in accordance with subsection 10(7) for a determination under subsection 10(6);
- (d) the CEO is satisfied that:

- (i) the support would replace one or more other supports that are NDIS supports for the participant; and
- (ii) the cost of the support is the same or lower than the total of the costs of the supports it would replace; and
- (iii) the support would provide the same or a better outcome for the participant than the supports it would replace; and
- (iv) any other conditions specified in the NDIS rules are met in relation to the support, the participant, or both.

Subsection 10(7) includes requirements for an application for a replacement support determination. This includes paragraph 10(7)(c), which requires that an application be made in accordance with any other requirements specified in NDIS rules.

Subsection 7(1) is made for the purpose of paragraph 10(6)(a), meaning it prescribes the supports that a replacement support determination can be made for. Subsection 7(1) provides that a replacement support determination may be made for a support covered by column 1 of the table in subsection 7(3).

Subsection 7(2) is made for the purposes of subparagraph 10(6)(d)(iv) of the NDIS Act, meaning it prescribes conditions that must be satisfied before a replacement support determination can be made. Subsection 7(2) provides that the CEO must be satisfied of conditions included in column 2 of the table to subsection 7(3) before making a replacement support determination.

Subsection 7(3) includes the table mentioned in subsections 7(1) and (2). That table includes the supports for which a replacement support determination can be made, and conditions that must be met for each support. These are as follows:

<b>Available supports</b>	<b>Conditions that must be met</b>
Standard commercially available household items	The support must: <ul style="list-style-type: none"> <li>(a) be necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements; and</li> <li>(b) increase whole task independence; and</li> <li>(c) reduce or eliminate the need for a support worker or disability specific assistive technology.</li> </ul>
The following: <ul style="list-style-type: none"> <li>(a) smart watches;</li> <li>(b) tablets;</li> <li>(c) smartphones;</li> <li>(d) an app used for accessibility or communication purposes</li> </ul>	The support must be necessary to address communication or accessibility needs of the participant arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements.

Subsection 7(4) prescribes circumstances in which a participant cannot apply for a replacement support determination, for the purpose of paragraph 10(7)(c).

Subsection 7(4) provides that a participant cannot make more than one application for the same support within the following period:

- (a) if the reassessment date of the participant's plan is less than 12 months after the plan came into effect—while the plan is in effect; or
- (b) otherwise—during any 12 month period starting while the plan is in effect.

This means that a participant can apply for a replacement support determination in respect of a particular support once during each plan that is effect, unless the plan is in effect for longer than 12 months in which case a fresh application may be made every 12 months. As soon as a new plan is approved, the participant will be entitled to make a further request for a replacement support determination no matter how recently they last made an application. This will ensure participants who have a change in circumstances are not prevented from applying for a replacement support determination when their new plan comes into effect.

Subsection 7(5) is an interpretive provision. It provides that a reference in section 5 to a provision of section 10 of the NDIS Act is a reference to the provision as modified (if at all) by item 124 of the Amending Act. A legislative note is included at the end of subsection 5(3) to remind the reader that item 124 provides that, until the first NDIS rules are made for the purposes of subsection 10(1) of the NDIS Act, section 10 has effect as if a reference to NDIS rules are a reference to rules made under item 138 of Schedule 1 to the amending Act.

This provision is required as a result of the Instrument being of a transitional nature, rather than the permanent Category A section 10 rules. It ensures that the provisions of the Amended Act, the NDIS Act and the Instrument are all interpreted consistently with each other.

## **Schedule 1 – Support that are NDIS supports unless otherwise provided**

Schedule 1 is made for the purposes of subsection 10(1) of the NDIS Act and declares the supports that are NDIS supports unless otherwise provided.

If a support is declared not to be an NDIS support under subsection 10(4) of the NDIS Act (see Schedule 2), or falls within subsection 10(9) of the NDIS Act, then it is not an NDIS support regardless of whether it falls within one of the categories described in this Schedule.

This Schedule contains a table with 36 categories of supports, set out in column 1 to the table. These categories are loosely based on the provider registration groups set out in section 20 the *National Disability Insurance Scheme (Provider Registration and Practices Standards) Rules 2018* (Provider Registration Rules). While the categories have some similarities with the Provider Registration Rules, this is for ease of organisation only. It does not have any impact on how providers are registered, their categories of registration or the kinds of supports that registered NDIS providers may provide.

Column 2 of the table contains a description of the supports that fall within each category. Many of the descriptions include a list of included supports. These lists are not exhaustive so do not exclude an item that is not listed in the description. The purpose of the listed supports is to clarify the kinds of supports that fall within the overarching description.

Some of the categories of supports may only be provided where a participant has that support specified in their plan. Column 3 sets out whether the support may be provided to participants generally or only to participants who have the support stated in their plan. References to prospective participants are also included for the purposes of considering whether a prospective participant is likely to require NDIS supports at the time of access.

The 36 categories of NDIS supports are explained below. The below provides some additional context and examples for some of the categories, but does not repeat the inclusions that are set out in the instrument.

### *Accommodation assistance or tenancy assistance*

These are supports that guide, prompt, or assist a participant to do activities for finding or keeping appropriate accommodation.

The majority of supports that fall within this category are available to participants and prospective participants generally.

However, medium term accommodation (where a participant cannot move into long term accommodation due to that accommodation or other supports not being ready and current accommodation is not suitable) is only an NDIS support for participants that have the support specifically stated in their plan.



This may occur where a participant needs to move to a new house because their disability support needs have changed and their house is no longer accessible, and while their new home is being prepared they require accommodation that is accessible and meets their currently disability-related needs. In these circumstances, accommodation which meets the person's disability-related needs for an interim period may be provided.

### *Assistance animals*

This is a support provided by an eligible assistance animal. The definition of an eligible assistance animal is described above. The types of assistance animals funded by the NDIS are:

- dog guides
- hearing assistance animals
- physical assistance animals
- assistance animals for some participants who have been diagnosed by a psychiatrist with long term but stable Post Traumatic Stress Disorder who are able to take on the ongoing responsibilities of a primary handler.

This support is only available to participants who have the support stated in their plan.

### *Assistance in coordinating or managing life stages, transitions and supports*

These are supports provided on a short-term basis that provide assistance to manage life transitions. Some participants require temporary supports that help them prepare for and navigate major life changes successfully, such as preparing to move out of home for the first time or getting ready to leave hospital after a long stay. Supports can be provided which help a participant to get used to using new equipment, develop new routines, work with new support workers, or orient to a new house or community setting.

These supports can be provided to any participants or prospective participants who need them as a result of their disability.

### *Assistance to access and maintain employment or higher education*

These are supports that build a participant's capacity to successfully prepare for, find or keep employment in the open labour market (including self-employment and micro-enterprise) or the supported labour market.

These are the extra supports that a participant may need as a result of their disability to:

- prepare for work
- prepare for and find a first job or a new job
- study at university or TAFE
- start an apprenticeship or traineeship
- volunteer or have work experience to build work skills
- work in their own business.

The NDIS will fund a range of supports, including

- help to build basic work skills
- supports to help move from school to further study, training or work
- supports not available through DES or Workforce Australia to develop work skills, find and keep a job
- training for teachers or work mates about a participant's individual disability support needs and how to help them be productive at work
- travel to and from work and study in some situations.

#### *Assistance with daily life tasks in a group or shared living arrangement*

These are supports that provide assistance with or supervision of daily living tasks to participants in a shared living environment.

Participants who live with other participants may receive help from one or more support workers who provide support to all the residents in the house. Supports provided in a shared living arrangement include support to organise and manage the household, and to help residents to prepare for and carry out their usual daily activities.

While these supports can be provided to participants generally, they can only be provided in a shared living environment and so will only be provided to participants with those living arrangements.

#### *Assistance with travel or transport arrangements*

These are supports that provide transport assistance to participants that cannot travel or use public transport independently.

A participant will generally be able to access funding through the NDIS for transport assistance if the participant cannot use public transport without substantial difficulty due to their disability.

For children, this may look like transport to from school from an approved in-kind support provider that is organised by the child's school. This would not generally extend to extracurricular activities as it is reasonable to expect parents to provide transport to and from their child's after-school activities.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

#### *Assistive equipment for recreation*

This is the provision of assistive products used in sports or other recreational activities.

These products are equipment or related modifications that is specially designed to help a participant play or participate equitably where they normally can't because of their disability.

For example, a child may obtain a modified wheelchair or bike that is recommended by their physiotherapist to support their participation in family and peer recreational activities.

Recreation also includes indoor recreation, and this support could cover adaptations for musical instruments or paint brushes, or modified controllers for online games.

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

This category does not include products for elite or professional sport.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

### *Assistive products for household tasks*

This is the provision of assistive products that support a participant to carry out domestic and everyday actions and tasks within their home.

This includes the equipment a participant needs to help them do things they normally can't do because of their disability, in and around their home. It includes items that mean the participant can do tasks independently, or needs less help from others, such as to clean floors or make their own meal. For example, supports may include modified cutlery, plate guards, special cutting boards and pick up sticks.

This does not include standard home items that everyone uses, such as a standard kettle, broom or food processor, as these are not related to a participant's disability.

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants or prospective participants generally who need the support as a result of their disability.

### *Assistive products for personal care and safety*

This is the provision of assistive products for self-care activities and participation in self-care. This category includes the tools and equipment a participant needs to help do things that they normally can't do because of their disability for their personal care, or to stay safe. It includes items that mean the participant can do the task independently or needs less help from others. For example, the following may be supports that fall within this category:

- shower chairs and extended brushes or pads to help a participant to wash and groom themselves
- adaptations to help a participant go to the toilet independently
- tools and hooks to help a participant put their clothes and footwear on
- an alert device to call a carer when a participant needs help to change position in bed

- smoke alarm packages including visual a strobe light and bed shaker or vibration pad to alert to the smoke alarm

This category also includes services that are associated with the assistive products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants generally who need the support as a result of their disability.

### *Specialist positive behaviour support*

These are supports that are provided by professionals with specialist skills in positive behaviour support.

Specialist positive behaviour supports will involve the development of a Behavioural Support Plan, which outlines specifically designed positive behavioural support strategies for a participant, their family and support persons. These supports will assist participants with:

- multiple complexities that may require multiple interventions,
- extreme behaviours of concern where there is a use of regulated restrictive practice,
- behaviours of concern involving various stakeholders (multiple issues for intensive intervention requiring comprehensive assessment, planning, support and training for the participant and carers),
- significant 1:1 support in the community, 1:2 support in the community (greater than 30% of the day) or exceptional circumstance supports at home due to their harmful or persisting behaviours that may present risk to themselves or others,
- a requirement for additional support to implement newly developed strategies in the community or within newly engaged activities/services,
- an anticipated significant transition during the plan period, such as moving into SIL or from school to a day program, and
- circumstances where:
  - there are a lack of services willing to engage with the participant due to presenting behaviours and risk to staff/participants/community, or
  - there has been a significant change of participant circumstances that will result in withdrawal of service support and need for immediate intervention.

These supports are only available to participants who have the support stated in their plan.

### *Communication and information equipment*

This is the provision of assistive products to support communication and information management. These assistive products are the tools and equipment a participant requires because of their disability, to enable them to communicate and/or share and receive information. Products will be recommended, and training provided in their use, by a speech pathologist or an occupational therapist depending on the disability need being addressed.

Assistive products calling under this category may include:

- communication books, boards or electronic solutions, including computerised communication devices
- alternate access systems for electronic communication/information devices such as neuro-sensor;
- head, switch or eye interfaces
- mounting systems for holding communication solutions
- person specific programming and vocabulary preparation and entry to a communication device
- voice/speech amplification devices

These supports are available to participants generally who need the support as a result of their disability.

### *Community nursing care*

These are supports that provide disability-related nursing care for participants with high care needs (not including high intensity daily personal activities), requiring a high level of clinical skill.

A registered nurse will generally set up a daily management regime and train high intensity support workers for people with physical disability to maintain hygiene of catheters or tracheostomies and good skin integrity. Wound management, catheter changes, or provision of intramuscular injections where required will be undertaken by the registered nurse but day to day care needs will be delivered by properly trained support workers who must comply with the management routine developed by the health professional.

These supports are available to participants generally who need the support as a result of their disability.

### *Prostheses and orthoses*

These are assistive products externally applied to replace, wholly or in part an absent or deficient body segment, or to assist participant control and functioning of their neuromuscular skeletal systems.

Prostheses are items that are worn or fitted externally to replace or complete a missing or incomplete body segment, such as an artificial limb, including powered upper limbs.

Orthoses provide extra control or support around joints due to nerve or muscle impairments. These include products such as braces that provide control to a child's ankles or specialised footwear to manage pain, both of which enable better walking, which can also reduce the longer-term effects of their disability. It also includes items such as a dynamic neoprene fitted glove to reduce tremor and contracture in a participant's hand.

This category also includes services that are associated with the products, including prescription, training in the use of the product and product maintenance.

These supports are available to participants generally who need the support as a result of their disability.

### *Daily personal activities*

These are supports that provide supervision or assistance with personal daily living tasks to help a participant to live as independently as possible in their own home and in the community.

Supports may be provided to directly assist, or support through prompting, a participant to undertake tasks such as:

- transfer in and out of bed safely,
- choose clothing and dress,
- brush teeth, brush hair, and apply deodorant.
- go to the toilet (including assistance to mobilise to the toilet, adjust clothing before and after toileting, and maintain perineal hygiene without incontinence or soiling clothes),
- eat (including cutting food, bringing food to the mouth, and cleaning of face if needed),
- managing medication.

These supports are available to participants generally who need the support as a result of their disability.

### *Development of daily care and life skills*

These are supports that provide training and development activities for participants and carers to increase a participant's ability to live as independently as possible (including as part of psychosocial recovery supports). This includes increasing the participant's ability to independently undertake a range of activities.

Supports may be provided where a participant requires assistance to gain confidence and independence to travel on public transport. This could include tailored assistance to understand the bus or train timetable, identifying the right route to take, and practising travelling on the bus or train to identified destinations.

Other development activities include tailored cooking classes for a participant with intellectual disability who wants to learn how to cook independently but needs a modified teaching schedule to learn to do this safely or to use modified kitchen equipment. Support may also be provided to build a participant's capacity to manage their own plan and/or finances more broadly.

These supports are available to participants generally who need the support as a result of their disability.

### *Disability related health supports*

These are supports that would generally be funded through the health system for people who are not participants. If the need for the support arises as a result of a participant's disability, then it may be funded through the NDIS.

Health supports that are directly related to a participant's disability include:

- dysphagia supports – may be provided if a participant has trouble eating, drinking or swallowing on a daily basis
- respiratory supports – may be provided if a participant needs support, care and planning to help breathe and maintain respiratory health where this is compromised
- nutrition supports – may be provided if a participant needs help with the way they eat or understanding the food they need
- diabetes management supports – may be provided if a participant needs extra help to manage their diabetes, for example, testing their blood sugar level because they are unable to do this on their own due to the functional impact of their disability
- continence supports – may be provided if a participant needs products to maintain their continence or someone to help them with toileting on a daily basis
- wound and pressure care supports – may be provided if a participant has slow to heal wounds, a condition that results in swollen arms or legs, or ongoing loss of feeling in body or arms or legs, and the participant needs need regular skin, wound and pressure care
- podiatry supports – may be provided if a participant needs assessment and development of a care plan to help look after their feet, ankles and lower limbs.
- seizure supports – may be provided if a participant needs help to monitor and manage seizures when they occur. This includes epilepsy supports and supports for seizures arising from other disability related needs.

Certain assistive products may also be provided to help participants do things that they cannot do because of their disability. This may include:

- pressure care cushions or mattress – may be provided if a participant needs regular care to prevent wounds or pressure sores arising as a result of their disability
- a cough assist machine – may be provided if a participant needs support to maintain respiratory health because of their disability.

Disability-related health supports may also include:

- funding for a person, such as a support worker, to provide disability-related health supports
- training for support workers or other people who provide support to a participant such as family or friends
- consumables, which are the things a participant uses, such as continence products like catheter bags, pads, bottles and straps

These supports are available to participants generally who need the support as a result of their disability.

### *Early intervention supports for early childhood*

These are supports that are evidence-based early childhood intervention supports for children 0-9 years (including children aged 0-6 with developmental delay) and their families to achieve better long-term outcomes for the child.

The early childhood approach aims to:

- provide timely support to ensure that a child is able to access the supports they need
- give parents and carers information about best-practice early childhood supports and how they can help their child
- increase parents and carers confidence and capacity to manage and respond to their child's support needs
- increase a child's ability to do activities they need or want to do
- increase a child's inclusion and participation in mainstream and community settings like playgroup, childcare, kindergarten or preschool.

This may include a range of therapeutic interventions delivered by a qualified treating health professional, such as an occupational therapist, developmental educator or speech pathologist, which are aimed at building a child's functioning.

This may also include a key worker, who is the main person in a team of early childhood professionals who work with the child and their family to deliver and coordinate child and family centred supports, including connections with mainstream and other systems.

These supports are available to participants who are children generally.

### *Exercise physiology and personal well being activities*

These are supports that maintain or increase physical mobility or physical well-being through personal training or exercise physiology to address the functional impact of the participant's disability. For example, a participant with a spinal cord injury may need support to develop a safe and appropriate exercise program that will help them maintain their upper limb strength and condition over time.

These supports are available to participants generally who need the support as a result of their disability.

### *Group and centre based activities*

These are supports for participants to access and participate in community, social, cultural and recreational activities that are provided in a group setting, either in the community or in a centre. They include supports provided to a group of participants in a day program environment or in the community. Supports might include assistance with navigating around the community and participating in an activity either as an individual or as part of a group.



Supports in this environment can range from supporting a person to communicate and engage with other community members, or could entail physical support such as help with toileting, eating and moving around.

These supports are available to participants generally who need the support as a result of their disability.

### *Hearing equipment*

This is the provision of hearing equipment directly related to a participant's permanent hearing impairment that is not provided through the Hearing Services Program for the participant. The Hearing Services Program will fund any supports that a participant is eligible for. The NDIS can fund other supports to address the participant's hearing related needs that the Hearing Services Program does not fund.

This may include specialised hearing aids, hearing aid protection for use in water environments, replacement cochlear implant external speech processors.

These supports are available to participants generally who need the support as a result of their disability.

### *High intensity daily personal activities*

These are supports that assist a participant with complex needs or psychosocial disabilities to undertake high intensity daily personal activities.

High intensity daily personal activities present some of the highest risks for participants. Many of these supports are intensely personal in nature and require workers to communicate and work closely with the participant to understand when and how to deliver supports safely in ways that meet the participants' preferences and daily routines.

These supports must be provided by a worker with additional qualifications and experience relevant to the participant's complex or psychosocial needs.

These supports are available to participants generally who need the support as a result of their disability.

### *Home modification design and construction*

These are supports that design, change or modify a participant's home to help the participant live as independently as possible and to live safely at home. Home modifications are changes to a participant's home that help manage a participant's disability. These changes can be minor or more complex. They can help a participant safely access or move around their home and make daily tasks easier.

Home modifications may be required if a participant:

- has safety concerns or difficulty moving around their home
- has trouble with personal care, like using a shower
- cannot use the rooms they need to use in their home

- needs changes to their home so their carers can support them safely.

The NDIS may also fund equipment or assistive technology to make a home safer and more accessible, including helping participants undertake activities that are difficult or impossible as a result of their disability. An occupational therapist might recommend equipment such as:

- grab rails
- accessible tapware or a hand-held shower
- a weighted shower curtain
- lever door handles
- portable ramps.

These supports are only available to participants who have the support stated in their plan.

### *Household tasks*

These are supports that provide assistance with essential household tasks that a participant is not able to do themselves because of their disability. For example, a participant with physical impairments may need assistance from another person to vacuum their floors or do their laundry when these are tasks the participant cannot do themselves.

These supports are available to participants generally who need the support as a result of their disability.

### *Innovative community participation*

These are supports that are tailored for individual participants with extraordinary support needs to assist them to participate in the community.

Extraordinary support needs arise due to a participant's specific situational and personal circumstances. This may include when participants living with a disability have different challenges impacting on their lives such as mental health issues, incarceration or homelessness, and need a higher level of specialised and tailored supports in their plan. For example, a participant who has been in secure mental health facility for an extended period and wishes to reintegrate with the community may need very specific, bespoke supports to do so. This will look different for every individual but could include supports like assisted volunteering.

These supports are only available to participants who have the support stated in their plan.

### *Interpreting and translation*

These are supports that assist a participant with independent communication in personal, social, cultural or community activities where translation and interpretation is needed as a result of their disability.

Interpreting and translation supports may be provided to attend events and occasions such as:

- medical or health professional appointments such as GP's or Specialist.
- private legal and financial appointments
- special occasions such as weddings or funerals
- volunteering opportunities
- attending support or interest groups
- access to sporting opportunities
- courses provided by private education providers who do not provide interpreters.

These supports will not be provided if they are funded by a mainstream service such as the following:

- Health Care Interpreting Services at public hospitals
- Employment Assistance Fund for the workplace
- Community Relations Commission for the justice system
- National Relay Service to assist a deaf, hard of hearing or person with speech impairment to make and receive phone calls

These supports are available to participants generally who need the support as a result of their disability.

#### *Management of funding for supports*

These are supports provided by a registered plan management provider to manage the funding of supports under a participant's plan. Plan management providers can purchase supports on behalf of participants from either registered or unregistered providers. A plan manager will receive funds from the NDIA and disburse funds on behalf of a participant to providers of other services received.

These supports are only available to participants who have made a plan management request to have their plan managed (at least in part) by a registered plan management provider.

#### *Participation in community, social and civic activities*

These are supports that assist a participant to take part in community, social, cultural and civic activities. For example, a participant may need a support worker to accompany them when they go shopping to assist with purchases, or to help them to participate in their local basketball club. These supports can be provided to individual participants or groups of participants who are participating in the same social or community activity.

These supports are available to participants generally who need the support as a result of their disability.

#### *Personal mobility equipment*

This is the provision of personal mobility equipment that supports or replaces a participant's capacity to move indoors and outdoors and to transfer from one place to another. These supports help participants to do things that they otherwise would not be able to do because of their disability. This includes items that:

- allow participants to do tasks independently
- mean participants need less help from others
- help participants do things more safely or easily
- help participants keep doing the things they need to do
- are personalised for participants.

These supports are available to participants generally who need the support as a result of their disability.

### *Specialist disability accommodation*

This is the provision of specialist disability accommodation (SDA) which is accommodation for a participant who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs.

SDA is generally provided to participants who have an extreme functional impairment and/or very high support needs. Most participants don't need to live in SDA, and there may be other home and living supports that are more suitable. SDA does not refer to the support services, but the homes in which these services are delivered. SDA may, for example, have specialist designs for people with very high needs or a location or features that make it feasible to provide complex or costly supports for independent living.

The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* set out the eligibility criteria for SDA, including the kind of dwelling that a participant is eligible for.

These supports are only available to participants who have the support stated in their plan.

### *Specialised driver training*

These are supports that provide driver training with a specialised vehicle driving instructor. The supports may also provide training on the use of adapted equipment or vehicle modifications. This support is only provided after a driving training assessment has been completed by an occupational therapist who has completed specialist post graduate training in conducting driving assessments.

A specialised vehicle driving instructor helps teach a participant to safely operate their modified vehicle or address other disability related needs, to meet the driver licencing requirements in the participant's home State or Territory. The NDIS may fund specialised driving lessons so that a participant can learn to drive a modified vehicle and additional driving lessons where a participant's disability affects their ability to

learn to drive. The NDIS does not fund all driving lessons, only ones required as a result of a participant's disability.

These supports are only available to participants who have the support stated in their plan.

### *Specialised hearing services*

These are specialist audiological services provided by an audiologist for participants with complex needs. This support is provided for certain participants with needs that are not covered by the Hearing Services Program. Participants are likely to require Specialised Hearing Services when:

- the participant has a profound hearing loss
- the participant uses an implantable device
- the participant has hearing loss and severe communication impairment which:
  - prevents the person from communicating effectively in his or her daily environment such as significant visual impairment, or
  - is caused or aggravated by significant physical, intellectual, mental, emotional or social disability or mobility issues such as after a stroke.

These supports are available to participants generally who need the support as a result of their disability.

This category of supports is different to the provision of 'hearing equipment' which is dealt with above.

### *Specialised supported employment*

These are supports that provide a participant with assistance to prepare for, find and retain a job in the participant's employment setting of choice. These supports include on the job assistance in paid employment that help a participant gain work skills, adjust to a work environment, increase productivity, and progress their career. These services may be provided in employment settings such as a participant's own business or a micro business as well as private, public and not for profit enterprises

These supports are available to participants generally who need the support as a result of their disability.

### *Support coordination*

These are supports that assist participants to connect with informal community and funded supports (including as part of psychosocial recovery supports).

This includes meeting with a participant to discuss and help them understand their NDIS plan, considering strategies for implementing their plan in a way which is tailored to their life and needs, helping them to identify and contact providers in their local community, and managing any challenges or changes of circumstance that may arise during their plan period. A support coordinator will work with a participant to help them understand and use their NDIS plan to pursue their goals, connect the participant with

NDIS providers, community and other government services, and build their confidence and skills to use and coordinate their supports.

These supports are only available to participants who have the support stated in their plan.

### *Therapeutic supports*

These are supports that provide evidence-based therapy to help participants improve or maintain their functional capacity in areas such as language and communication, personal care, mobility and movement, interpersonal interactions, functioning (including psychosocial functioning) and community living.

This includes an assessment by allied health professionals for support planning and review as required.

Therapeutic supports may be provided by a range of therapists. The following are examples of therapeutic supports that may be provided:

- support from an occupational therapist to practice and improve their motor planning skills, or to assess and prescribe a piece of assistive technology they need
- support from a speech therapist to develop their verbal language skills or write a mealtime management plan which helps them to manage swallowing and aspiration risks

These supports are available to participants generally who need the support as a result of their disability.

### *Vehicle modifications*

This is the provision of assistive products that can be added to vehicles or modifications made to vehicles that help a participant to operate, enter, exit or ride in the vehicle safely. This includes modifications, specialised vehicle controls, restraints and other equipment a participant requires because of their disability to safely use their private vehicle, either as a passenger or registered driver.

It is critical to note that the NDIS does not fund the purchase of a vehicle, only the modifications required.

The modifications should allow a participant to access their vehicle independently or need less help from others in doing so. If a participant meets the requirements to have a licence to drive the vehicle, the vehicle modifications and altered or additional controls must address their disability needs to enable the participant to meet the functional and legal requirements for safe operation of the vehicle.

All modifications and additional driving controls must be assessed and specified as suitable for the specific participant through a driver trained occupational therapist assessment and, as required, supervised training program (see specialised driver training above).

Modifications can include modification of the vehicle structure and components, vehicle passenger and wheelchair hoists, driver and auxiliary controls, modified restraints, and modified car seats. Supports may also include certification for registration and additional vehicle insurance premium costs as a direct result of the modification and maintenance or repair of the modifications (not the vehicle itself).

These supports are available to participants generally who need the support as a result of their disability.

### *Vision equipment*

This is the provision of products for navigation, orientation, braille, magnifiers and note taking equipment. These products are provided to participants who are blind or have low vision and who require the products to interact with their world and engage in daily tasks. These supports may also help children to achieve developmental milestones and may relate to mobility aids that aid orientation and mobility.

Vision equipment includes products such as:

- products related to navigation orientation such as white canes and apps
- sonar or vibration devices to assist in detecting obstacles
- magnifiers either optical (glass), electronic (video-based), smart device applications, cameras or computer software
- screen readers that can assist with reading text on websites, emails or digital books by converting text, buttons, images and other screen elements into speech or braille
- braille displays that can connect to your computer and translate what's on screen into Braille dots, or print in Braille
- smart glasses, which are high tech glasses which can provide higher magnification, read text aloud and help for navigation
- reading devices for digital content and books such as DAISY reader, talking book, audio book player.

These supports are available to participants generally who need the support as a result of their disability.

## **Schedule 2 – Supports that generally are not NDIS supports**

Schedule 2 is made for the purposes of subsection 10(4) of the NDIS Act and declares supports that are not NDIS supports.

Schedule 2 includes a table that sets out 24 categories of supports. Each of these categories is set out in Column 1. Column 2 provides an exhaustive list of the supports that are included in that category and are therefore declared not to be NDIS supports.

This schedule reflects existing arrangements as outlined in the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Supports for Participants Rules) and intergovernmental agreements such as the applied principles and tables of support and the Disability Reform Council's Communique dated 28 July 2019.

There are universal obligations for all governments to provide inclusive and accessible services for people with disability. The NDIS and other service systems retain the general principle of working together at the local level to plan and coordinate streamlined care for people requiring both disability supports and mainstream services, recognising both services may be required in conjunction with the need for smooth transitions, coordination and collaboration across service systems.

It is important to note that just because something is excluded from the list of NDIS supports does not confer an obligation on other service systems to provide it.

The lists in schedule 2 declare that the NDIS will not fund a number of 'standard' items. That is, the NDIS will not fund items that any person would buy for themselves, but may fund items that are specifically required or modified as a result of a person's disability.

While the instruments in the list are exhaustive, the below provides a more general outline and explanation of the supports that are not NDIS supports and does not enumerate all of the supports that are captured.

### *Day-to-day living costs*

Day-to-day living costs are items that every person needs to pay for or purchase, regardless of whether they have a disability or not. There are 8 categories of day to day living costs that are declared not to be NDIS supports:

- *Accommodation and household*: this includes items such as rent, home and property deposits, stamp duty, and standard utilities and household items. The NDIS does not fund additional utility costs as subsidies are available to assist participants with impairments that impact these costs, such as thermoregulatory impairments.
- *Finance and payments*: this includes things such as donations, fines, penalties, insurance, tuition fees and legal costs.
- *Food and groceries*: groceries, fast food and some food delivery services. This category does not exclude meal delivery services where the food and ingredient component can be separately identified from the meal preparation and delivery components. The NDIS will pay for meal preparation and delivery where it is



required because of a participant's disability but will not pay for the cost of food and ingredients. This is consistent with existing policy and many providers already separate these components for billing purposes.

- *Lifestyle*: this includes items such as standard computers, recreational and sporting equipment, smoking paraphernalia, tickets and entertainment. This does not include modified equipment required as a result of a participant's disability. The NDIS does not cover costs associated with participation in professional, elite or competition level sports, including more expensive products that may be required to facilitate participation.
- *Clothing and beauty*: this includes jewellery and watches, make up, standard clothing and footwear, hair styling and body art. It does not include adaptive clothing that a participant may require as a result of their disability.
- *Travel and transport*: this includes cruises, holiday packages, holiday accommodation, standard vehicles, petrol and personal mobility devices (which are different from the mobility devices required by a participant as a result of their disability).
- *Pets*: this includes day to day costs associated with having a pet (other than an eligible assistance animal included in a participant's plan). It also includes costs associated with taxidermy and pet burials.
- *Reproductive health and family related*: this includes all surrogacy and fertility treatments.

### *Not evidenced based*

The NDIS does not fund supports that are not evidence based. This refers to supports for which there is no contemporary body of evidence that the support is likely to be result in a favourable long-term outcome for people with disability.

There are 3 categories of supports that are not evidence based that are declared not to be NDIS supports:

- *Alternative and complementary therapies*: this includes therapies such as crystal therapy, cuddle therapy, reflexology, animal therapy and alternative or complimentary medicine.
- *Wellness and coaching*: this includes services such as hypnotherapy, sports or athletic supplements and life coaching.
- *Energy and healing practices related*: this includes services such as reiki, deep energy clearing and shamanic healing.

### *Health*

A number of items in this category are not NDIS supports because they reflect the existing division of responsibility to provide health supports set out in the Supports for Participants Rules. This includes the diagnosis and clinical treatment of health conditions, including ongoing or chronic health conditions; and time-limited, goal-oriented services and therapies predominantly related to a person's health status, or following medical or surgical events with the aim of improving a person's functional status, for example rehabilitation following hip replacement surgery.

Other items are not NDIS supports in accordance with intergovernmental agreements such as the Applied Tables and Principles of Supports. This reflects the existing universal obligations of governments to provide access to health supports and services for all Australians, regardless of disability. For example, mainstream health systems provide diagnostic assessments and screening services, or provision of acute, subacute, emergency and outpatient clinical services delivered through public or private hospitals.

Health systems will remain responsible for the diagnosis, early intervention and treatment of health conditions, including ongoing or chronic health conditions. This may involve general practitioner services, medical specialist services, dental care, nursing, allied health services, preventive health care, and care in public and private hospitals.

While the NDIS will not fund any pharmaceuticals, access to some pharmaceuticals will be available through the Pharmaceutical Benefits Scheme.

The exclusion of sub-acute palliative care including in-patient and out-patient services delivered in the person's home or clinical setting reflects the existing division of roles and responsibilities for palliative care. This exclusion does not change existing responsibilities between the NDIS and health systems. The NDIS retains responsibility for the provision of disability-related supports as part of an NDIS participant's plan alongside the provision of palliative care services.

The exclusion of an item as an NDIS support does not create a commitment or obligation for other service systems to provide that support. Similarly, these lists do not create an obligation for other service systems to provide for accessibility or to make reasonable adjustments. Those obligations are created through relevant anti-discrimination legislation at the federal and State and Territory level.

The commitment for the NDIS and health system to work together at the local level to plan and coordinate streamlined care for people requiring both health and disability supports remains unchanged, recognising that both services may be required in conjunction and that there is a need to ensure a smooth transition, coordination and collaboration across service systems.

Some items related to health that are not NDIS supports are activities, products or services that are largely expected to be funded directly by a person or their families as an ordinary cost, for example sunscreen or health retreats.

### *Mental health*

A number of items in this category are not NDIS supports because they reflect the existing division of responsibility to provide mental health supports set out in the Supports for Participants Rules.

Other items are not NDIS supports in accordance with intergovernmental agreements such as the Applied Tables and Principles of Supports. This reflects the existing universal obligations of governments to provide access to mental health supports and services for all Australians, regardless of disability.

The NDIS is responsible for supports for ongoing psychosocial recovery focused on improving a person's functional ability, including those that enable a person with psychosocial disability to undertake activities of daily living and participate in the community and in social and economic life.

The mental health system retains responsibility for supports that are clinical in nature, including treatment of mental illness. This includes acute, subacute, emergency and outpatient clinical services delivered through public and private hospital mental health services.

It is acknowledged that rehabilitation support occurs in both a clinical and community setting including non-clinical staff. A distinction has been made that rehabilitation interventions that are clinical in nature are to be funded through the mental health system, while other forms of rehabilitation may be provided through the NDIS, if appropriate to do so based on a participant's disability related support needs.

The commitment for the NDIS and health system to work together at the local level to plan and coordinate streamlined care for people requiring both health and disability supports remains unchanged, recognising that both services may be required in conjunction and that there is a need to ensure a smooth transition and collaboration across service systems. A coordinated response between clinical mental health services and non-clinical psychosocial services gives people with severe and enduring mental illness the best chance at increasing their independence, functioning, community participation and quality of life.

#### *Child protection and family support*

This includes things such as family therapy and parenting programs, travel or accommodation for parents visiting their children in out of home care as well as out of home care or support to carers of children who are participants in out of home care.

This category does not capture supports and costs for children in out of home care that are over and above what would generally be required for another child of a similar age in similar arrangements due to the child's disability.

#### *Early childhood development*

This includes things such as early childhood supports or therapies that may be required to support the general development needs of any child, childcare fees and reasonable adjustments to childcare settings to meet the education and care needs of a child who is a participant.

#### *School education*

This category captures tuition fees as well as any supports that schools are responsible for providing for children. This includes making reasonable adjustments to personalise learning and support for students that primarily relate to their educational attainment (including teaching, learning assistance and aids, school building modifications and transport between school activities).

### *Higher education and vocational education and training*

This category captures tuition fees as well as any supports that higher education and vocational education and training providers are responsible for providing. This includes the learning and support needs of students that directly relate to their educational and training attainment (including teaching, learning assistance and aids, building modifications and transport between education or training activities where this transport is being arranged for all students). This also includes general transition supports from education or training to employment.

### *Employment*

This category includes government funded employment programs, including those funded at the Commonwealth, State or Territory level. It also includes work specific aids and adjustments, reasonable adjustments, employer responsibilities and programs for to encourage and assist employers to hire people with disability.

Employers are required to comply with employment laws, including those related to disability discrimination. This includes making reasonable adjustments for people with disability.

### *Housing and community infrastructure*

This includes things such as direct costs of compliance with a person's tenancy agreement, including bond, pest control, exit cleaning and general damage repairs (noting that the NDIS will fund repairs that are required because of the impact of a participant's disability). It also includes design and subsequent changes or modifications to State and Territory owned residential facilities and reasonable adjustments to social housing to make buildings accessible for people with disability. The NDIS may fund costs that are over and above what may constitute a 'reasonable adjustment'. The NDIS also does not fund homelessness and outreach programs and services, including emergency accommodation.

This category also includes subsequent changes or modifications to SDA as this is the responsibility of the SDA provider.

### *Transport*

This category includes supports the public transport system is responsible for providing. For example:

- ensuring that transport options are accessible to people with disability. This includes through concessions to people with disability to use public transport (including parties choosing to provide concessions for the total cost of transport) and compliance with relevant non-discrimination legislation including the *Disability Standards for Accessible Public Transport 2002*.
- transport infrastructure, including road and footpath infrastructure, where this is part of a universal service obligation or reasonable adjustment. This includes managing disability parking and related initiatives.

## *Justice*

The NDIS does not fund supports that are more appropriately funded by the justice system. Whether or not certain services are NDIS supports will depend on whether or not a participant is in custody.

A participant is in custody if they are:

- in custody in a correctional facility, for example a prison, remand centre, youth detention centre or secure mental health facility
- on remand, awaiting or following sentencing
- required by a court order to regularly report to a correctional or community correctional agency, for example on bail, probation or parole
- serving a community based order, or are on a leave of absence order or therapeutic leave
- under forensic orders, which may include restrictions on your movements or other requirements, such as drug testing or attending prescribed treatment.

If in custody, the justice system is responsible for a participant's day-to-day care and support needs. This includes supervision, personal care and general supports. If a participant is in custody, the justice system will provide help with personal care, such as showering, eating and dressing as well as disability-related health supports.

The justice system is also required to make reasonable adjustments to supports or services to make them accessible to specific participants. This includes things like:

- shower rails in bathrooms, or fixed aids such as hoists, that may be used by the participant and other inmates
- help with communicating and engaging, including Auslan interpreting
- adapting the building so the participant can move around it
- case coordination to help the participant transition out of a justice setting, including the management of orders, child protection and family support, health, mental health, housing or homelessness services
- secure mental health facilities that are mainly clinical in nature
- transport, for example to and from court hearings.

There are disability related supports not captured by this category that may be provided to a participant while they are in the justice system. This includes things like

- certain assistive products, such as a replacement prosthetic limb
- training for staff in custody, where it is specifically for a participant's disability support needs
- capacity building supports that will help a participant following release, such as support coordination, a recovery coach, occupational therapy or behaviour supports related to a participant's disability.

## *Aged care*

NDIS supports do not include basic daily care fees, refundable accommodation deposits and extra service fees within the meaning of the *Aged Care Act 1997*.

The NDIS does not fund the following supports when they are provided by a residential aged care provider:

- daily assistance with tasks such as cleaning, cooking and laundry;
- personal care supports including bathing, dressing and going to the toilet;
- access to health practitioner services, clinical care and therapies;
- social and emotional support services and entertainment.

On some occasions, these may be NDIS supports for participants who move permanently into residential aged care under the age 65. This is based on an agreement between the NDIA and the Department of Health and Aged Care.

Under paragraph 29(1)(b) of the NDIS Act, a person ceases to be a participant in the NDIS if the person enters a residential care service on a permanent basis, or starts being provided with home care on a permanent basis, and this first occurs only after the person turns 65 years of age. The NDIS does not fund Commonwealth funded aged care services for people who are no longer participants.

#### *Unlawful goods and services*

This includes supports or items that would contravene a law of the Commonwealth or the State or Territory in which the support would be provided. It also includes all supports involving restrictive practices that are prohibited in the participant's State or Territory of residence and seclusion rooms.

#### *Income replacement*

The NDIS does not provide income replacement or supplementation.

Funding provided under the NDIS is not income support or a social security payment that can be used to purchase any item or service a person could spend their own money on. It is specifically and directly intended to obtain supports that a participant needs as a result of their disability to allow them to realise their full potential for physical, social, emotional and intellectual development, as well as participate in and contribute to social and economic life.

There are other services available, such as the social security system, to supplement a participant's income if they are unable to work as a result of their disability.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024***

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the legislative instrument**

This *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* (the Instrument) provides a transitional definition of 'NDIS support' which is a key concept inserted into the *National Disability Insurance Scheme Act 2013* (NDIS Act) by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The definition of NDIS support clarifies what supports are provided through the National Disability Insurance Scheme (NDIS, Scheme) in a manner that is consistent with the original intention of the Scheme. It also reinforces the constitutional basis for the supports that are funded and provided under the Scheme, which is necessary as it transitions to a new budget-based planning framework.

The Instrument sets out the supports that are declared to be NDIS supports, including whether they are NDIS supports for participants generally, or only when the support is specifically stated in a participant's plan. These supports are described generally to ensure that participants continue to have choice and control over how they use their plans.

It also includes transitional arrangements that ensure a support specifically stated in a participant's plan at the commencement of the Amending Act will continue to be an NDIS support for the duration of the participant's current plan. This ensures that participant's will receive continuity of support. Similar transitional arrangements are in place for supports that the AAT has found to be reasonable and necessary for a participant.

The Instrument also declares supports that are not NDIS supports. It is important to note that a support will not be an NDIS support, even if that support could otherwise fall within one of the categories of supports that are declared to be NDIS supports.

In addition to the supports that are declared not to be NDIS supports, subsection 10(9) of the NDIS Act (as amended by the Amending Act) provides that a support is not an NDIS support if the support consists of the provision of:

- sexual services
- alcohol

- drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

Finally, the instrument prescribes the supports that are declared not to be NDIS supports but may be substituted for other supports that are in particular circumstances.

The Instrument is a transitional rule made under item 138 of Schedule 1 to the Amending Act and will only remain in place until permanent NDIS rules are made under section 209 of the NDIS Act.

## Human rights implications

The Instrument engages the following human rights:

- Right for all people to self-determination and to freely pursue economic, social and cultural development - Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- Right of people with disability – Articles 3, 4, 5, 7 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16, 24 and 26 of the ICCPR.
- Article 28 of the CRPD and Article 23 of the Convention on the Rights of the Child (CRC)

### Right for all people to self-determination and to freely pursue economic, social and cultural development - Article 1

Article 1 of the ICCPR and ICESCR enshrines the right for all people to self-determination and to freely pursue economic, social and cultural development. The Instrument will provide clarity and certainty for people with disability when selecting their supports, but it does not change the types of supports that have always been appropriate to purchase with NDIS funding.

The Instrument promotes these rights by clarifying how NDIS funding can be used to enable people with disabilities to pursue their goals and maximise their independence, to live independently, to be included in the community as fully participating citizens and develop and support the capacity of people with disabilities to undertake activities that enable them to participate in the mainstream community and in employment.

To the extent that the Instrument may be seen to limit some of the rights mentioned above, this is a necessary and appropriate limitation. Additionally, the overarching principles outlined in section 34 of the NDIS Act remain the same, including whether a support meets a participant's disability related support needs and is effective and beneficial for the participant. The Instrument provides important clarification about what types of goods and services are appropriately funded by the NDIS to allow participants greater certainty and flexibility when choosing how to spend their allocated NDIS funding.



## Right to equality and non-discrimination - Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for respect of the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference and acceptance of persons with disabilities, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 and 5 of the CRPD outline the need to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5 of the CRPD outlines obligations to recognize all persons as being equal under the law and being entitled, without discrimination to the equal benefit of the law. Specifically, section 5 prohibits discrimination on the basis of disability.

Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards. The Article also provides that persons with disability should be given equal rights to, among other things, control their financial affairs and not be arbitrarily deprived of their property.

The Instrument promotes these rights by clarifying how NDIS funding in participants' plans can be used. This provides certainty and enables participants to make informed choices about the supports they can acquire using their NDIS funding. The NDIS support categories are intentionally broad, to promote and respect the diversity of people with disability and ensure equal opportunity.

In addition, the Instrument provides that any support stated in a participant's plan at commencement of the Amending Act on 3 October 2024 will be considered an NDIS support for that participant until the plan ends. Similarly, supports found by the Administrative Appeals Tribunal to be reasonable and necessary and included in a participant's plan at commencement will be considered NDIS supports for that participant until the plan ends.

This will preserve existing rights and interests in a support that has been determined to be reasonable and necessary before commencement of the Amending Act, and allow time for participants to adjust to any changes introduced by the Instrument.

The Instrument promotes Article 12(5) of the CRPD by recognising the equal right of people with disability to control their own financial affairs and identify NDIS supports that most appropriately meet their disability related support needs. Under the new planning framework enabled by the Amending Act, the definition of NDIS support will facilitate greater choice and control.

To the extent that the Instrument may be seen to limit some of the rights mentioned above by excluding goods and services from being funded by the NDIS, this is a necessary and appropriate limitation. The Instrument is consistent with the original intent of the Scheme, and it will operate until new Category A rules are made.

#### Rights of people with disability - Articles 4(3) and 7 of the CRPD, Article 24 of the ICCPR and Article 23 of the CRC

Article 4(3) of the CRPD seeks to ensure necessary consultation with, and active involvement of, persons with disabilities in the development and implementation of legislation and policies. The Instrument is consistent with Article 4(3) as there has been wide consultation with the disability community, as set out in the Consultation Statement.

Having regard to Article 7 of the CRPD, children receive special rights under human rights law, reflecting their intrinsic vulnerabilities as members of society. Children's rights are protected under several international treaties, notably under the CRC. These rights extend to all children under the age of 18 and are guaranteed.

Article 23 of the CRC and Article 7 of the CRPD reflects the need to respect that every child with a disability should enjoy the best possible life in society through recognition of their human rights and fundamental freedoms on an equal basis with other children. It recognises that government should remove obstacles for children with disabilities to become independent and to participate actively in the community.

The Instrument reinforces participants' inherent dignity and individual autonomy by supporting freedom to make choices about the best use of supports outlined in the Instrument, thus ensuring a child is achieving the fullest possible social integration and individual development consistent with Article 23(3).

The effect of the transitional rule is not a retrogressive measure, as it is not a limitation on an economic or social right. Rather, the rules represent a clarification of what has always been intended to be available under the NDIS as a disability support and to clarify what cannot be purchased using NDIS funding. This will enhance transparency, and enable participants, nominees and parents to make informed choices and have confidence about the use of NDIS funding.

#### Right to social security - Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 28 of the CRPD

The right to social security recognises the importance of adequate social benefits, through reducing the effects of poverty and other roles. The right plays an important role in recognizing other social, economic and cultural rights.

Funding provided under the NDIS is not an income support or a social security payment that can be used to purchase any item or service a person could spend their own money on. It is specifically and directly intended to obtain supports that a participant needs as a result of their disability to allow them to realise their full potential

for physical, social, emotional and intellectual development, as well as participate in and contribute to social and economic life.

The Instrument has no impact on a participant's right to social security.

**Conclusion**

This instrument is compatible with human rights as it advances the protection of the rights of people with disability.

To the extent it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the NDIS, for the benefit of all persons with disability who need access to the NDIS.