



Australian Government

Department of Health

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

Explanatory Document



Note that this explanatory document is for the purposes of consultation only and will form the basis of the explanatory statement for this instrument. Further updates will be made to the document following further consultation, development of other related rules and to meet the requirements of all explanatory statements.

## Purpose of the Instrument

The Instrument will declare, for the purposes of subsection 32E(4) of the *National Disability Insurance Scheme Act 2013* (Act), what NDIS supports are to be stated supports under the new planning framework. It will set out the categories of supports that are stated supports and explain what supports fall within each of those categories.

## Background

The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (the Amending Act) provided the basis for critical reforms to the National Disability Insurance Scheme (NDIS). In particular, the Amending Act introduced into the NDIS Act the concept of a new budget-based planning framework in which participants get 'new framework plans'. This framework is operationalised through the exercise of new and expanded NDIS rule-making powers.

New framework plans include a participant's reasonable and necessary budget which is made up of one or both of flexible funding and funding for stated supports. Flexible funding can be used by a participant on any support that is an NDIS support for that participant, subject to any restrictions and requirements that may be placed on that funding. Funding for stated supports must be spent on the stated support as described in a participant's plan.

Reasonable and necessary budgets will be calculated using a method prescribed in the National Disability Insurance Scheme (Reasonable and Necessary Budget Method) Rules based on information contained in a needs assessment report (prepared in accordance with section 32L of the NDIS Act).

This is consistent with the approach recommended by the Independent Review into the NDIS, that recognised that while participants should be given greater flexibility in how they spend their budget with minimal exceptions, some supports should always be 'stated supports'.

Subsection 32E(4) of the NDIS Act provides that a support will be a stated support if it is declared in NDIS rules to be a stated support for participants generally or a class of participants that includes the participant. All supports declared in the Instrument will be stated supports for all participants who have those supports in their new framework plan.

A participant's support needs assessment report will identify the need for a stated support. Depending on the support, the budget method may be able to identify the funding to be attached to the stated support. In other cases, quotes, assessments or other information may be required to identify the funding amount to be attached to the support. A participant's reasonable and necessary budget can then be varied to include the funding amount for that support.

## Detailed explanation

### Name

This instrument will be the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Stated Supports) Transitional Rules 2025*.

## Commencement

The instrument will commence on the day after it is registered on the federal register of legislation.

## Authority

The Instrument will be made under item 138 of Schedule 1 to the Amending Act.

Subitem 138(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Amending Act.

Item 139 of the Amending Act provides that certain NDIS rules can be made as transitional rules under item 138 if certain procedural steps are taken.

## Definitions

A number of expressions used in the rule are defined by the NDIS Act including:

- a) NDIS support
- b) participant;
- c) registered plan management provider;
- d) stated support.

This section includes the following key definitions for the purpose of the Instrument:

**Act** means the *National Disability Insurance Scheme Act 2013*.

**approved residential care home** has the same meaning as in the *Aged Care Act 2024*.

**eligible assistance animal** has the same meaning as in the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

**personal care in schools** means personal care that the student requires due to the impact of the student's impairments on their functional capacity and in addition to reasonable adjustments.

**specialist behaviour support provider** has the same meaning as in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

**specialist school transport** means specialist transport for children with disability between home and school, that the student requires due to the impact of the student's impairments on their functional capacity and in addition to reasonable adjustments.

**specialist disability accommodation** has the same meaning as in the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*.

## Supports that are stated supports

The instrument will, for the purposes of subsection 32E(4) of the NDIS Act, identify supports that are to be stated supports for all participants. A table will set out the categories of supports and what supports fall within each category.

Generally, supports will be declared to be stated supports where:

- The absence of the support may cause harm to the participant or presents a safety risk to the participant, and the support has been stated to ensure that a participant's support needs will be met
- The item is high-cost
- The support has significant integrity risks attached and has been stated to ensure that a participant's support needs will be met
- The funding for the support is fixed for all participants, and the cost of delivering the support is unrelated to the participants support needs
- The NDIS reimburses another support system for the cost of delivering the support that is made available to the NDIS participant
- The support is funded as a cash payment.

### **Assistive technology assets**

This category will include the following supports:

Devices or products that support an individual to perform tasks, improve independence and enhance safety, when a participant is limited by the functional impact of their disability.

This includes the following:

- a) modified or adapted furniture, household items and fixtures;
- b) communication tools, including hearing and vision;
- c) home automation systems and equipment for environmental control;
- d) customised prosthetics;
- e) vehicle modifications;
- f) devices simulating body function;
- g) mobility aids, including wheelchairs, mobility devices, transfer devices and complex assistive products for walking;
- h) recreational equipment;
- i) services to deliver and set-up assistive technology;
- j) maintenance, spare parts and repairs specific to assistive product.

The precise language and description of this category may evolve to ensure consistency with other NDIS rules currently under development to ensure consistency of language and approach.

Assistive technology assets will be stated supports for a combination of reasons, including that there may be safety risks to a participant if they do not get the specific assistive technology that they need and the additional assurance required to ensure that funding for high-cost items is used appropriately. These are also often one-off purchases that do not require ongoing funding. In addition, the NDIS Review recommended that assistive technology assets be stated supports.

Due to the fact that assistive technology is a stated support, it is appropriate that ancillary supports are also stated. There are serious safety risks to a participant if they cannot maintain or repair their assistive technology and as a result funding for repairs and maintenance must be guaranteed and separately provided for. Where appropriate, there will be funding specifically stated for the repairs and maintenance of assistive technology assets.

### **Assistance animals**

This category will include the following supports:

Support provided by an eligible assistance animal.

This includes the following:

- a) assessment, matching and provision of an eligible assistance animal;
- b) dietary needs;
- c) grooming;
- d) veterinary services including flea and worm treatments, medication, and vaccinations;
- e) yearly reviews to maintain accreditation.

The definition of eligible assistance animal will be consistent with the definition in the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* to ensure consistency with the definition of NDIS supports.

Assistance animals will be declared as a stated support due to the highly specialised nature of the support that is not interchangeable with other supports. The absence of an assistance animal, once identified as necessary, could significantly impact a participant's independence, safety, and ability to engage in daily life. This aligns with the principle that stated supports include those whose absence may cause harm or present a safety risk to the participant.

Making assistance animals a stated support also guarantees that funding for associated costs (such as veterinary care and annual accreditation) is clearly allocated and protected.

### **Support coordination**

This category will include the following supports:

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

This includes:

- a) building a participant's capacity to connect with supports;
- b) assisting participants to understand and utilise their plan;
- c) assisting participants to connect with providers and mainstream services;
- d) addressing barriers and reducing complexity in the support environment;
- e) transport which is ancillary to the provision of these supports.

Support coordination is an NDIS support for participants who require additional assistance to identify, connect with and coordinate the supports they need and build their capacity to use their NDIS plan. It is offered at multiple levels to meet varying complexity in need, and in targeted forms including psychosocial recovery coaching and assistance to identify and maintain accommodation supports. It also includes provider travel for support coordination, and activity-based transport for participants receiving psychosocial recovery coaching.

Support coordination is a critical safeguard for many participants and facilitates choice and control in the acquisition and use of other supports. Declaring this support as stated will ensure participants who need this support can navigate the disability ecosystem.

The NDIA is considering options for reforming support coordination through a commissioned navigator service to reduce delivery of low value intermediary supports. Retaining support coordination as a stated support will minimise unintended market distortion and steward the market towards the future navigator role.

### **Short term respite**

This category will include the following supports:

Supports that assist participants to have time apart from their primary informal supports overnight.

This includes the following:

- a) accommodation
- b) supports that allow a person to stay in the accommodation

These supports may be provided in both group and individual settings.

The purpose of short-term respite is to help sustain and maintain caring arrangements with primary informal supports overnight. These supports allow the opportunity for a participant to be supported by someone else whilst providing their primary informal support or supports with short term breaks from their usual caring responsibilities.

Short term respite will be declared as a stated support to ensure that the respite appropriately meets the needs of participants and their families and carers, or other informal supports.

### **Behaviour support**

This category will include the following supports:

Supports dealing with the development, implementation and co-ordination of a behaviour support plan.

This includes:

- a) assessment, development and delivery of a comprehensive behaviour support plan that aims to reduce and manage behaviours of concern;
- b) development and delivery of interim or transitional behaviour support plans;
- c) training and ongoing monitoring of staff in implementation of a behaviour support plan;
- d) training and capacity building for a participant's informal supports in the use of positive behaviour support;
- e) supports to assist participants with behaviours of concern to develop their social skills for participation in the community and social activity
- f) transport which is ancillary to the provision of these supports.

Behaviour support includes specialist behavioural intervention support to develop a behaviour support plan, as well as training for informal carers and support workers in implementing the plan. These services must be delivered by a specialist behaviour support provider, as required by the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018.

Behaviour support also includes individual social skills development, which is a capacity building support to assist in implementing the strategies set out in a participant's behaviour support plan. This support can either be provided directly to the participant or to their informal supports.

These supports are stated supports due to the significant risk to participant safety and the safety of others if behaviour support plans are not appropriately developed and implemented as well as the complex legislative and reporting obligations attached to the provision of behaviour support.

This category does not include the use and implementation of behaviour support plans or the use of positive behaviour support strategies or restrictive practices, where this occurs in the context of delivering other NDIS supports. For example, a support worker delivering in-home and community supports may implement strategies set out in a behaviour support plan while

delivering the support. This does not mean that the in-home and community support falls within the scope of the behaviour support stated support.

### **Plan management**

This category will include the following supports:

Supports provided by a registered plan management provider to manage the funding of supports under a participant's plan.

It is important to note that registered plan management providers are only funded to manage the funding of supports under a participant's plan and not to provide other supports or services to a participant. Plan management funding is always a fixed amount that cannot be 'topped up'. Further, plan management type cannot be changed without a plan variation and so a participant's budget will always accurately reflect a participant's plan management type.

### **Specialist disability accommodation**

This category will include the following supports:

The provision of specialist disability accommodation.

This Instrument will adopt the same definition of specialist disability accommodation as the one found in the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (SDA Rules) to ensure that there is a consistent approach to specialist disability accommodation across the Scheme.

Section 5 of the SDA Rules provide that specialist disability accommodation:

means accommodation for a person 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; but

does not include supports delivered to the person while the person is living in the accommodation.

Specialist disability accommodation will be a stated support due to the strict eligibility criteria that apply as well as the serious risk of harm to participants if specialist disability accommodation is not guaranteed and delivered appropriately.

### **Home modifications**

This category is likely to include the following supports:

Supports that change or modify a participant's home to help the participant live as independently as possible and to live safely at home.

This includes the following:

- a) installing equipment or changing a building's structure, fixture or fittings;
- b) internal and external building modifications to remedy damage arising exclusively from disability related behaviours or use of NDIS funded assistive technology or equipment;
- c) the design of these changes or modifications;
- d) regulatory certification requirements for works.

Home modifications will be a stated support due to the safety risks to the participants if the home modifications are not carried out exactly as required and the high-cost of many home-modifications. While there are some lower cost home modifications, these will still be stated supports. The NDIS Review also specifically recommended that home modifications be a stated support.

This category includes all design costs associated with home modifications, including architects or other design specialists. This does not include the assessment of the need for home modifications which is carried out by other providers such as occupational therapists and funded through a participant's flexible funding.

### **Medium-term accommodation**

This category will include the following supports:

Accommodation that is required because a participant cannot move into long term or permanent accommodation where the participant's current accommodation is not suitable for the participant and:

- a) the long term or permanent accommodation is not ready for the participant to reside in; or
- b) other supports necessary to allow the participant to live in that accommodation are not available.

Medium-term accommodation is generally funded for 90 days but can be funded for up to 180 days in certain circumstances. This Instrument does not deal with the length of medium-term accommodation as this is currently dealt with in NDIA operational guidance.

Given that medium-term accommodation is a strictly capped support provided for a specified time frame, it is necessary for it to be a stated support.

### **Private vehicle transport**

This category will include the following supports:

Costs associated with private transport for participants who cannot use public transport due to their disability. This does not include transport that is ancillary to the provision of an NDIS support.

Private vehicle transport may be provided by:

- a) taxis;
- b) rideshares;
- c) other private travel options.

This support is not intended to cover transport that is ancillary to the provision of supports as this is separately funded either as part of the support or through flexible funding.

The supports that fall within this category are intended to cover existing 'recurring transport' supports. The description of the category above may change as the budget method is settled or as longer-term intergovernmental arrangements are resolved.

### **Residential aged care**

This category will include the following supports:

NDIS supports provided to participants living in an approved residential care home.

The above description aligns with the language of the Aged Care Act 2024 and will continue to support the current cross-billing arrangements between the National Disability Insurance Agency and DHDA for supports to be funded through participant plans as well as reimbursements for means-tested care fees and daily accommodation payments.

### **In-kind supports**

This category will include the following supports:



The following programs that are funded by State and Territory governments:

- a) personal care in schools;
- b) specialist school transport.

In-kind supports are disability related supports within the responsibilities of the NDIS (as set out in relevant intergovernmental agreements) that are provided by state and territory governments but included in a participant's plan. These supports have been gradually phased out and there are now only two in-kind programs in place. If in-kind supports are stated in a participant's plan there will be no funding allocated to those supports as the support is separately provided by the relevant State or Territory government. The purpose of stating the support in a participant's plan is to show that the participant receives the support, but payment for the support does not occur through the participant's plan. NDIS amounts cannot pay for the service.

The NDIS provides supports for students with disability to help with daily living activities (and not related to their learning), such as personal care and support and transport to and from school. Personal care may cover, for example, meals, toileting and personal hygiene. The NDIS cannot personalise either learning or supports for students related to their schoolwork (including teaching, learning assistance and aids, school building modifications and transport between school activities).