

'Speaking NDIS':

How understanding NDIS Legislation can
increase your understanding of funding
decisions

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NDIA vs NDIS

- The National Disability Insurance Agency (NDIA) manages the scheme: the National Disability Insurance Scheme (NDIS)
- Unlike other federal government departments, the NDIA has a board of political appointees approved by the Minister. The board's mandate is to ensure that the strategic direction set by the minister is implemented.

<https://teamdsc.com.au/resources/position-description-ndia-ceo>



NDIS Act 2013

The National Disability Insurance Scheme Act 2013 is the legislation that frames the Scheme and defines its scope

Though the Act makes the CEO the final arbiter in determining who can access the Scheme and whether plans can be varied or reassessed, the reality is vastly different.

No one person can possibly make that many decisions in a day, so the CEO **delegates** that authority to planners.

<https://teamdsc.com.au/resources/position-description-ndia-ceo>

Planner vs LAC

LAC (Local Area Coordinator):

- Employed by a Partner in The Community (PITC) eg Uniting, Carers QLD
- NOT employed by the NDIA
- NOT a Delegate
- No funding/budget/final plan decision-making powers
- Messenger

NDIA Planner:

- Employed by the NDIA
- A **delegate** of the CEO of the NDIA
- Power to make funding/budget/plan decisions

NDIA Planners: So, how do NDIA Planners make funding decisions then?



Australian Government

Federal Register of Legislation

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National Disability Insurance Scheme Act 2013



- C2019C00332

In force - Superseded Version

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DETAILS

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34 Reasonable and necessary supports

- (1) For the purposes of specifying, in a statement of participant supports, the general supports that will be provided, and the reasonable and necessary supports that will be funded, the CEO must be satisfied of all of the following in relation to the funding or provision of each such support:
 - (a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;
 - (b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;
 - (c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;
 - (d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;
 - (e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;
 - (f) the support is most appropriately funded or provided through the National Disability Insurance Scheme, and is not more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:
 - (i) as part of a universal service obligation; or
 - (ii) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.
- (2) The National Disability Insurance Scheme rules may prescribe methods or criteria to be applied, or matters to which the CEO is to have regard, in deciding whether or not he or she is satisfied as mentioned in any of paragraphs (1)(a) to (f).

<https://www.legislation.gov.au/Details/C2019C00332>

Let's take a look...

<https://www.legislation.gov.au/Details/C2019C00332>



Section 34 NDIS Act 2013

34 Reasonable and necessary supports

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A bit more summarised, please?

1. Support you to pursue the disability related goals in your NDIS Plan
2. Facilitate your social and economic participation
3. Represent Value for Money
4. Effective and Beneficial (in-line with current good practice)
5. Takes into account what is reasonable to expect from informal networks
6. Support is most appropriately funded by the NDIS



Reasonable and Necessary

- Only an NDIA Delegate can decide
- All 6 criteria must be met
- Must be shown at every NDIS Planning Meeting/Reassessment/Internal Review/External Review
- Reports/assessments/supporting letters must address all R&N criteria and justify all funding recommendations against them

But I'm not a Delegate?

We may not be delegates,
but we can learn to speak
the language of the
decision-makers



Some more clarity and detail: NDIS Rules 2013



National Disability Insurance Scheme (Supports for Participants) Rules 2013

National Disability Insurance Scheme Act 2013 (the Act)

The Act establishes the National Disability Insurance Scheme (the NDIS).

People who are participants in the NDIS will be assisted to develop a personal, goal-based plan about how they will be provided with general supports and reasonable and necessary supports.

The NDIS will respect the interests of people with disability in exercising choice and control about matters that affect them.

National Disability Insurance Scheme (Supports for Participants) Rules 2013

These Rules are made for the purposes of sections 33 and 34 of the Act.

These Rules are about assessment and determination of the reasonable and necessary supports that will be funded for participants under the NDIS.

These rules commence on 1 July 2013.

Some more clarity and detail: NDIS Rules 2013

Let's take a live look at the NDIS Rules

These can be quoted and referenced, word-for-word!



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NDIS Rules: examples

Reasonable family, carer and other support

3.4 In deciding whether funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide, the CEO is to consider the following matters:

- (a) for a participant who is a **child**:
 - (i) that it is normal for parents to provide substantial care and support for children; and
 - (ii) whether, because of the child's disability, the child's care needs are substantially greater than those of other children of a similar age; and
 - (iii) the extent of any risks to the wellbeing of the participant's family members or carer or carers; and
 - (iv) whether the funding or provision of the support for a family would improve the child's capacity or future capacity, or would reduce any risk to the child's wellbeing;



NDIS Rules: examples

- (b) for other participants:
 - (i) the extent of any risks to the wellbeing of the participant arising from the participant's reliance on the support of family members, carers, informal networks and the community; and
 - (ii) the suitability of family members, carers, informal networks and the community to provide the supports that the participant requires, including such factors as:
 - (A) the age and capacity of the participant's family members and carers, including the extent to which family and community supports are available to sustain them in their caring role; and
 - (B) the intensity and type of support that is required and whether it is age and gender appropriate for a particular family member or carer to be providing that care; and
 - (C) the extent of any risks to the long term wellbeing of any of the family members or carers (for example, a child should not be expected to provide care for their parents, siblings or other relatives or be required to limit their educational opportunities); and
 - (iii) the extent to which informal supports contribute to or reduce a participant's level of independence and other outcomes;
- (c) for all participants—the desirability of supporting and developing the potential contributions of informal supports and networks within their communities.



NDIS Act Section 34 (1) (e) Carer Impact Statement

Use the language in the NDIA's own documentation. For example:

*At the age of 27, Jimmy now resists me as the provider of his intimate personal care. Despite Jimmy very clearly requiring 1:1 for all intimate personal care (please refer to attached Occupational Therapy assessment and report), **it is no longer reasonable to expect this to be provided by me.***

If there is an ongoing expectation that Jimmy's intimate personal care continues to be provided by me, it will be an expectation that is not age-appropriate, will place a risk on the long-term wellbeing of myself and the sustainability of my role in Jimmy's life, and reduce Jimmy's potential for capacity building as he works towards increased acceptance of formal support in his goal of supported independent living.

BOOM!

NDIS Rules: they are a gift!

Part 5 General criteria for supports, and supports that will not be funded or provided

General criteria for supports

- 5.1 A support will not be provided or funded under the NDIS if:
- (a) it is likely to cause harm to the participant or pose a risk to others; or
 - (b) it is not related to the participant's disability; or
 - (c) it duplicates other supports delivered under alternative funding through the NDIS; or
 - (d) it relates to day-to-day living costs (for example, rent, groceries and utility fees) that are not attributable to a participant's disability support needs.

NDIS vs Mainstream

Some examples of 'Mainstream'

- Health
- Mental Health
- Employment
- Higher Education
- Housing
- Transport

NDIS vs Mainstream

NDIA Planner: "The NDIS does not fund Psychology"

NDIA Planner: "The NDIS will only fund Psychology if you first get a Mental Health Treatment Plan from your GP and use those sessions first"

Hmmm. Nope. And Nope.

Not that simple, I'm afraid. Let's use the NDIA's words to self-advocate...

Let's take a look...

<https://ourguidelines.ndis.gov.au/how-ndis-supports-work-menu/mainstream-and-community-supports/who-responsible-supports-you-need>

Who is responsible for the supports you need?



Print this page 

We have separate pages that set out who is responsible for funding different types of mainstream supports. These include:

- [health](#)
- [mental health and psychosocial disability](#)
- [early childhood development](#)
- [child protection and family support](#)
- [school education](#)
- [higher education and vocational education and training](#)
- [employment](#)
- [housing and community infrastructure](#)
- [transport](#)
- [justice](#)
- [aged care](#)

Browse the links above or download the guideline:

- [Mainstream and community supports interfaces \(PDF 317KB\)](#)
- [Mainstream and community supports interfaces \(DOCX 80KB\)](#)

How NDIS supports work

Mainstream and community supports —

What are mainstream and community supports?

How do we work out who should fund or provide your supports?

Who is responsible for the supports you need? —

Health

Mental health and psychosocial disability

Early childhood development

Child protection and family support

School education

Talking the Talk

We may not be NDIA Delegates, but if we can speak the language of the decision-makers, and reference ***their decision-making tools***, you are building your own capacity to translate the NDIS and self-advocate

There is a good chance that you will need to translate these tools to the support team and treating professionals in your NDIS-funded world eg therapists- **which may include requesting and suggesting edits to their reports**

So just to be clear...

Your 3 best friends:

1. NDIS Act 2013 Section 34 Reasonable and Necessary Supports
<https://www.legislation.gov.au/Details/C2019C00332>

2. NDIS Rules 2013 [NDIS Rules 2013.pdf](https://www.legislation.gov.au/Details/F2013L01063)
<https://www.legislation.gov.au/Details/F2013L01063>

3. NDIS vs Mainstream NDIA Operational Guideline

<https://ourguidelines.ndis.gov.au/how-ndis-supports-work-menu/mainstream-and-community-supports/who-responsible-supports-you-need>













What next?

Stay up to date:

1. [NDIS newsletter](#)
2. [Fighting Chance NDIS newsletter](#)
3. [Team DSC newsletter](#)
4. Know about participant check-ins, Plan Variations and Plan Reassessments
5. Legislation updates
6. Information is power: **the participant is the boss of their NDIS plan**

Questions?

