Submission on the Transitional Rules for Permitted and Prohibited ‘NDIS Supports’

July 2025

South West Autism Network

www.swanautism.org.au

Executive Summary

South West Autism Network (SWAN) submits this response to express deep concern over the implementation and impact of the transitional Section 10 Rules for NDIS Supports and the associated In and Out lists of fundable items. While intended to provide clarity, these lists have introduced confusion, hardship, and systemic inequity for participants, particularly those in regional and remote areas, people with complex support needs, and members of First Nations and culturally and linguistically diverse communities.

The prescriptive nature of the lists undermines the flexibility, individualisation, and participant autonomy that are foundational to the NDIS. The current rules have resulted in widespread denial of essential supports, even when those supports are low-cost, mainstream, or previously funded under the Scheme. This includes critical items such as mobility equipment, noise-cancelling headphones, smartwatches used for safety, and disability-related recreational or therapeutic supports. The lists disproportionately disadvantage participants who self-manage or self-direct their supports, and fail to consider the real-world context in which people with disability live and access support.

Despite Government assurances of co-design, the transitional rules were introduced with minimal consultation, inaccessible materials, and limited timeframes, excluding the very people the NDIS is meant to support. The legislative framework now enables unreviewable debts against participants and allows plan changes without proper process, introducing fear, confusion and legal uncertainty into the lives of participants and families.

SWAN makes the following key recommendations:

1. Amend Section 10 of the NDIS Act to reinstate the principles-based approach to ‘NDIS Supports’ and remove the ‘Replacement Support’ process. SWAN strongly advocate for this approach to be taken.
2. If Lists are retained, greatly simplify and use an exclusion-only List. This option enables flexibility, innovation and enables permitted NDIS Supports to stay abreast of technological advances, while supporting participants to understand what supports are not permitted. Note, however, that the ‘Replacement Support’ process must be removed regardless.
3. If Lists are retained, greatly simplify and combine the lists into an inclusion-only list with exclusions (carve-outs).
4. Develop an App for participants to check if a support they want to claim is permitted.
5. Redefine ‘standard’ vs ‘disability-specific’ by function, not form.
6. Renegotiate and update the Applied Principles and Tables of Supports (APTOS).
7. Ensure genuine co-design in developing the permanent rules.
8. Provide clear, accessible guidance and training to NDIS representatives, participants, families and providers.
9. Fund independent navigation peer support and advocacy.
10. Monitor and evaluate impacts of any changes.
11. Address plan flexibility and budget structure.

This submission includes case studies illustrating the harmful impacts of the current rules, and provides detailed recommendations for reform. SWAN calls for the immediate suspension of the current lists, meaningful co-design of future rules, and a recommitment to the NDIS values of dignity, inclusion, and participant-led decision-making.

About SWAN

South West Autism Network (SWAN) is a not-for-profit, charitable organisation that has been supporting autistic individuals and their families in the south-west region of Western Australia for the past 16 years. We are a Disabled Persons and Families Organisation (DPFO) with more than 2,000 members, and we provide free support to many more people with disabilities and their families. All staff, volunteers, and Board members either have a disability or are family members of someone with a disability.

Our primary role in the community is to provide information, peer support, advocacy, and connections to mainstream and disability services. We build the capacity of people with disabilities and their families to navigate government and non-Government systems to meet their needs and participate in their local communities. We support people seeking diagnosis, post-diagnosis, and across their lifespan, and provide autistic-safe space group programs for autistic children, teens, and young adults through our AutStars and YES Programs. We also deliver Youth Mental Health First Aid training to the wider community.

Introduction

This submission outlines SWAN's position on the transitional Section 10 Rules for NDIS Supports, including the associated lists of supports deemed fundable or not fundable under the scheme. SWAN holds significant concerns about the practical impacts these rules are already having on participants and the inadequate safeguards in place to protect individualised, needs-based planning. The rigidity of the current lists undermines the flexibility and tailored supports that are essential for our members, and fails to reflect the diverse, intersectional needs of people with disability and their families, particularly those in regional and remote communities, and those navigating multiple forms of disadvantage.

The changes have not been adequately explained to participants and nominees, and the significant majority of people contacting SWAN remain unaware that the NDIS legislation has changed, and that there are new rules for what can and cannot be claimed. As a result, there has been a dramatic increase in demand for support from SWAN and organisations like ours, to provide information, linkages and capacity building support to people with disability and their support networks to help them to navigate the Section 10 Rules. For the period October to December 2024 alone, SWAN experienced a 49% increase in demand for support – solely due to the impact of the legislation changes and lack of adequate information and support to people with disability and families.

We are advocating strongly for amendment of Section 10 of the NDIS legislation to enable a simplified, principles-based approach to 'NDIS Supports', as per the original intent of the scheme and the United Nations Convention on the Rights of People with Disability (UNCRPD).

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SWAN's Position on the Current NDIS Supports Rules and Lists

SWAN strongly oppose the prescriptive and restrictive lists currently being applied under the transitional Section 10 Rules for 'NDIS Supports', introduced through the 'Getting the NDIS Back on Track No. 1' legislation. These itemised lists are already limiting access to essential supports for many participants and undermining the flexibility and individualisation that sit at the heart of the NDIS. Rather than safeguarding the scheme, the rules are driving up costs, reducing innovation, and increasing reliance on segregated and disability-specific supports that are neither necessary nor aligned with participant goals.

Although the Government has repeatedly stated its commitment to co-design, this has not been reflected in practice. The transitional Section 10 Rules were introduced with inadequate consultation and no genuine partnership with people with disability, families, or representative organisations. The consultation period for the transitional rules, just 14 days, later extended by only a week under united advocacy pressure, was completely insufficient. Many accessible formats of the lists were released only partway through that window, and key materials, such as the Easy Read version, remain overly simplified, misleading, and lacking in critical detail. These rushed processes excluded the voices of the most marginalised, including people with complex communication needs, those in regional and remote areas, and individuals without formal advocacy support. Furthermore, the consultation coincided with a period of intense legislative and policy activity, including the Government's response to the Disability Royal Commission and the release of major NDIS reform reports. This created an overwhelming and inaccessible environment that did not allow full and proper consultation with disability advocates on the plethora of issues being raised.

The risks and harms raised by people with disability and our advocacy organisations; and the recommended changes to the lists were not adequately taken into consideration in finalising the transitional Section 10 Rules. The repercussions and harm warned of in introducing the overly complicated, confusing and prescriptive In and Out lists have been experienced by people with disability and families for the past 10 months (some of which have been documented in case studies at the latter end of this submission). We urge the Government to take immediate action to address these issues, and reinstate the principles-based approach to Reasonable and Necessary funded supports, in-line with the original intention of the National Disability Insurance Scheme (NDIS) and the UNCRPD.

Implementation of the Transitional Rules for Section 10

Section 10 of the NDIS Act stipulates that a support must be on the In list (s10(1)) and not on the Out list (s10(2), (3) or (4)) in order to be considered an 'NDIS Support'. Both the NDIA and DSS advise that the lists are not meant to be exhaustive, and if a requested support is not on either list, it can likely be claimed. This advice contradicts the wording in the legislation itself, which takes precedence over the Rules or advice from NDIA and DSS. This is incredibly problematic, as an exhaustive list of permitted and prohibited supports suitable for the wide range of individual disability support needs is impossible to achieve – which is why a principles-based approach was originally taken to establish the NDIS, and why the principles-based approach must be reinstated.

The Rules for 'NDIS Supports' have introduced a strong emphasis on disability specific supports which are typically more expensive. Further, the lists are narrow in scope, rigid and inflexible. Technology is constantly and rapidly evolving, particularly in the space of disability supports. By their very nature as a legislative instrument, the In and Out lists are insufficiently flexible to adapt to changing technology, low-cost innovations and individual disability support needs. Historically, a great many mainstream technology and products were originally developed to address the needs of people with disability, before being adopted as mainstream due to their usefulness. Some examples include:

- Curb cut outs on footpaths – designed for wheelchair users to cross roads, but are also of benefit to people pushing prams, cyclists etc.
- Typewriter – developed for blind and vision-impaired people to be able to write letters.
- Audio books – developed for blind and vision-impaired people to access books.
- Touch screens – designed for people with physical disability.

People with disability typically use such products to address needs related to their disability, usually in ways very different to how non-disabled people use them. Omitting support items from 'NDIS Supports' because the wider community uses them, and limiting access to only disability-specific products and supports only, increases segregation and cost. An example of this is the iPad, which the wider community often use for emails, internet browsing, gaming and social media. People with disability frequently rely on iPads for communication and/or to aid daily living skills, task management, self-regulation and reduce overwhelm. Non-disabled people may use noise-cancelling headphones for listening to music in noisy environments, or when using public transport and airplanes. Autistic people use noise-cancelling headphones to reduce auditory overwhelm, enabling greater social and community participation.

It's also critical to consider technology developments in products considered to be mainstream. The Apple AirPod Pro 2 earphones can now be used in lieu of hearing aids for people with some hearing loss, and can be adjusted for hearing loss in one ear only. This is a mainstream item which has introduced a feature specifically to address a disability support need. Disability-specific supports and products are generally more expensive, significantly more difficult to access (especially in regional and remote areas), have slower, more expensive follow up service and fewer features.

Disability is entirely individual. What works for one person does not necessarily work for another, and what works for people with disability in metropolitan areas is frequently entirely unavailable in regional and remote communities. For individuals with diverse and complex support requirements, this restriction undermines the flexibility necessary for effective and responsive support, and innovation to access support to meet needs where traditional options are unavailable, unsuitable, more expensive or reduce independence and community inclusion.

The fundamental flaw of the NDIS Support Rules is the move to a rigid, list-based approach that tries to definitively itemise what can or cannot be funded. By dictating supports without regard for individual context, the rules fail to accommodate the incredible diversity of participant needs, living situations, and personal goals. The NDIS was designed to fund Reasonable and Necessary supports related to a person's disability, recognising that disability impacts everyone differently, and that what is reasonable for one person may not be for another. It is literally impossible to create a definitive list covering all items and supports that participants might require due to disability. The attempt to do so - aside from a few narrow exceptions - represents a one-size-fits-all model that *by design* cannot reflect individual circumstances. This **stands in direct opposition to core Objects and Principles of the NDIS Act**. Notably, NDIS Act Section 3(e) commits to enabling people with disability to exercise choice and control over their supports, and Section 3(g) to promoting provision of high-quality and innovative supports to maximise independence and inclusion. Section 4(8) further affirms that people with disability have the same right as others to determine their own best interests and exercise choice and control in decisions that affect their lives. Prescriptive support lists that override individual judgement and flexibility are inconsistent with these legislative principles.

SWAN is particularly concerned about harms to several vulnerable groups that are already disadvantaged under the current approach:

People Living in Regional and Remote Areas

Individuals in regional and remote communities face well-documented barriers to accessing services (e.g. workforce shortages, limited providers, higher costs). They often rely on creative or community-based solutions to meet their support needs. The rigid In and Out lists, however**,** further entrench inequity by preventing reasonable local solutions that fall outside the prescribed In list. For example, if a mainstream service is the only option in a remote town for a certain need (such as a community gym for exercise or a local transport arrangement), but that service is deemed a "non-NDIS support" under the rules, the participant is effectively barred from using their funds, even if it's the only practical support available.

The In and Out lists take a city-centric, ideal-world view of service availability that does not account for geographic realities. SWAN echoes concerns raised by Every Australian Counts and others during the previous consultation for the development of the transitional Section 10 Rules – that the draft lists would *"worsen the inequities faced by those in geographically isolated locations"* by narrowing the supports they can purchase. Over the past ten months, we have seen the impact of this harm on people with disability and their families every single day. In combination with overly prescriptive NDIS Plans, the transitional Section 10 Rules for 'NDIS Supports' have dramatically worsened the already poorer outcomes and access issues experienced in regional and remote areas, rather than addressing them.

People with Complex Support Needs

Participants with complex or high support needs often require non-standard combinations of supports, creative use of funding, and frequent adjustments to find what works. The rigid In and Out lists do not adequately cover the diverse and unique needs of people requiring complex supports - standardised support categories may be wholly unsuitable for them. While a legislative exemption mechanism (the 'Replacement Support' determination process) was introduced at the last minute to allow some flexibility. However, the process for applying for a Replacement Support is opaque, burdensome, and far too narrow in scope. The Replacement mechanism only permits exceptions for a very limited set of excluded items (for example, certain "standard household items" can be substituted if no disability-specific alternative exists). It entails a case-by-case application and CEO approval, with criteria that requires that the item requested replace another support funded in the Plan of equal or greater value. Adding to the problems with the Replacement Support requirements, in many cases participants need both the support item they are applying for, and the other supports funded in their Plan.

There is no guarantee participants will be granted the replacements they need; notably**, the decision to reject a replacement support request is not a reviewable decision** under the NDIS Act. This means if the NDIA rejects the Replacement Support application for a necessary support, the participant has no right to appeal that refusal through the usual review and Tribunal processes. The person is simply left without the needed support. Such an outcome fails basic procedural fairness and leaves those with complex needs particularly vulnerable - rigid rules are excluding their essential supports, and they have no recourse. Multiple advocacy groups, including SWAN highlighted this concern in our previous submissions to the consultation on the development of the transitional rules. The current Section 10 exemption pathway falls far short of safeguarding complex needs; it is both inaccessible (given the administrative burden and NDIA capacity issues) and inadequate (given its limits and non-reviewability). The Replacement power is not subject to a merit review, and lacks both transparency and accountability.

First Nations and CaLD Communities

First Nations (Aboriginal and Torres Strait Islander) participants and those from culturally and linguistically diverse (CaLD) backgrounds often have support needs and preferences shaped by cultural, community, and language contexts. One-size-fits-all support lists do not account for culturally specific supports or approaches that may be effective in these communities. The current framework, by narrowly defining supports, is *worsening exclusion* of these groups. For example, a support that involves traditional healing practices or community-led programs do not neatly fit the list definitions and are being denied, even if it's what works best for that person. The exclusion of "mainstream" items also ignores that in some cultures or communities, there may be culturally appropriate mainstream solutions that are preferable to specialised disability services. SWAN is deeply concerned that the rules are further disadvantaging First Nations and CaLD participants by failing to accommodate cultural safety and relevance, instead imposing a Western, standardised model of support. Restrictive lists do not account for the unique cultural and community-based needs of these groups, effectively exacerbating existing disparities. This runs counter to the NDIS's commitment to equity and inclusion. We urge that any support definition must be tested against diverse cultural perspectives to ensure it does not indirectly discriminate or exclude.

In light of these profound concerns, SWAN joins with disability representative and carer organisations across the country in calling for urgent revision of the NDIS Supports Rules. The current lists, in our view, should be withdrawn or at a bare minimum, suspended and redrafted to enable time for the NDIS Act to be amended in order to reinstate the principles-based approach. We believe the definition of "NDIS support" should be re-centred on the original Reasonable and Necessary criteria as set out in Section 34 of the NDIS Act and long-standing policy. Those criteria are that a support:

- must be related to the participant's disability;
- must not include day-to-day living costs not caused by the disability (e.g. groceries);
- should represent value for money;
- must be likely to be effective and beneficial for the participant; and
- should take into account support provided by other systems, family, carers, and community.

These principles have guided personalised decision-making in the NDIS since inception, and were designed to ensure each plan is tailored to the person while maintaining fiscal sustainability and mainstream service responsibilities. By returning to these criteria - possibly with updated guidance or examples - the NDIA can ensure supports are decided based on individual circumstances, rather than a static list that cannot capture every scenario. This approach, coupled with appropriate training and oversight, would allow flexibility while still preventing improper use of funds (since supports would still need to meet the criteria and not be more appropriately provided by other systems).

SWAN emphasises that a principles-based approach is not about “anything goes” - it still requires NDIA delegates to apply the Act’s tests and their professional judgement to each situation. What it does is *allow nuance*: for instance, recognising when an item normally seen as “day-to-day” (like a tablet device or a gym membership) is actually being used to meet a disability-specific need and is reasonable and necessary in that participant’s context. The current lists largely eliminate that nuance. We note that the 2022-23 Independent NDIS Review explicitly recommended moving towards a trust-based, flexible budget approach with minimal exceptions, indicating that participants should have greater freedom to use funding as needed (with safeguards for only truly inappropriate expenditures). The Section 10 Rules, as they stand, implement the opposite philosophy - a distrustful approach that prescriptively bans a wide range of items regardless of individual need. This not only contradicts the Review’s vision but has been described by community members as taking us “a step back in time” to old welfare approaches.

This approach has previously allowed for decisions that reflect the reality of people’s lives, rather than forcing them to justify their needs against a 34-page-long, overly complicated and contradictory checklist. SWAN urges the Government to commit to genuine reform by engaging in transparent, co-designed processes that uphold the rights, dignity, and autonomy of all NDIS participants.

Overarching Concerns

The implementation of prescriptive NDIS Support Rules under Section 10 has introduced a restrictive framework that undermines participant choice, individualisation, and the flexibility intended by the original design of the NDIS. Rather than increasing efficiency, these rules have led to confusion, distress, and a reduction in the quality and accessibility of supports. Below, we outline several key overarching concerns that have emerged since the rules took effect.

Loss of Individualisation

The new rules severely restrict choice and control for participants, in many cases forcing them into less suitable and more expensive support options. By applying rigid categories of what is (and is not) fundable, the rules prevent the tailoring of supports to suit diverse and evolving needs. This loss of individualisation not only harms outcomes but can also increase the cost of supports to the taxpayer, as participants are pushed to use more expensive or specialised services when a creative mainstream solution might have been cheaper and just as effective. For example, a participant who could previously use part of their Core funding for a smart tablet to assist with communication and daily living will now be told an iPad is not covered because it’s a “day-to-day living cost” - leaving them to either seek a costly dedicated assistive device, apply for a ‘Replacement Support’ and lose other supports in their Plan, or lose that functionality altogether.

Several stakeholders have observed that the lists promote a narrow, disability-specific approach that paradoxically can lead to higher costs. Our engagement with people with disability and families reflect that “disability-specific generally means more expensive, more difficult to access, fewer features and slower service,” and the very real high risk of returning to pre-NDIS scenarios where lack of competition kept prices high and innovation low. The rigid transitional Section 10 Rules for ‘NDIS Supports’ are contrary to the NDIS’s person-centred ethos and counterproductive to participant outcomes, safety, human rights, and cost-effectiveness.

Contradiction of NDIS Review Findings

The rules directly contradict a key recommendation of the 2023 Independent NDIS Review Final Report. Specifically, Action 3.5 of that report states: *"The NDIA should allow greater flexibility in how participants can spend their budget, with minimal exceptions."* The intention was to simplify the participant experience and trust participants to use their funding appropriately (with oversight focusing only on a small number of unacceptable purchases). However, Section 10's implementation has done the opposite - it introduced complex and contradictory lists of allowed and disallowed items, with broad exclusions covering many disability-related needs. There are dozens of "exceptions" (i.e. non-allowable supports) codified in the rules, rather than minimal exceptions.

This divergence from the Review's blueprint has been flagged by multiple organisations during the previous consultation to develop the transitional Section 10 Rules. Every Australian Counts, for example, explicitly noted that the lists are 'not in line with Action 3.5 of the NDIS Review' and urged that they be reconsidered in light of the Review's recommendations (Every Australian Counts, 2024). The current approach risks undermining the broader NDIS reform agenda, which is aimed at making the Scheme fairer and more sustainable by reducing red tape and increasing trust in participants. **By implementing a rules-heavy system, the NDIA is effectively doubling down on administrative complexity and paternalism, which the Review sought to move away from.** We consider alignment with the Review findings essential - if the community and expert consensus is to empower participants with flexible budgets, the support rules must be redesigned accordingly.

Distress, Confusion and Legal Risk

The complexity and inflexibility of the support lists have generated significant confusion among NDIA staff, Partners In The Community (PITC) and providers, with misinformation to participants and families dramatically increased. It is entirely unreasonable to expect participants and families, who bear the serious repercussions of 'getting it wrong', to understand and comply with the Rules, when NDIS representatives and providers are consistently 'getting it wrong'. The Section 10 Rules span 34 pages of legislative instrument (plus additional explanatory notes), plus a further 3 pages for the Replacement Rules. Many categories are not intuitively clear, many funded supports are omitted entirely (eg. 2:1 supports), and a great many supports are mentioned on both the In and the Out list – exacerbating confusion. SWAN regularly encounters participants and families who do not understand the new lists - indeed, many were not even aware these rules had come into effect until they faced an issue. Ten months after the changes, we still meet NDIS participants every week who have never heard of the in and out lists and are shocked to learn that a purchasing mistake could put them in debt or force a change in how their plan is managed. The burden of navigating these rules has largely fallen on participants - including those with cognitive or psychosocial disabilities for whom complex rules are especially daunting.

Without sufficient support or clear guidance, participants are afraid of accidentally breaching the rules, which has created a climate of anxiety and risk aversion. Advocacy organisations, including SWAN, have noted a pervasive fear of incurring a debt among participants since the rules were introduced. This fear is not unfounded - under the amended NDIS Act, if a participant spends funds on something that is not an 'NDIS support' (as defined by the lists), the NDIA can raise a debt against them for that amount. Small first-time mistakes under

$1,500 are supposed to result in warnings rather than immediate debt, but larger expenditures will result in a debt that the participant is liable to repay, and the participant's plan changed from their preferred funding management type to Agency Managed or Plan Managed. While NDIA is supposed to issue two warnings to participants for the first 12 months for mistakes <$1500 in value, mistakes >$1500 will incur a debt which cannot be appealed. Participants can only ask the NDIA to waive the debt, and appeal the decision not to waive the debt, but the debt itself remains on the participant's file – even if the decision to apply the debt is incorrect. This record then impacts all future decisions made about the participant.

We note, however, that despite assurances from the NDIA's senior executive that an 'educative approach' will be taken for the first 12 months, we are commonly hearing from participants and nominees across Australia, that NDIA delegates are issuing a new NDIS Plan without warning or discussion with the participant / nominee, with reduced funding and the funding management changed from their preferred management type. A concern raised by many advocates and disability representative organisations prior to this power being given to the NDIA. Participants and nominee's are also reporting receiving demands to submit all invoices / receipts for a specific NDIS support category from 2018 through to the present day. This is a period of **seven years**, despite the NDIA's own website stating that self-managed participants must *"keep records of invoices and receipts for **5 years** to show that you've purchased NDIS supports and used your funding in line with your NDIS plan."*

Participants have expressed that this makes them feel 'guilty until proven innocent' - a punitive approach that exists nowhere else in social support systems. The debt, even if waived, stays on the participant's record permanently and can influence future NDIA decisions about them. There is risk of NDIA delegates determining that a participant has incurred a debt for supports that the Administrative Review Tribunal would consider to be Reasonable and Necessary for that participant.

SWAN characterise this as essentially criminalising mistakes by participants, treating them as fraud risks rather than people using their funding in good faith. The stress of possibly incurring an unchallengeable debt has been immense, especially for participants who self-manage their funds and for plan managers. Many are now afraid to use their funding for anything not explicitly on the In list, even if it might benefit them, leading to under-utilisation of plans and unmet needs. Plan managers and some providers are now overly cautious, refusing to process claims for items not specifically mentioned in a participant's plan without a letter from an NDIA delegate confirming the claim can be approved – which participants are unable to source.

In summary, the rules have created an environment of "mental gymnastics" (as one participant put it) to interpret what's allowed, and a constant fear of punitive consequences. This is opposite to the NDIS's goal of improving participants' wellbeing and confidence. We also note it disproportionately affects those with cognitive impairments or limited access to legal/advocacy support - exactly the groups who can least navigate such complexity. The legal risk embedded in these rules (debts, plan management changes, etc.) is an undue burden with no fair process. No other social program we are aware of functions in this way for end users making purchase decisions. It is, in effect, a *"Robodebt"-like scenario* that some advocates have warned about, where vulnerable people are automatically saddled with debts for arguably policy failures (in this case, unclear rules) - a comparison the Government has rejected, but the justified fear remains.

Inadequate Consultation (Process Flaws)

As mentioned earlier, the process by which these rules were formulated and implemented was deeply flawed. The 14-day consultation period (extended to 21 days) in August 2024 was woefully inadequate. Standard best practice for significant policy changes is to allow at least 8-12 weeks and to ensure accessible materials are available from the start. In this case, the Department of Social Services did not even release an Easy Read version until a week into the consultation, and even then, it was merely a summary that omitted important details and was misleading in parts. There were no Auslan videos or comprehensive translations in languages other than English during the initial period, despite the obligation to consult broadly. Disability groups, including SWAN, widely condemned this process. Moreover, the overlap with other major events (the Disability Royal Commission report, etc.) meant the consultation did not have the sector's full attention - a point Every Australian Counts described as a *"concurrent… plethora of issues"* that made proper consultation impossible. Despite extensive advocacy for meaningful and accessible consultation in the development of the permanent Section 10 Rules, the disability sector was only given a period of four weeks, woefully inadequate for consulting our membership bases.

The result of these process issues is that the rules are unsuitable for those most affected. It also set a poor precedent for co-design, undermining trust that the Government will listen to people with disability. SWAN's concern is not only with the past process but with what it portends for the future - if these transitional rules were essentially decided behind closed doors and pushed through quickly, will participants have a real say in the permanent rules? The NDIA has since opened a review of the support lists in 2025, with some consultations including surveys and community workshops. While this is welcome, it comes after people have already been hurt by the transitional rules. **We stress that any further development of Section 10 rules must be done in genuine partnership with people with disability from the outset - not as an afterthought.**

NDIA Workforce Capacity

Because participants, nominees and providers cannot easily determine whether a support is allowed, they have no option but to frequently contact NDIS representatives seeking advice. But that advice is not forthcoming, as NDIS representatives do not understand the rules either. Plan managers are requiring that participants supply written confirmation from NDIS representatives that they may claim supports not specifically written in their plans, this is also impacting on the workforce issues experienced by the Agency.

A practical concern that cannot be overlooked is whether the NDIA can even administer the complex processes created by these rules. The introduction of "Replacement Support" applications and tighter scrutiny of claims significantly increased administrative workload for the Agency (as well as for participants, families and providers). Already, the NDIA's service delivery is under strain - there remain massive backlogs for plan reassessments and access decisions, with the NDIA meeting its Participant Service Guarantee for Access Decisions only 9% of the time. For example, industry reports indicated in mid-2024 that over 50,000 plan change requests were in queue (about 10 times the usual level) awaiting reassessment. New access decisions for people with List A conditions (those that should be straightforward) have been taking up to 9-15 months in some cases, far exceeding the 21-day target in the Participant Service Guarantee.

Introducing hundreds of thousands of potential exemption (Replacement Support) requests into this environment is a recipe for further delays and failures. If even a fraction of participants apply for a replacement support for an item on the out list, the NDIA would be flooded with requests requiring individual determinations. Each request presumably needs careful consideration of equivalence, alternative availability, etc., perhaps even committee review. To-date, this has not occurred, primarily because the significant majority of participants are not being informed of the Replacement Application process and eligibility requirements by NDIS representatives, many of whom do not understand how it works. SWAN staff have attended numerous planning and plan reassessment meetings where we have had to correct misinformation and omission of information by NDIA delegates, regarding the various NDIS reforms, how they work, and the rights of participants in navigating these changes.

The Agency does not have the workforce to manage these unnecessarily complex processes in a timely way. The likely outcome is that either decisions will be extremely delayed (during which time participants go without the support), or cursory denials will become the norm to manage volume - or both (which appear to be supported by the NDIA's data and by participant reports). Neither is acceptable. The NDIA's current wait times for plan changes (often 6+ months) already breach the Participant Service Guarantee; additional workforce burdens will compound these delays. There is also a very real risk to participant safety - if necessary supports are tied up in bureaucratic limbo or disallowed outright, people's health and wellbeing could deteriorate.

SWAN bluntly notes that *lives are at stake*, as dramatic as that sounds. Consider a scenario where a certain health-related support (e.g. a nutritional supplement or a piece of safety equipment) is deemed 'not an NDIS support' and an exemption is not granted or delayed - a participant's condition could worsen, potentially leading to hospitalisation or even death in extreme cases. Disability advocates have raised alarms that the cumulative effect of these policies and delays can indeed lead to tragedy if people fall through the cracks.

The Administrative Review Tribunal (ART) case of YGBW vs NDIA exemplifies the danger of prescriptive rules for 'NDIS Supports. In this matter, the Tribunal member stated that they were left with no option but to deny 24/7 registered nursing support due to the Section 10 Rules. The life of a four year old is at risk due to these arbitrary Section 10 Rules, with support workers given far too much responsibility for risky medical procedures such as deep suctioning.

From a capacity and risk standpoint, the approach of arbitrary exclusions and case-by-case 'replacements' is not feasible or safe. A simplified, principles-based approach would avoid this bureaucratic bottleneck entirely by letting most decisions happen within planning meetings rather than through separate, burdensome applications and appeals to the ART.

Operational Guidelines Misapplication

Another systemic issue is the way NDIA planners and delegates are interpreting the rules and accompanying guidance. We have observed (and received consistent reports) that many NDIA staff are treating the *Our Guidelines* and other internal operational guidance as literal rules or hard criteria, rather than as interpretive tools. This was already a problem before (where some planners rigidly followed the previous Operational Guidelines like checklists), but it has become worse under the new lists. The support lists themselves contain a lot of vague and overlapping language, and planners often lack nuanced understanding of disabilities' functional impacts. Many appear to default to a restrictive reading - essentially saying 'if it's not clearly listed as allowed, then it's not allowed.'

We have heard of multiple instances where delegates have told participants that certain supports are ‘banned by the legislation’ purely because they are not explicitly named on the in-list. For example, some planners interpreted the absence of ‘psychology’ on the lists (which only mention OT and speech therapy as specific examples) to mean *psychology is no longer fundable*, which is not actually the case, but has led to confusion and even plan cuts until clarified. Similarly, because 2:1 support ratios and various therapy modalities (music therapy, etc.) were not explicitly listed, some participants were incorrectly informed that those were now prohibited - a misinterpretation that caused a loss of access to necessary supports and significant stress. While the NDIA has since tried to clarify some of these via its Frequently Asked Questions (FAQ) webpage, (stating, for instance, that allied health professionals *can* use tools like games or animals during therapy, despite ‘game therapy’ and ‘animal therapy’ appearing banned in the rules), the damage in understanding is already done.

Further, having to navigate 34 pages of Section 10 Rules (plus three pages of Replacement Supports rules), plus the FAQs webpage to aid interpretation of the Rules, in addition to the contradictory information spread across thousands of NDIS webpages and Operational Guidelines is a recipe for confusion, mistakes, and unintended consequences – all of which are seriously impacting people with disability and their families. The bottom line is that ambiguous rules plus inconsistent operational messaging have led to frontline staff denying reasonable supports that *should* still be allowed. And because participants have no easy way to challenge those interpretations except through lengthy reviews, many simply miss out. This underscores that a prescriptive list approach requires extremely clear, exhaustive definitions to avoid misapplication - which is an impossible task (acknowledged even by DSS in their summary paper, which noted a purely principles approach was rejected for lack of clarity, yet the chosen alternative has clarity issues of its own).

Without scrapping the lists or heavily simplifying them, participants will continue to face a ’postcode lottery’ or rather a ‘planner lottery’ where what you can get funded depends on how your NDIA planner reads the lists. That is the opposite of the consistency the policy was allegedly meant to provide. Until the rules are fixed, we urge intensive training and oversight of NDIA delegates to mitigate this, and a mechanism for quick clarification when disputes about interpretation arise, and an escalation pathway to rapidly fix errors made by NDIA delegates.

Inaccessible and Incomplete Formats

We must also highlight the ongoing issue that official information about the rules has not been fully accessible to all participants. As noted, Easy Read materials remain insufficient. As of mid-2025, there still is *no comprehensive Easy Read version of the full lists*; only a simplified summary exists. This is not acceptable for a change that deeply affects participants’ use of funding. Those with intellectual or cognitive disabilities have been left with partial information that does not convey the nuance of the rules - essentially excluding them from understanding their own rights and obligations. Auslan translations for Deaf participants were missing when the changes rolled out. Screen-reader-friendly versions were also delayed.

This lack of accessible formats severely limited the opportunity for feedback from certain groups and continues to limit understanding. Many participants who rely on alternate formats likely remain unaware or uncertain about what these rules mean. Likewise, NDIA has failed to adequately communicate the changes to people with disability and families, with tens of thousands of participants and families remaining unaware the changes have occurred. This is a serious concern: the NDIS, as a scheme for people with disability, has a higher duty to ensure its communications are accessible. By failing that, the Agency has denied many participants the opportunity to understand or respond to reforms that directly affect them. In practical terms, if someone cannot access the information about what they can or cannot buy with their plan funds, they are set up to fail compliance or to under-utilise their plan out of caution. Neither outcome is justifiable. We recommend that any future iteration of the rules come with a full suite of accessible communications (including examples and scenarios) ***before*** enforcement begins - something that did not occur in 2024.

Unclear Cross-System Boundaries

The support lists attempt to delineate what is NDIS-funded versus what should be provided by other service systems (health, education, etc.), but they do so in a manner that is excessively complex and often vague. The term “better funded or provided by other systems” appears in the rules, but without concrete definitions, leaving participants guessing. For instance, the rules say the NDIS won’t fund items better covered by health - but participants frequently struggle to know what the health system will actually cover in practice. The lists include broad exclusions like “clinical services such as diagnostics, surgery, or hospital care” (clearly health’s domain) but also grey areas like “therapy or supports that duplicate what is available in the education system”.

Families of children with disability are left trying to figure out whether certain school-related supports are considered education’s responsibility (and often schools don’t provide them) or NDIS responsibility. This complexity places an undue burden on participants to navigate interfaces between systems that even government bureaucracies have trouble delineating. It has created stress and confusion, and more people falling into the gaps. A parent might not request a particular support in their child’s NDIS plan because the list implies education should provide it - but then the school doesn’t provide it either, and the child goes without. The situation with tutoring or study support for people with intellectual disability is a prime example: the NDIS list carved out anything “primarily related to education attainment”, yet the education system typically does not fund one-on-one tutoring for students with disabilities. So these young people lose crucial help with study skills, directly impacting their educational outcomes and future employment prospects.

The interfaces between NDIS and mainstream services remain unclear under the lists, despite that being one goal of the reform. If anything, it has become more confusing, because participants must now attempt to use legislative wording rather than having a conversation about their needs. This indicates a need for a complete review of the Applied Principles and Tables of Support (APTOS) or similar guidance. SWAN supports calls (from bodies like the Joint Standing Committee) to update and reinstate a clear APTOS guide. Until that happens, the lists by themselves are an imperfect tool for boundary-setting and are causing inadvertent service gaps.

Opaque Presentation and Drafting Issues

Many stakeholders, including SWAN, have found the lists document itself to be poorly structured and difficult to follow. The language used shifts between overly broad (e.g. “general exclusions”) and extremely specific (e.g. banning “jacuzzis and spas” by name), which makes it hard to understand the intent and how to apply it to real-life scenarios. The use of terms like “etc.” in a legal instrument is particularly problematic - it appears numerous times in the lists, leaving participants to wonder what the “etcetera” covers. For example, Schedule 2 says no funding for “personal grooming and beauty products etc.” - does “etc.”

include haircuts? skincare? It's not explicitly stated. Such drafting muddles the information and reduces overall clarity, even for seasoned NDIS practitioners. For participants, the majority of whom are not going to read legislative instruments regularly, this is essentially indecipherable without expert help.

The structuring into two lists (In and Out) that have overlapping categories also forces cross-referencing and "mental gymnastics" to compare. Some categories are duplicated across lists with slight differences, which has been described as very confusing by community members. We have heard plan managers complain that the format is so convoluted they've had to create their own internal cheat-sheets to train their staff on it. In our view, if the NDIA's aim was clarity, this format failed - something even the NDIA tacitly admitted by publishing an extensive FAQ to *interpret the lists* after the fact. **A simpler presentation (for instance, a single list of clearly ineligible items, limited to obvious exclusions like illegal activities and personal expenses, with everything else considered case-by-case) would have been preferable.**

In any event, the current lists' opacity undermines their utility. If participants cannot easily determine whether something is allowed, the lists do not actually provide the certainty that was promised - instead, they push people to constantly ask the NDIA or fear the worst.

Unappealable Debts and Discriminatory Impact

We have touched on debts above, but it bears repeating as a standalone concern. The mechanism of raising unappealable debts against participants for funding misused (even inadvertently) is, in SWAN's view, punitive and discriminatory. It effectively holds people with cognitive impairments, literacy difficulties, or lack of systemic knowledge to an impossible standard - expecting them to master 30+ pages of fine-print rules under threat of debt. The fact that a debt, once raised, *"remains on the participant's record permanently, affecting all future decisions about them"* is extremely harsh. It brands the person as having done something wrong (even if they simply misunderstood the lists or were never properly informed). All of the responsibility for understanding, navigating and complying with these incredibly complex rules and processes is placed on participants and families – while NDIS representatives consistently fail to appropriately educate and support participants to understand and utilise their plans appropriately. Plan implementation support remains optional, despite extensive and consistent advice to the Agency that it must be mandatory. Participants and nominees are set up to fail – there is either no or inadequate education and support provided.

In a broader sense, it feels like the system is saying it does not trust participants - which is contrary to the principle of dignity of risk and the NDIS's insurance approach. No other social security debtor is denied appeal rights or left with a permanent mark for a mistake of this nature. Usually there are internal review processes and debts can be challenged if wrongly issued. Here, because it's framed as "non-compliance" rather than a reviewable decision, participants are uniquely disempowered and procedurally unfair. We note that NDIA has stated it will only recover debts when "appropriate" and that a "safety net" requiring senior oversight has been established so that debt recovery is a last resort. While this is somewhat reassuring, it is policy-based, not rights-based - there's nothing to ensure that the issuing of debts is not increased dramatically in future.

Moreover, plan management changes (moving a participant to Agency management if they break the rules) *are* a reviewable decision, but by the time a participant appeals that, they may already have lost their preferred management for some time, and lost access to supports that were working for them. The entire enforcement scheme around Section 10 feels punitive. It has been colloquially referred to as “NDIS compliance regime” that punishes participants for buying something the NDIA later deems improper - even if it was reasonable to them at the time. This is causing real fear among participants, many of whom have said they feel like they are being treated like they are trying to “cheat” the system when all they want is to use their funds to meet their needs. The distrust and stress introduced by these rules is a serious concern for SWAN, and is further eroding the goodwill and optimism that many had for the Scheme.

Failure to Support Self-Directed Models

One somewhat overlooked aspect is how the rules impact participants who use *self-directed supports*, such as directly employing their own support workers (micro-employment models) or otherwise managing unique arrangements. The lists did not adequately consider the practical realities of self-management and self-direction. For example, when participants directly employ support staff, they incur costs like recruitment, police checks, training, accounting software, insurance, superannuation contributions, etc. Previously, these could be covered from a participant’s plan (usually from a Capacity Building or Core budget, as they are costs incurred to obtain disability support). The new lists, however, make no mention of these necessary expenses. Items like “bookkeeping software” or “first aid training for your employee” could be construed as ordinary business costs and thus not NDIS supports under the rigid reading.

We have already seen confusion as to whether insurance premiums (Workers Compensation Insurance is compulsory in Western Australia) or administration costs for directly employed staff can be paid out of plans - some plan managers say no, citing the absence of such items on the in-list. This threatens the viability of personalised arrangements, effectively pushing people back towards agency-managed, traditional, and significantly more expensive provider models. That runs counter to the NDIS’s goal of encouraging choice in plan management and innovation in support delivery. It also contradicts recent efforts by the NDIA to make self-management easier and expand participant-led services. SWAN contends that the rules must explicitly accommodate the legitimate costs of self-directed support models; otherwise, participants who manage their own supports are unfairly disadvantaged. The policy environment should support, not penalise, those who self-manage or self-direct their supports. The current lists, by omission, do not reflect that support.

Barriers for Vulnerable Populations

Finally, to reiterate, the negative impacts of all the above concerns fall heaviest on those who are already vulnerable: people in remote areas (as discussed), people with complex needs, First Nations and CaLD communities, and also those with limited formal education or support networks. These are people who often rely on advocacy services to navigate the NDIS. The lists make that navigation even harder. It is telling that multiple organisations have called the lists a step backwards for disability rights - comparing it to more medicalised or paternalistic systems of the past. The cumulative effect is that many participants feel less empowered and more confused about their own plans now. This is a deeply concerning outcome for a Scheme that is supposed to empower people. It also increases reliance on formal advocacy and support coordination, since participants are hesitant to make decisions alone - which in turn is an extra cost and indicates a loss of the original vision of independent planning. **SWAN experienced a 49% increase in demand for information, support and**

advocacy in October to December 2024 – entirely due to the impact of the NDIS legislation changes.

Lack of Genuine Co-Design

We have already covered this in detail, but emphasis is required - the Section 10 rules were developed and implemented *without* meaningful input from people with disability, despite public commitments to co-design. The result is a policy that *does not* meet the needs of the community and has sparked widespread backlash. If anything positive can be taken, it's that the NDIA and DSS are now hearing the feedback loudly (with thousands of submissions and stories demonstrating issues). SWAN hopes that this will lead to a genuine co-design of whatever comes next - whether that's revisions to the lists or a whole new approach. Trust needs to be rebuilt, and that starts by acknowledging mistakes made in this process and working collaboratively going forward.

Day-to-Day Living Costs (rent, utilities etc)

Excluding all housing or utility costs fails to consider disability-related extra needs. For example, some participants require constant high power usage for ventilators or air-conditioning due to impairments, leading to substantially higher electricity bills directly caused by disability. Yet Schedule 2 bars any contribution to such "ordinary" expenses. Stable, appropriate housing is especially critical for people with disability – evidence shows that having a safe, long-term home profoundly improves mental health and even physical health outcomes. By flatly prohibiting rent or utility supports, the rules risk undermining participants' health and stability. Notably, certain innovative arrangements like Individual Living Options (ILO), where a housemate is reimbursed for rent in exchange for providing support, are more cost-effective than group homes. Treating all rent as personal cost could unintentionally shut down these creative and low cost solutions.

Home Modification Issues

Short story:
NDIS has gone from potentially funding all the transfer costs of buying/selling/moving to an accessible home to only funding removalists. For home owners, this is a difference of about $110,000 down to $1,400.

Long story:
Prior to October 2024, the NDIS Would We Fund it, Moving House guidelines stated that where it was too expensive to modify a participant's home for their disability needs, the following transfer costs to move to a more accessible home could potentially be funded by the NDIS:

- "Removalists
- Stamp duty
- Conveyancing
- Inspections
- Mortgage Fees
- Real estate costs to sell the current home"

(see archived operational guideline from August 2024)

New guidelines updated on 2nd December 2024, state that:

> “We can’t fund other costs related to buying, selling or renting property, like stamp duty, bonds, conveyancing or real estate fees. These supports are not NDIS supports.” [Note that only Stamp Duty and bonds are on the Out List.]

https://ourguidelines.ndis.gov.au/would-we-fund-it/home-and-living-supports/home-modifications/moving-house

These new guidelines provide a case study of home-owner Barry, in which the only transfer costs that the NDIS fund are removalists. Barry self-funded all other transfer costs, even though he was only moving house due his current home being inaccessible and deemed too expensive to modify.

There’s a potential short-term incentive here for the NDIA to decline complex home modifications: It will always be excellent value for money for the NDIA to tell participants to move house and pay for 99% of the transfer costs themselves.

Unlike Barry, many home-owning participants won’t be able to afford up to $100,000+ in costs to buy/sell/move. They will become stuck living in their inaccessible home that the NDIS also won’t modify, risking both physical and financial harm to the participant.

Transport

The new rules sharply limit transport funding (generally to specialised modifications or providers), excluding most everyday transport assistance. This is problematic, especially for participants in areas with no accessible public transit. Disability advocates note that lack of accessible transport is a major barrier to employment and community life – many people with disability rely on personal transport like taxis as a non-optional expense of daily living. If NDIS will not fund transport unless it fits narrow criteria, those in rural and remote regions or with mobility and vision impairments are being left stranded. For instance, public transport fares and taxi costs are deemed ‘ordinary’, yet people who cannot physically access public transport have no alternative. Vision Australia has argued that taxis are an essential cost for people who are blind, and cutting transport support would directly hurt their job access. Another example is a wheelchair user currently undergoing chemotherapy for cancer in the south west community. Chemotherapy is only available at the Bunbury Regional Hospital, but the cancer bus transporting patients to the hospital for treatment is not wheelchair accessible, leaving the participant with no option but to travel via accessible Taxi – at a cost in excess of $500 per week (with Transport funding in their NDIS Plan of less than $70 per week). Overall, the transport exclusions risk isolating participants or forcing them to pay out-of-pocket, contrary to the NDIS goal of community participation.

Health and mental health

Schedule 2 excludes anything considered “clinical” or better funded by the health system. In practice this creates dangerous gaps for disability-related health needs, particularly psychosocial disability. For example, NDIS operational guidelines explicitly state they *“don’t fund psychology as therapy or clinical treatment to address…mental health condition”*, on the grounds that clinical mental health is a health system responsibility. The rigid separation ignores that for many participants (e.g. those who are autistic or have psychosocial disabilities), therapies like psychology or counselling are integral to building functional skills and stability. People with psychosocial disability already often *“fall into the cracks”* between health and disability services, and these rules exacerbate that divide – NDIA planners may reject needed behavioural supports as “medical,” while health services might not cater to the long-term habilitation needs. The result is participants going without supports that are plainly *reasonable and necessary* for them, simply due to categorical silos. Clearer guidance and flexibility are needed so that disability-related health supports (such as capacity-building therapy or nursing for chronic conditions tied to disability) are not summarily excluded as ‘not the responsibility of NDIS to fund’.

Recreation and social activities

The rules’ blanket exclusion of fitness, sports, and recreation costs as *“ordinary”* expenses ignores the therapeutic and capacity building value these can have for people with disability. Research shows that adaptive sport and exercise programs yield significant benefits – a 2023 meta-analysis found adaptive sports participation had a positive impact on both mental and physical quality of life in people with disabilities. Yet under Schedule 2, items like gym memberships, sporting equipment, club fees, or art classes are generally not funded, even when they directly address a participant’s goals. The NDIA position is that only explicitly clinical exercise (e.g. physiotherapy sessions) are covered; a community gym program is seen as a personal choice. This creates ambiguity and often injustice. For instance, an AAT case in 2024 approved a gym membership for an autistic young man by treating it as a form of therapy to manage anxiety and build social skills. Under the new rules, that same support is likely to be refused as ‘mainstream recreation,’ despite its demonstrated effectiveness.

Similarly, families have used NDIS funds for dance classes or art programs that achieved outcomes where traditional therapies failed – the AAT agreed these were legitimate capacity-building supports, not mere leisure. The rigid rule now prohibiting such supports unless delivered by allied health professionals (at higher cost), undermining participant choice and proven benefits. It forces participants to either forego meaningful social/recreational engagement or to use more expensive clinical services that may be less engaging. SWAN urges that if a recreation activity demonstrably meets a disability need or goal, it should not be automatically excluded.

Mainstream vs. disability-specific items

A recurring concern is the exclusion of items deemed “not disability-specific,” such as mainstream technology or household appliances, which many participants rely on as assistive aids. The rules categorise things like smartphones, tablets, computers, smart watches, ordinary furniture, kitchen appliances, etc., as general consumer goods that the NDIS won’t fund. This overlooks the reality that *many mainstream technologies were originally developed as assistive technology and remain crucial supports for people with disability.* For example, an iPad or Android tablet, a ‘mainstream’ device, might serve as a low cost communication tool for a non-speaking person (or one who experiences situational mutism as part of their disability), or a scheduling tool for someone with cognitive disability. Noise-cancelling headphones, while popular in the general market, are life-changing for an autistic person managing sensory overload. Smart home devices, wearable alarms, GPS trackers, all ‘mainstream’ products, can profoundly increase safety and independence for participants, and at significantly lower cost than disability-specific items. Many of these mainstream alternatives function more intuitively and effectively than the disability-specific products, delivering greater ‘bang for buck’.

SWAN’s experience, and that of many other advocates, is that excluding such items outright is counterproductive. It often forces participants to seek far costlier ‘specialised’ equipment for lack of a modest mainstream solution. We have already seen cases of participants being denied funding for smartwatches that would alert caregivers or call emergency services, even when these devices would literally save lives (see Case Studies below for examples of such denials). By insisting these are day-to-day items, the system is forgoing relatively low-cost supports and, ironically, sometimes ending up funding more expensive support worker hours or institutional solutions. We recommend a more nuanced approach that considers whether a so-called mainstream item is being used to meet a disability-related need (as per the principles-based approach). If yes, it should be eligible (with appropriate cost limits), rather than excluded on a technicality.

Consumables

The incontinence products and other consumables category is one area that *is* generally funded by NDIS, but stakeholders have concerns about gaps. It's vital that items like continence pads, urinary catheters, wound care supplies, nutritional supplements, and related equipment remain funded at a level that meets real usage (which can be substantial). If Schedule 2 or guidance too narrowly defines what is covered, participants run short of essential supplies. There are reports of plan managers refusing claims for things adjacent to consumables – for example, denying a claim for skin barrier cream, wipes, or extra cleaning required due to incontinence, because those were interpreted as personal or housing costs.

SWAN stresses that *all disability-related consumables and the reasonable costs to use them (e.g. ancillary cleaning, disposal)* must be recognised as fundable, otherwise basic health and dignity are at risk. Consumables might seem low-cost individually, but over time they impose a significant financial burden that the NDIS was designed to cover.

Case Studies of Impact on Participants

Lack of Flexibility and Unusable NDIS Plans

Parker is a 9 year old autistic NDIS Participant living in regional WA. He was diagnosed late because wait times to access autism diagnostic assessment through the public WA system are up to four years or longer. Parker received his first NDIS Plan after the legislation changed, which included Capacity Building – Improved Daily Living funding for an Occupational Therapist and Speech Pathologist only, with a plan duration of 12 months. Due to the way PACE operates, and the requirement in the legislation that NDIS Participants spend in accordance with their Plan, this funding is a Stated Support and thus has no flexibility. The wait time to access an Occupational Therapist and Speech Pathologist where Parker lives exceeds 18 months, rendering his NDIS Plan completely unusable. At SWAN, we see this issue impacting NDIS Participants and their families every single week since the legislation changed. We have repeatedly raised the issue with the NDIA senior executive, with no action being taken to address the issue.

This issue has been further exacerbated by the recent NDIS Price Limit changes for allied health professionals' travel costs. Like many people with disability in regional WA, Parker lives in a town with no local allied health professionals. The nearest allied health professional is located more than 90 minutes away (one-way). Prior to the 3rd October 2024, the Capacity Building – Improved Daily Living budget was a Stated Support but did not specify allied health professionals, enabling some flexibility. This meant that families could access parent/carer training to learn about their child's disability and how to better support their needs, other allied health professionals with availability (eg. Psychologists), or therapy assistants. This has artificially reduced participants expenditure, while driving new participants and families into crisis – also impacting the capacity of advocacy services, peer support organisations, health care and mental health care services.

Misinterpretation of Rules by NDIA Delegate and LAC – Denial of Mobility Equipment

Petra is a 66 year old NDIS Participant with physical disability living in regional WA, and currently undergoing chemotherapy for cancer. Petra requires a mobility scooter in order to access chemotherapy at the nearest regional centre, 50 minutes away. Petra was denied funding for the low-cost mobility scooter by her Plan Manager due to the s10 Rules, and was again denied the mobility scooter by both her Local Area Coordinator and NDIA Delegate. As a Disability Support Pensioner, Petra was forced to pay out of pocket for the mobility scooter she needed to attend chemotherapy because of her disability.

Loss of Driving Lessons, Personal Training, HorsePower, Noise-Cancelling Headphones, Boardmaker and Impact on Health, Function and Community Participation

Jeremy is a 32 year old NDIS Participant and Disability Support Pensioner living in regional WA. He is diagnosed with autism level 3 and severe psychosocial disability. Prior to 3rd October 2024, Jeremy's NDIS Plan included driving lessons to help him achieve his goal of learning to drive to improve his independence, personal training to help him improve his balance and coordination and manage his weight due to the impact of anti-psychotic medications, and HorsePower (formerly called Riding for the Disabled Association). Due to the new Rules for 'NDIS Supports', Jeremy is no longer able to access driving lessons because there are no Occupational Therapist Driving Assessors located outside of Perth (3 hours north of his location, one-way), and there are no Driving Instructors supervised by Occupational Therapists nor very experienced in teaching people with disability. He is no longer able to access personal training, and has gained 17kg in the 10 months since the legislation changed, which has led to adverse impacts on his health.

Jeremy cannot afford gym membership fees as a DSP recipient, and attempts to have his exercise supervised by a support worker have been unsuccessful, due to his difficulties with comprehension and interoception, resulting in injury. Jeremy requires exercise support and supervision from someone with expertise in safe body movement and exercise. Jeremy has also lost access to HorsePower, which was the highlight of his week. As all of the adults who used to participate in HorsePower are DSP recipients, none could afford to participate when the lists banned it, and Jeremy lost access to a skill-building activity which also provided the opportunity to build social connections and community participation.

Jeremy's previous NDIS Plan included noise-cancelling headphones, which now require replacement. As a DSP recipient, he cannot afford to replace his noise-cancelling headphones, needed due to extreme auditory sensitivity. Without them, he is unable to go out with his support workers to participate in community activities. While the NDIA senior executives advise verbally that noise-cancelling headphones are still classified as an 'NDIS Support', frontline NDIS staff do not, stating that they are day-to-day living costs. Jeremy also needs his Boardmaker subscription renewed, for developing visual schedules to support him to learn and perform new tasks. Boardmaker is classified in the new Section 10 Rules for 'NDIS Supports' as an App, requiring a Replacement Support application. While Jeremy could apply for a Replacement Support application for both the noise-cancelling headphones and the Boardmaker subscription, NDIA can reject the application, and Jeremy would be unable to appeal that decision and would be forced to wait at least 12 months to apply again (he currently has a 3 year plan). Further, Jeremy requires both supports in addition to the other supports in his Plan.

Loss of Access to Inclusive Community Participation

Lucy is a 29 year old NDIS Participant and Disability Support Pension recipient with Intellectual Disability living in regional Victoria. Prior to 3rd October 2025, Lucy's NDIS Plan included funding for the three activities that were extremely important to her, and the only supports she personally wanted from the NDIS. Lucy participated in Toastmasters, Disability Disco and Riding for the Disabled Association (RDA). Lucy is devastated at being told that she can no longer use these supports, and does not understand why the supports she has relied on for eight years to enable her to participate in her local community, connect with others, build friendships and relationships, have been banned. Lucy cannot afford the cost of any of these programs, and has barely left her home in the past ten months. She has gone from being an active member of her local community to isolated, lonely and depressed.

Lack of Flexibility and Loss of Critical Supports

Kellie is an 11 year old NDIS Participant, diagnosed with Intellectual Disability and autism level 3, living in regional WA. She received a new NDIS Plan after the legislation changed, with a significant funding cut and Capacity Building – Improved Daily Living funding for an Occupational Therapist and Speech Pathologist only. Even worse, the NDIS Plan specified exactly how much funding was allocated to each – which left Kellie with no flexibility between the two types of therapy. Kellie's previous NDIS Plan included funding for Occupational Therapy, Speech Pathology, Psychology and Physiotherapy – all reasonable and necessary supports to address the impacts of her disabilities on her function. Of note, Occupational Therapy and Speech Pathology are the only examples of therapy types given in the Section 10 Rules for 'NDIS Supports', and are the only two therapy types we are consistently seeing in NDIS Plans for children, teens and adults since the legislation changed.

There is a very significant shortage of Occupational Therapists in the south west region of WA, and this lack of flexibility is leaving many NDIS Participants without access to other therapy supports which would build their skills and capacity.

For example, Psychology to:

- Build skills in recognising, understanding and regulating emotions
- Develop skills in building and maintaining friendships and relationships
- Build skills in theory of mind (ability to understand that other people have thoughts, feelings and experience the world different to how you do)
- Build protective behaviours
- Develop skills in self-awareness, self-regulation, and coping strategies to reduce meltdowns and shutdowns
- Build skills in social interaction and understanding of social skills
- Understand puberty, sexuality and consent

Physiotherapy to:

- Build balance and coordination skills
- Develop gross motor skills
- Improve fine motor skills
- Improve leg and foot mobility due to toe-walking

Smart Watch

Vanessa is a 45 year old NDIS Participant diagnosed with Autism level 2, hypermobile Ehler's Danlos Syndrome (hEDS) and Postural Orthostatic Tachycardia Syndrome (POTS), living in regional WA. She uses mobility aids and is a falls risk due to how her different disabilities impact her function. Vanessa had an Apple smart watch funded in a previous NDIS Plan a few years ago, which needs replacing. The smart watch alerts her partner when she falls and loses consciousness, but is old and malfunctioning, requiring replacement. Vanessa needs the smart watch in addition to her other supports, not as a replacement for other funded supports. Three weeks ago, Vanessa fell in the inaccessible toilet in her home, dislocating her knee. Her old smart watch failed to alert her partner, and can only make phone calls if it is close to her mobile phone and connected to wi-fi. Vanessa was trapped in her toilet with a dislocated knee for two hours.

In addition to the need for a smart watch, Vanessa requires Dragon Dictation to enable her to use her computer when she is unable to type due to dislocation-related injuries to her upper limbs. The new Section 10 Rules for 'NDIS Supports' classify Dragon Dictation as an App, which means that Vanessa would have to apply for a Replacement Support. Vanessa barely has sufficient funding in her NDIS Plan to meet her needs, and requires the other funded supports in addition to the smart watch and Dragon Dictation.

SWAN has also heard from Trish, a 42 year old quadriplegic NDIS Participant in New South Wales. Trish has some movement in her arms, but minimal control of her fingers. Trish was home alone after a support worker failed to show up for her shift, and dropped her phone under her bed when she tried to use it to contact someone for help. Trish was left alone, immobile and terrified, without support for eight hours, until the next support worker arrived. Her catheter bag required changing during this period, and Trish developed a urinary tract and bladder infection. Trish has repeatedly requested funding for a smart watch which would enable her to call for help in such emergencies, but this has been denied due to the new Section 10 Rules for 'NDIS Supports' and the fact that the smart watch is required in addition to other supports in her NDIS Plan.

Another example is Will, a 7 year old autistic NDIS Participant who 'absconds' and is drawn to water. Will has limited communication, and does not come when called. There have been police searches to find him after 'absconding' on four occasions. Will's Occupational Therapist has recommended a smart watch with GPS, to alert his parents and caregivers when he absconds, enabling them to quickly locate him. Due to the new Section 10 Rules for 'NDIS Supports', this request was denied during his Plan Reassessment, and his family were informed that if they want the smart watch, they would need to apply for a 'Replacement Support', and would lose funding for other supports in his Plan.

Lack of Flexibility and Unusable NDIS Plans

Ethan is a 13 year old NDIS participant diagnosed with autism level 2 and epilepsy. Ethan's current NDIS Plan started prior to the legislation changes on 3rd October 2024. Ethan's Capacity Building – Improved Daily Living budget is written flexibly, and doesn't specify which therapy types are covered. Ethan's funding is Plan Managed, and when the legislation changed, the Plan Manager told Ethan's Mum that she needed to source confirmation in writing from his NDIA delegate what therapies were approved in the plan. Ethan's Mum has been unable to source this confirmation in writing, only verbally over the phone from the NDIA Contact Centre. As a result, the plan manager has been refusing to process claims for therapy supports for Ethan, due to the risk of the Plan Manager incurring a debt if they approve a claim that is ‘not in line with the plan’. Ethan’s Mum had no option but to cancel his therapies, which has now cost Ethan his place with that therapy provider. Ethan has been relegated to the provider’s waitlist to regain access to therapy – a waitlist that exceeds 18 months.

‘Day-to-Day Living Costs – Accommodation and Household’

Simon is a 56 year old paraplegic NDIS Participant living in Perth WA. In March 2024, Simon’s NDIA delegate informed him that he needed to source reports from an Occupational Therapist and at least two quotes from builders to justify funding of a footpath from his front door to the exterior fuse box and the letterbox; in order to enable him to collect his own mail and to switch his electricity back on when the surge protector shuts it off. Simon submitted the OT report and quotes along with a S48 Change of Circumstances request, and by the time NDIA responded to the S48 request, the legislation changed and Simon was denied funding for the footpath to enable access to the fusebox and letterbox, as the NDIA delegated that it was on the Out list as a ‘Day-to-day living costs – accommodation and household’ item.

Continence-Related Items and Cleaning

Cody is a 6 year old NDIS participant diagnosed with autism level 3, living in regional WA. Cody also has suspected Intellectual Disability, but has not yet been assessed. Cody has Consumables funding for continence aids in his NDIS Plan, which is Plan Managed. Since the legislation changed, Cody’s Mum has been denied claims for wipes, barrier cream, additional cleaning products and professional cleaning of the bedding, mattress and carpet in their private rental property, as these are on the Out list of the Section 10 Rules for ‘NDIS Supports’. Cody needs the barrier cream to reduce the risk of rash, bleeding sores and infections. His Mum, who is on a Carer Pension, spends considerable time each day washing bedding, scrubbing walls, furniture and carpet, however, without regular professional cleaning, the carpets and mattress are badly stained and smell strongly.

In a distraught phone call to SWAN, she told us that she was missing meals, trying to pay for the high cost of wipes, barrier cream, extra cleaning products, water and electricity trying to keep their home clean and hygienic. At the last rental inspection, Cody’s exhausted Mum was warned that they would be evicted if the stains and smell were not addressed before the next inspection. As a single parent on the Carer Pension, she is unable to afford professional carpet and mattress cleaning services frequently enough to prepare for rental inspections, and the family are now facing high risk of homelessness. Cody’s Mum is terrified that they will be forced to live in her car, and/or that Child Protection and Family Support will remove him from her care.

Repairs to ‘Furniture’ Equipment

John is a 61 year old NDIS Participant with quadriplegic Cerebral Palsy living in regional WA. The vinyl cover on his shower chair recently tore, and his brother contacted a NDIS Registered Provider in Perth about repairing the shower chair (there is no local registered provider supplying such equipment). The provider quoted $2,100 to repair the chair’s upholstery. John’s brother then contacted an upholstery business in a neighbouring town, who replaced the vinyl upholstery on the shower chair for $129. John’s brother submitted the receipt to his Plan Manager for reimbursement, and the claim was rejected by the Plan Manager because furniture repairs are on the Out list. The Plan Manager went on to explain that had they claimed the $2,100 repair through the specialist disability equipment provider, it would have been approved.

Gaming Therapy

Charlie is a 15-year-old, geographically and socially distanced autistic teenager who has very limited friendships and finds social interaction extremely challenging. One of Charlie's special interests is video games, and through his therapist, he was introduced to a small therapeutic Dungeons & Dragons group for neurodivergent teens, Roll for Growth. The program uses role-playing and collaborative storytelling games as a form of group counselling and social-emotional learning. This group, run online by a Perth gaming specialist, uses the D&D game format to practice social skills like turn-taking, flexible thinking, teamwork, and conversation. Charlie was in traditional therapy for a long time, but showed no noticeable improvement, but gaming therapy has made a huge difference in his life; his parents have noticed he's become more talkative and confident since joining. The program was funded under NDIS in his social participation budget.

The Perth gaming specialist is a counsellor, not an allied health professional, but is registered with the Psychotherapy and Counselling Federation of Australia (PACFA) and Australian Counselling Association. He's regarded as one of the leading specialists in this field in Australia. Elsewhere, two clinicians with little experience are running gaming sessions as 'group therapy delivered by allied health professionals, using games as a tool for engagement', but the sessions are not really group sessions. At $220 per hour per clinician, with two inexperienced clinicians, Charlie's family doesn't regard this alternative as a cost-effective, evidence-based social skills program that happens to use a game. They're worried that this is an emerging field that Australia might not keep up with – the USA, for example, has a developed ecosystem of certification programs and specialised training in this field. But most of all, they are worried about Charlie losing his newfound social skills, growing independence and confidence.

Gap Fee For Private Swimming Lessons

Samuel is an 8 year old autistic NDIS Participant living in regional WA. He is unable to swim, and has been unable to learn to swim in group classes. Like many autistic children, Samuel is drawn to water, and has a strong tendency to 'abscond', putting him at high risk of drowning. Prior to the legislative change in October 2024, Samuel's NDIS Plan included the gap fee between private and group swimming lessons, however this inclusion was not specifically written in Samuel's NDIS Plan, but approved verbally by the NDIA delegate who developed the plan. When the new Section 10 Rules for 'NDIS Supports' came into effect, Samuel lost access to private swimming lessons, putting his safety at risk. Had the NDIA delegate specifically written their approval for the gap fee between private and group swimming lessons into his plan, he would have only been able to access this for the duration of his existing plan – insufficient time to enable Samuel to build the critical, life-saving skill of being able to swim.

Robot Vacuum

Alex is a 35-year-old NDIS participant with a C5 spinal cord injury living in outer Melbourne. A single dad on a Disability Support Pension, Alex cannot push a standard vacuum cleaner and has minimal in-home support. He requested a robot vacuum to help keep the floors clean for his toddler's safety. His NDIS planner, however, pointed to the Section 10 rules that "standard household…items, appliances" are ordinary goods not funded by the NDIS.

Alex's plan previously covered a small amount of domestic assistance, but with tightened budgets and the new lists, he was told a robot vacuum is a "mainstream" appliance he must buy himself. Unable to afford one, Alex struggles to maintain basic hygiene at home.

Hiring an NDIS support worker for vacuuming (~2h/week) costs on the order of $6,000 per year (at standard weekday rates). In contrast, using a mid-range robot vacuum averages roughly $150-$200 per year (when factoring in the purchase cost over its lifespan, plus electricity and maintenance). This is a huge cost differential. On an annual basis, the support worker option is roughly 30-40 times more expensive than a robot vacuum for the equivalent floor-cleaning task.

Over a 5-year span, a single mid-range robot vacuum (plus parts and power) might total around $800–$900 in costs. Meanwhile, paying a support worker for 5 years of weekly cleaning could exceed $30,000 in NDIS funds. Alex worries about the health implications for his child, noting the irony that a cost-effective device that would reduce his need for paid support is deemed ineligible under the current rules.

Fuel

Mia is a 9-year-old First Nations girl with cerebral palsy living in a remote Northern Territory community. She needs to travel 300 km to Darwin twice a month for specialist therapy. Mia's mother, a single parent on a Carer Payment, has been using their old van for these trips, but fuel costs are crushing her budget. In the past, some families could use NDIS core funding or get reimbursements for extra transport costs when public transport wasn't an option. Under the new Section 10 support lists, however, vehicle fuel (petrol or diesel) is explicitly classified as a non-disability expense that NDIS funds cannot cover. Mia's mum was devastated to learn that petrol is now on the 'Out list' – meaning the long drives to vital therapy must be paid out-of-pocket. She has already had to cut back on Mia's trips to therapy because she simply can't fill the tank every week. She understands that petrol is regarded as a mainstream expense and that parents have responsibilities, but as she says, who drives their child 1200km a week as part of their unavoidable parental responsibility? It's an all-day commitment, with the trip taking almost four hours, plus the appointment time. The exclusion of fuel costs is undoing Mia's hard-won progress, as regular therapy becomes unaffordable due to where they live.

Ventilator

Noah is a 5-year-old boy with spinal muscular atrophy who relies on a ventilator and feeding pump at home in Far North Queensland. Power blackouts in the wet season are frequent in his town. His parents remember when Ex-Tropical Cyclone Jasper caused blackouts in their town for five days, in December 2023. Noah's parents asked the NDIS to fund a backup generator to ensure his life-support equipment keeps running during blackouts. The request was denied outright due to the Section 10 Rules for 'NDIS Supports. They were told that electricity supply issues are considered a mainstream responsibility: the NDIS does not fund household power solutions like generators. Noah's Mum and Dad, both on modest incomes (his Mum had to stop work to provide 24/7 care), cannot afford a generator themselves. The family has registered with the state electricity provider's medical priority list, but that only promises notification or a temporary loan generator in prolonged emergencies, not the immediate, guaranteed backup their son needs. Noah's parents feel abandoned by a system that pays for his ventilator but refuses the generator that would keep it running. "The NDIS said to plan for emergencies, yet they won't help with the one thing that could save our boy in an emergency," his father says. They continue to monitor weather forecasts, knowing that each storm brings the threat of a life-threatening power loss. Noah's community all remember others who have died in storms and during natural disasters. Most other people don't need an emergency generator just to stay alive when the power goes out.

Electricity

Graham is a 62-year-old NDIS participant in Sydney New South Wales with progressive multiple sclerosis. Due to his MS, Graham cannot regulate his body temperature and must run his air-conditioner in summer constantly to avoid heat stroke. He also uses an electric hoist and a powered wheelchair that charges daily. These disability needs have doubled his electricity bills. On the Disability Support Pension, Graham receives only a token rebate - about $196 per year for each medical device or for cooling – under a federal energy concession program. This barely dents the extra costs he incurs each month. He asked if the NDIS could help cover his skyrocketing electricity bills, given that they are directly driven by disability-related usage. The answer was no: utility costs are treated as personal living expenses outside the NDIS.

Under the Section 10 rules, the NDIA maintains that even high electricity use for disability equipment is "not an NDIS support," pointing participants instead to state government rebates. After rebates totalling $1,239 against roughly $1,850 in extra annual electricity costs, Graham still faces a $611 shortfall - an amount he cannot afford without risking life threatening heat stroke, since no NDIS funding covers the gap. Now, Graham turns off his air-conditioner at intervals to save money - and ended up hospitalised with heat exhaustion in January. He has also cut back on groceries to keep the power connected. Graham fears the upcoming summer, knowing that keeping himself alive and safe will mean bills he can't afford, and no help from the scheme that funds the equipment driving up his electricity use.

Artificial Intelligence (AI) Software

Priya is a 30-year-old NDIS participant in regional Western Australia, who sustained an acquired brain injury in her 20s. One of the invisible impacts of Priya's disability is that she struggles to read and understand complex information. Lengthy NDIS service agreements, letters about her supports, even consent forms - all of these overwhelm her with jargon and fine print she can't easily process. Priya usually relies on a support worker to translate documents into plain language, but she's been striving to be more independent. Recently, Priya discovered an AI-based web service that can turn written material into Easy Read format (using simpler words and pictures for key points). Excited, she asked her planner if NDIS funds could cover the $20/month subscription, framing it as a modest assistive technology for cognitive accessibility. The answer was a firm no. Because it's a general software service, not a specialised disability device, the NDIA viewed it as something "all Australians use" and thus not the NDIS's responsibility. Priya was advised to "use her funding more appropriately" – essentially, to pay a support worker for help with forms instead. The rigidity of the new Section 10 Rules for 'NDIS Supports' mean that because an AI translation service isn't explicitly on the "approved" list, it's automatically treated as not fundable. She's now back to depending on others for everyday things like reading her own mail.

Our Recommendations

In light of the issues detailed above, SWAN makes the following recommendations (aligned, in many cases, with those put forward by other disability advocacy organisations) to reform the NDIS Support Rules and ensure they uphold the NDIS Act's principles and the rights of participants:

1. **Amend Section 10 of the NDIS Act to reinstate the principles-based approach to 'NDIS Supports' and remove the 'Replacement Support' process.** SWAN strongly advocate for this approach to be taken.

2. **If Lists are retained, greatly simplify and use an exclusion-only List.** This option enables flexibility, innovation and enables permitted NDIS Supports to stay abreast of technological advances, while supporting participants to understand what supports are not permitted. Note, however, that the 'Replacement Support' process must be removed regardless.

3. **If Lists are retained, greatly simplify and combine the lists into an inclusion-only list with exclusions (carve-outs).** An inclusion-only list would need to be phrased in very general terms to reduce unintended exclusions, and the carve-outs would need to be in-line with the relevant section. A landscape table format would simplify this format, as people would no longer be required to scroll back and forth across 34 pages trying to work out whether a support is or is not permitted. Example:

Allowed NDIS Supports	Not Allowed

   Where any supports are excluded because they should be provided by a different service system, the list should clearly state which service system is responsible.

4. **Develop an App for participants to check if a support they want to claim is permitted.** Where a requested support is not clearly excluded by the Rules, then the App should connect participants to a NDIA delegate who can quickly advise whether the support is an NDIS Support for that participant. When Navigators are established, this role can be transferred to them.

5. **Redefine 'standard' vs 'disability-specific' by function, not form.** The distinction between ordinary items and disability-specific items should be refocused on how the item is used or needed due to disability, rather than what the item is or who else uses it. We recommend guidelines that emphasise *function* - if a participant needs an item to achieve their plan goals and it's required *because of their disability*, it should be fundable regardless of whether it's sold in a mainstream store or a specialised store. The NDIA should abandon the blanket notion that if the general community uses something, an NDIS participant can't - this is not in the spirit of inclusion. Instead, use a "disability-related benefit" test: does the item address a disability need or reduce the impact of impairment? If yes, fund it, unless there's a specific reason to exclude.

6. **Renegotiate and update the Applied Principles and Tables of Supports (APTOS).** Clear delineation of responsibilities between NDIS and mainstream services like health, education, transport etc is needed, and this should then be reflected in any rules or guidance developed. Ensuring concrete information about which system is responsible

for which support clarifies this for staff from the various service systems, as well as for participants and families.

7. **Ensure genuine co-design in developing the permanent rules.** Before finalising any permanent Section 10 rules (to replace the current transitional ones), undertake a meaningful co-design process with people with disability, their families, advocates, and disability organisations. This should include consulting those who have been negatively affected by the current rules to learn from their experiences. The process must allow sufficient time and accessible engagement. Co-design is not just consultation; it means people with disability are equal partners in drafting the solution. We recommend establishing a working group or advisory committee of participants (including representation from First Nations, CaLD, regional, and high-support-needs communities) to help rewrite the rules or guidelines. This will ensure the final outcome has broad support and does not inadvertently marginalise any cohort. Rebuilding trust is crucial - the community needs to see that their feedback is being taken on board. The outcome should be rules that participants say *make sense* to them. As part of this, the NDIA should also user-test any explanatory materials or list drafts with participants for clarity.

8. **Provide clear, accessible guidance and training to NDIS representatives, participants, families and providers.** Regardless of the rule structure adopted, NDIA must publish plain language, Easy Read, and multi-language guides that explain what participants *can* purchase with their funding, with illustrative scenarios. All frontline staff (planners, Local Area Coordinators, etc.) must be thoroughly trained in the new approach to ensure consistent messaging. Misinterpretations that occurred with the transitional lists (like 'psychology is banned' rumours) must be proactively addressed with regular internal training which has been co-developed with people with disability. Frontline staff must also engage directly with participants and families to clearly explain the new rules, and the provision of implementation support must be made compulsory.

9. **Fund independent navigation peer support and advocacy.** The complexity introduced by these rules underscores the need for robust independent advocacy, navigation and peer support. We recommend that the government fund a national disability advocacy and peer support program specifically to assist participants in understanding and, if necessary, challenging decisions related to support eligibility (similar to how advocacy was funded to assist with NDIA internal reviews). This funding must be open to new applicants to ensure wider reach and engagement with people with disability and families.

10. **Monitor and evaluate impacts of any changes.** We urge the NDIA and DSS to establish a monitoring framework to evaluate the impacts of any support rule policy. This means collecting data on plan utilisation, requests for replacements/exemptions, reports of participants going without needed supports, etc., full complaint tracking (with a no-wrong-door approach) and engaging external researchers to study outcomes and evaluate. If evidence shows negative outcomes - such as declines in community participation or health due to excluded supports - there should be a mechanism to adjust the policy quickly. The NDIS is meant to be an evolving scheme; mid-course corrections should be welcomed. As an example, if data shows many participants are foregoing exercise or social activities because they mistakenly think they're not allowed to use funds for them, NDIA should respond with clarifications or tweaks. Continuous quality improvement in the implementation of these rules is essential.

11. **Address plan flexibility and budget structure.** Finally, an issue contributing to the adverse consequences of these rigid rules is the lack of plan flexibility. The combination of overly prescriptive plans short funding periods and rigid, complicated rules for ‘NDIS Supports’ has proved to be a recipe for disaster for participants. We recommend making plans more flexible within budgets, as per the Review’s vision (letting participants shift funds to where they need), and writing NDIS plans much more flexibly with significantly fewer ‘Stated Supports’. In a flexible budget environment, a short list of truly prohibited items (drugs, gambling, etc.) suffices - participants can choose other supports freely. The need for micromanaging via lists diminishes. Thus, we support moving to whole-of-plan budgets with minimal line-item controls, complemented by supportive guidance rather than prescriptive lists. This would empower participants and reduce the adversarial climate. It also aligns with the idea of a “trust-based approach” (NDIS Review Action 3.6). In implementing this, NDIA should ensure safeguards (like data analytics to catch truly aberrant spending, and senior oversight as they promised for any debt enforcement). Essentially, trust participants first, and intervene only when there’s a clear issue - not pre-emptively restrict everyone due to a minority of potential misuses.

We believe these recommendations, if adopted, will create a much fairer and more effective system. They are informed by what we and many others in the community have voiced throughout this process. The goal is to re-align the NDIS with its founding vision - a Scheme that provides people with disability the support they need to live an ordinary life, with genuine choice and control, and that does so in partnership with the community.

SWAN appreciates the opportunity to contribute to this important discourse. We stress that making these changes is not just a bureaucratic tweak - it directly affects whether children thrive in inclusive classrooms, whether adults find and keep jobs, whether families stay together, and whether people with disability can pursue their goals and dreams. The NDIS was meant to be enabling, not limiting. We are hopeful that by learning from the experiences of the past year, the Scheme will move back on track towards enabling people with disability to live their lives with the support they need.

Conclusion

The introduction of the Section 10 NDIS Support Rules and the associated In and Out lists in 2024 represented the most significant shifts in NDIS policy since the Scheme’s inception. Unfortunately, as detailed in this submission, that shift has largely been a step in the wrong direction from the perspective of participants, families, and frontline practitioners. The rigid lists have curtailed flexibility, created confusion, and undermined the core promise of the NDIS - that supports will be individually tailored, *“reasonable and necessary”* to each person’s needs and goals.

The current NDIS Support Rules are not working in their present form. They have prompted a strong, consistent response from across the disability community that change is needed. This is not mere resistance to change; it is a reasoned critique of a policy instrument that is misaligned with its purpose.

We have articulated how the rules conflict with the NDIS Act’s principles of choice and control, how they contradict the recent NDIS Review’s recommendations for flexibility, and how they have introduced inequities and anxieties that previously did not exist at such scale. Participants should not need a law degree or fear a debt notice in order to use their support funding. Parents should not be left guessing whether they can pay for their child's therapy or equipment this week. Yet that is what has been happening under the current rules.

However, SWAN is optimistic that this situation can be remedied. The issues identified are *largely fixable through legislative and policy adjustments* - and indeed, many of our recommendations do not even require legislative change, only a willingness by the NDIA and Government to adapt and trust the intent of the NDIS Act. By re-centring on a principles-based approach (with minimal exclusions), the Scheme can preserve flexibility while still maintaining financial sustainability and integrity through the Act's inherent criteria. By engaging in genuine co-design for the next iteration of rules, the Government can ensure that the rules make sense to those who live by them and avoid unintended harms. By clarifying interfaces with other systems and empowering participants with accessible guidance, we can prevent people from falling through the cracks of bureaucratic silos. And by shifting towards a trust-based, person-centric model, we honour the vision that people with disability are not just service recipients but active agents in choosing how they live their lives, with the NDIS as an enabler rather than a gatekeeper.

It is worth noting that even the Government's own explanatory materials recognised community concerns such as the confusion caused by carve-outs and the need for an exceptions process. These acknowledgments, along with the extensive consultation feedback, form a mandate for change. The Minister for the NDIS has the opportunity now to incorporate this feedback and course-correct the Scheme's rules in time for the permanent version. We believe that doing so will not only address much of the current discontent, but also improve Scheme outcomes (participants achieving more goals, funds being used more effectively, fewer appeals and complaints in the system). In short, what is good for participants is good for the NDIS.

SWAN thanks the Department of Social Services and the NDIA for considering our detailed input. We are committed to working collaboratively towards solutions. The NDIS is a world-leading reform, and we remain passionate about its success. The challenges brought by the support rules are significant, but not insurmountable. By implementing the recommendations outlined - embracing principles over prescriptions, ensuring no one is left behind by overly rigid rules, and truly listening to the people the Scheme exists to support - the Government can truly get the NDIS *'back on track'* not just financially, but in terms of community confidence and participant experience.

In the spirit of co-design and mutual accountability, we will monitor the outcomes of this consultation and continue to offer our expertise and lived experience to help shape a better NDIS. We look forward to a future where NDIS participants once again feel secure, empowered, and respected in how they use their funding, without undue fear or confusion - a future where the focus is squarely on supporting people with disability to pursue their goals and live their lives to the fullest, which is the very object of the NDIS Act (as stated in Section 3).

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