

Independent Advisory Council  
to the NDIS

# Flexibility as a tool to assist participants seek value for money

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## Executive Summary

The purpose of this paper is to explore the role of flexibility in enabling participants to seek value for money.

The paper argues that flexibility is pivotal in enabling participants to seek value for money and hence any NDIA constraints on flexibility thwart the value for money the Agency seeks. Given restrictions related to choice and flexibility are in place to safeguard the participant and the Scheme, the key issue of this paper is whether all the restrictions are in fact necessary and for those restrictions deemed necessary, can the safeguard intended by the restriction be achieved in other ways.

The paper will identify existing NDIA practices that lead to value for money, identify what is required to assist participants to seek value for money, examine risks, perverse incentives and mitigation strategies associated with both not increasing and increasing flexibility and provide recommendations as to the way forward

## Recommendations

The IAC recommends that the NDIA supports participants to seek and take responsibility for value for money in ways consistent with Scheme sustainability.

In this context, the IAC recommends that:

1. The NDIA undertakes a review<sup>1</sup> on restrictions on participant choice as part of moving toward a best practice regulatory framework. The review should:
  - a. Assess whether restrictions on participant choice conflict with the goal of seeking value for money and whether the safeguard intended in the restriction can be achieved in other ways. Restrictions to be reviewed include those arising from:
    - the distinction between supports related to disability support needs and expenses that are a personal responsibility
    - the Support Catalogue
    - price controls
    - the designation of 'stated supports'
    - budget cycles
    - bulk purchases
    - Assistive Technology, and
    - any other barrier to achieving outcomes
  - b. Identify practices to motivate participants to seek value for money
  - c. Identify capacity building and safeguards required to have confidence that participants can seek value for money, especially very vulnerable participants and participants in closed systems
2. The NDIA utilises an outcomes approach to determine what can be purchased with reasonable and necessary support.
3. The NDIA implements the strategies identified in this paper to mitigate risk.

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<sup>1</sup> the review to be co-designed with participant and family leaders

4. The NDIA enable participants to roll over a predetermined level of unspent funds to the next plan as a significant incentive for participants to seek value for money. The NDIA could mitigate any risk of the roll over increases the expectation of an increased base level of support in future years by:
  - limiting the roll over to 5% of the budget or \$5,000
  - requiring that the funds be used for items that do not increase the recurrent base such as support for a holiday, the purchase of items of equipment, spring cleaning the home
  - requiring participants to put forward a plan as to how they would use the support.
5. The NDIA enable participants to use or share in the use of savings that result from seeking value for money.
6. The NDIA reviews the requirement for expert assessment for AT to ensure participant and family knowledge, skills and experience are recognised in determining the need for assessment and in determining the final purchase where an assessment has been required.
7. The NDIA includes the monetary value of bulk purchased items in a participant plan, enabling the participant to drive value for money, for example by their ability to purchase consumables when on sale at retail outlets

## Expected Impact

Restrictions on participant choice and flexibility have been shown to reduce value for money and are unlikely to maximise participant outcomes and Scheme sustainability. The question becomes how the NDIA can reduce restrictions while ensuring that participants use reasonable and necessary support in ways that promote positive outcomes in line with Scheme goals and sustainability.

The paper proposes giving participants more responsibility for their support and the ability to use or share in the use of savings derived from their efforts. The paper also calls on the NDIA to review the constraints on choice. These steps will reward and encourage participants to continue to seek value for money and maximise the likelihood that support is effective in meeting outcomes. The mitigation strategies identified will give the NDIA confidence that proposed changes enhance Scheme sustainability.

The building blocks toward removing restrictions involves:

- providing incentives such as those outlined in this paper
- enabling participants to act on those incentives
- facilitating easy ways for participants to seek and achieve value for money the NDIA taking an observe and learn approach

The NDIA must have confidence in Reference Packages to be able to hand control of budgets to participants. It also requires the NDIA to empower and educate participants to care about the decisions they are making, to safeguard themselves and to have a sense of responsibility for reasonable and necessary support.

## 1. Purpose

The purpose of this paper is to explore the role of flexibility in enabling participants to seek value for money.

## 2. Background

### 2.1. Flexibility in State and Territory systems

Participants who have entered the Scheme from designated programs that provide self-management and shared-management options have long argued that the NDIS curtails their flexibility and consequently their motivation and ability to seek value for money. These participants have demonstrated restrictions arising from:

- the rigid distinction between personal expenditure and expenditure in relation to disability
- the shopping list approach of the Support Catalogue encouraging participants to seek more and more
- the lack of ability to roll over unspent funds
- the lack of ability to share in the savings arising from participant action to secure value for money.

Appendix A compares the flexibility enabled in State and Territory systems and the NDIS to demonstrate that most States enabled the flexible provision outlined in this paper.

### 2.2. Flexibility and value for money in the NDIS

The NDIS aspiration of participant choice and control is fundamental to Scheme design. Most supports are described generally by reference to a specified purpose thereby providing each participant with a high degree of flexibility over the implementation of the supports.<sup>2</sup> A smaller number of supports are identified more specifically as 'stated supports'<sup>3</sup>, quarantining that item's funding from the rest of the support category budget to ensure that it can only be used as intended.

The decision as to which supports are 'stated supports' and which supports are general is a safeguarding decision that seeks to ensure the support is used as intended and meets participant need in ways that enable Scheme sustainability.

Before any support is added to a participant's plan, the NDIA must be satisfied that the support represents value for money in that the cost of the support is reasonable as compared to the benefits achieved and the cost of alternative support.<sup>4</sup>

When deciding whether a support represents value for money, the NDIA must consider whether the support is fit for purpose including whether there is evidence that the support will substantially improve the life stage outcomes<sup>5</sup>; increase the participant's independence and reduce the participant's need for other kinds of supports<sup>6</sup> and reduce the cost of the funding of supports for the participant in the long term.<sup>7</sup>

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<sup>2</sup> Many participants do not understand the level of fungibility permitted because of the compartmentalised nature of participant plans

<sup>3</sup> Rule 6.2 of the Plan Management Rules

<sup>4</sup> NDIA Act 2013 section 34(1)(c)

<sup>5</sup> Rule 3.1(b) of the Supports for Participants Rules

<sup>6</sup> Rule 3.1(f) of the Supports for Participants Rules

<sup>7</sup> Rule 3.1(c) of the Supports for Participants Rules

Flexibility is an important element in achieving value for money. When the NDIA authorises participants to use their reasonable and necessary support flexibly, the NDIA is demonstrating trust that participants are better judges of value for money in meeting their disability support needs than the NDIA can ever be. Flexibility allows participants to move away from traditional approaches and innovate in pursuit of their goals, tailoring their support in the context of their unique circumstances. It encourages initiative, especially important when participants are otherwise passive or reactive and it allows participants to be nimble in a changing environment. Increased flexibility can also translate into more honest dialogue and ultimately a more supportive relationship between participants and the NDIA.

Flexibility is good for the Scheme as well as participants. The IAC has argued that increased flexibility assists participants to drive market change <sup>8</sup> because participants can directly purchase those supports that they believe are important for positive outcomes rather than needing to find surrogates for the fulfilment of those needs in disability services. Increased flexibility will thereby provide more choice, which will drive competition and would likely also allow providers to deliver more targeted or specialised services. This means that participants would be afforded services that suit them better and likely at low or at least more efficient prices.

The paper argues that flexibility is pivotal in enabling participants to seek value for money and hence any NDIA constraints on flexibility thwart the value for money the Agency seeks. Given restrictions related to choice and flexibility are in place to safeguard the participant and the Scheme, the key issue of this paper is whether all the restrictions are in fact necessary and for those restrictions deemed necessary, can the safeguard intended by the restriction be achieved in other ways.

The paper will identify existing NDIA practices that lead to value for money, identify what is required to assist participants to seek value for money, examine risks, perverse incentives and mitigation strategies associated with both not increasing and increasing flexibility and provide recommendations as to the way forward.

### 3. Existing NDIA practices that lead to value for money

The NDIA purchases some items in bulk where the items are standardised and the NDIA can achieve a lower unit cost as a result of bulk purchase. Consumables and a range of mobility items are purchased in bulk.

Participants indicate however that they are often able to purchase the item at a lower cost (e.g. consumables on special from retail outlets). They also want to be able to make a co-payment for a piece of equipment that includes features not provided in the standard bulk purchase item. The NDIA supports the use of co-payments but experience on the ground indicates that this is not known.

#### ***Improving value for money recommendation***

*The IAC recommends that the NDIA includes the monetary value of bulk purchased items in a participant plan, enabling the participant to drive value for money, for example by their ability to purchase consumables when on sale at retail outlets.*

<sup>8</sup> IAC submission (2017) to the Productivity Commission Inquiry into NDIS Costs

## 4. Assisting participants to seek value for money

Participants are more likely to seek value for money when they consider their reasonable and necessary support as funds for which they have responsibility. NDIA conceptualisation of choice and control without including the flip side of responsibility allows the NDIA to retain control over the level of choice afforded to participants. Respecting participants' authority to make decisions includes empowering them with responsibility for those decisions.

The IAC proposes that participants will have a greater sense of responsibility for their support if given greater flexibility in how they meet their disability related needs, greater capacity to roll over unspent funds at the end of the plan, opportunity to use or share in any savings derived from value driven decisions about support and greater recognition of their expertise and judgement in decisions about Assistive Technology (AT).

### 4.1. Ability to decide how to meet a need

Under State and Territory provision, people with disability were able to meet a disability support need without reference to disability services. Appendix A outlines the flexibility enabled in different jurisdictions and Appendix B provides examples that demonstrate the positive impact of valuing initiative, a focus on outcomes and the role of flexibility.

The Community Living Plan (CLP) of WA and the Supported Living Fund (SLF) of NSW are examples of the potency of genuinely flexible funding.

The CLP and the SLF provided incentives for people with disability (supported by their families) to move out of the family home and into their own home. A relatively small amount of money was made available (up to \$20,000 in WA and an average of \$50,000 in NSW) as an incentive for people to plan, strengthen their informal support and show the way in which they would use government resources to live in their own homes in a sustainable manner. Whereas the usual state systems rewarded crises (by providing funding and accommodation for those in 'greatest need'), the CLP and SLF used State funds to reward initiative. Applicants needed to demonstrate that they had (or were in the process of) planning, building informal support, facilitating community membership and valued roles, so that the funds for living were significantly less than would have been the case in traditional supported accommodation.

Participants had flexibility within their budget to purchase goods and services and pay for activity costs that led to outcomes of greater independence and social and economic participation. In line with its outcome focus, Government funds were used to facilitate membership in mainstream community places and very intentional strategies were implemented to build informal networks in those places. It was recognised that limiting Government funds solely for the payment of support would restrict participants' ability to achieve outcomes.

For example, some recipients of the CLP and SLF used the resources to afford a 2 bedroom unit, subsidizing the rent of the home sharer who in return committed to the provision of informal support at a level significantly in excess of the monetary value of the rent subsidy. Importantly it enabled the person with disability to live with a 'mate' rather than a paid carer and this was pivotal to developing a connection much stronger than a paid relationship.

This example recognizes that informal support is pivotal to a good life; that relationships don't come easily for many people with disability and very intentional strategies, ongoing support and small incentives and tokens of appreciation are helpful in sustaining informal support.

The strategies to sustain assistance provided by family and friends (i.e. informal support) are not recognised in a participant's NDIS budget. In addition the NDIS prohibits a participant from using their reasonable and necessary support for small incentives and expressions of appreciation such as periodically paying for a tank of petrol for a friend who always drives, paying for a cinema ticket for an accompanying friend or reducing the rent of a house sharer who provides negotiated informal support. It is critical to stress in these examples that the person with disability meets his/her own personal responsibility, paying his/her own rent and paying his/her own cinema ticket. The subsidised rent and the purchase of a cinema ticket<sup>9</sup> are small incentives and tokens of appreciation for unpaid support. As the examples in Appendix B demonstrate, the small incentive can provide genuine value for money.

## 4.2. NDIA constraints on the ability to decide how to meet a need

### *Differentiation between disability support need and personal responsibility*

A key barrier to determining how to meet a need relates to the NDIS distinction between supports related to the participant's disability and supports related to day-to-day living expenses. The latter are prohibited unless *the additional living costs (are) incurred by a participant solely and directly as a result of their disability support needs.*<sup>10</sup>

For many participants, community participation through a disability service is free to the participant and a cost to the NDIS. The same activity in the mainstream will be free to the NDIS but require payment by the participant.

The value for money thesis is that if the cost of membership or activity fees in the mainstream is less than the cost the NDIA would pay for the disability service, meeting those membership and activity fees represents value for money for the NDIS.

An outcomes approach to determine the nature of reasonable and necessary support assists the participant to engage with mainstream services in a value for money solution.

For example, where a participant goal is to be clean and well presented, reasonable and necessary support could include personal care to shave on a daily basis or, if the participant prefers, the cost of a barber on a weekly basis. The latter option simultaneously contributes to the outcomes of increased use of mainstream services, increased independence on public transport and increased communication with retail sales persons. The cost of the barber is a cost solely and directly incurred by the participant as a result of his disability support need (his inability to shave himself) and represents value for money, being less than the cost of a support worker undertaking the task.

For example, where a participant who is unable to safely stay alone has a goal of living in her own home, the rent on a second bedroom for an unpaid home sharer who commits to providing informal support, is incurred by the participant solely and directly as a result of her disability support need

<sup>9</sup> For some participants, a companion card would meet this cost. The variable eligibility based on out dated State and Territory funding programs means that many participants who need support to participate in the community are not eligible.

<sup>10</sup> Rule 5.2 of the Supports for Participants Rules



(her inability to be home alone) and is less than the cost of housing and support when shared with other people with disability.

For example, where a participant wants to be more independent and spend time without paid support but often gets lost, the purchase of a device that includes a tracking function (such as a smart phone) is an expense that simultaneously enables the participant to meet the goal of increased independence while being safe and is less than the cost of the one to one support he would otherwise require when going out in the community.

In the UK, the Chartered Institute of Public Finance and Accountancy (CIPFA) <sup>11</sup> advises local authorities to encourage people with disability to find alternative ways of meeting their needs and achieving the outcomes they are seeking. Local authorities are encouraged to describe 'flexibility' to social care users in relation to outcomes rather than inputs and to local authorities as alternate ways to meet agreed outcomes. People are not required to ask permission for using their direct payment or personal budget flexibly unless they want to pursue different outcomes.

### **Restrictions to manage risk**

Given choice is a central tenet of the NDIS, it is important to recognise and have transparent processes in place to justify (to participants and other stakeholders) restrictions on that choice. In the NDIS, restrictions on choice are usually linked to a desire to manage risk, but these objectives are not always clear to participants and other non-Government stakeholders.

Restrictions on participant choice have the potential to undermine value for money if applied too stringently or widely. For example, Appendix B demonstrates value for money is achieved by a broader reading of the criteria used to permit day-to-day living expenses being considered reasonable and necessary, i.e. *additional living costs that are incurred by a participant solely and directly as a result of their disability support needs*.<sup>12</sup>

Restrictions on choice are best developed through discussions on options to manage risk and the impacts associated with each option, noting that all forms of regulation, no matter how well intentioned, come at a cost, and that the scale and distribution of this cost needs to be weighed against the intended benefits of the regulation.

Moving toward a best practice regulatory framework <sup>13</sup> would ensure that any restrictions on participant choice were considered in the context of:

- an established case for the restriction prior to the restriction being put in place
- consideration of a range of feasible options including consultation with stakeholders
- adopting the option that generates the greatest net benefit for the community
- checking the preferred option for consistency with Competition Principles that the benefits of restriction to the community outweigh the cost and the objectives of regulation can only be achieved by restriction
- effective guidance to ensure the policy intent and compliance requirements are clear
- ensuring relevance over time

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<sup>11</sup> Chartered Institute of Public Finance and Accountancy (CIPFA), *Self directed support: a Guide for Local Authority Finance Managers* at 4.10 & 4.11

<sup>12</sup> Rule 5.2(a) of the Supports for Participants Rules

<sup>13</sup> Council of Australian Governments (2007)

[Best practice regulation: a guide for ministerial councils and national standard bodies](#) Accessed 3 April 2018

- consulting effectively with stakeholders.

### ***Support Catalogue***

The Support Catalogue is a specific form of regulation that reduces participant ability to decide how to meet a need. Whilst planners and LACs are guided to list the support under the closest line item, the catalogue encourages a babysitting approach to support and the development of a shopping list rather than the targeted funding of the strategies most likely to achieve an outcome. For example, the Support Catalogue approach to:

- supported independent living (SIL) steers participants into traditional group homes and away from living with co-residents who do not have a disability
- capacity building is woefully inadequate. Capacity building for relationships describes behaviour support with no provision for assistance to build informal support, so crucial for the sustainability of the Scheme.

The price control requirements on all but self-managing participants can also constrain participant capacity to decide how to meet their needs, preventing, for example the use of more creative payment options often underpinning innovative supports.

An outcomes approach to supports would restructure the Supports Catalogue and enable a planner or LAC to assist a participant to meet their disability support needs in ways that enhance participation and embed them in the community. Such an approach would enhance participant outcomes and Scheme sustainability.

### ***Use of stated supports***

Another example of regulation is the designation of a small number of supports as ‘stated supports’ with the designation related to:

- the cost of the support
- any expected return or saving in costs from providing the support
- any risks associated with the supply of the support
- whether achievement of other goals in the plan or the effectiveness of other supports is contingent on a particular support being procured or used
- whether a participant’s disability requires a specialist, evidence-informed support provided by a qualified person or a particular delivery mode.<sup>14</sup>

Identifying a support as a ‘stated support’ means that the participant is required to use a registered provider and observe price controls and the support must be Agency managed. This affects the ability of participants to use more contemporary supports that are not well reflected in the current Support Catalogue. In the area of SIL for example, its designation as a stated support forces most participants into traditional group homes and away from creative arrangements. The call by AHURI<sup>15</sup> for research into whether savings can be achieved by enhancing access to informal support is an example of the value of flexibility in seeking value for money.

The key issue is whether restrictions conflict with value for money and whether the safeguard intended by the restriction can be achieved in other ways. It is possible that alternate more nuanced

<sup>14</sup> Rule 6.4 of the Plan Management Rules

<sup>15</sup> Wiesel, I. and Habibis, D. (2015) [NDIS, housing assistance and choice and control for people with disability](#) AHURI Final Report 256, Australian Housing and Urban Research Institute, Melbourne, p33-34

mechanisms could be developed to verify that an arrangement represents value for money and that strategies are in place to mitigate perceived risks

### *Improving value for money recommendation*

*The IAC recommends that the NDIA review restrictions on participant choice to encourage increased participant choice, control and responsibility to achieve outcomes in ways consistent with Scheme sustainability. The review should:*

- *move toward working within a best practice regulatory framework*
- *review<sup>16</sup> restrictions emanating from:*
  - *the distinction between supports related to disability support needs and expenses that are a personal responsibility*
  - *the Support Catalogue,*
  - *price controls,*
  - *the designation of 'stated supports',*
  - *budget cycles,*
  - *bulk purchases and AT, and*
  - *any other barrier to achieving outcomes*
- *identify practices to motivate participants to seek value for money*
- *identify capacity building and safeguards required to have confidence that participants can seek value for money, especially very vulnerable participants and participants in closed systems.*

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<sup>16</sup> through co-design with participant and family leaders

## 6. Roll over of unspent funds

### 6.1. Ability to roll over unspent funds

In some State and Territory systems, participants were able use funds over a time frame that the individual believed would best achieve their outcomes. This was achieved by authorising roll over a predetermined level of unspent funds to the next financial year. The ability to roll over unspent funds:

- minimised the burst of expenditure at the end of the period designed to ‘not hand any back’
- encouraged saving for planned unusual expenses such as a holiday
- provided participants with a sense of control over their budget and a reward for seeking value for money.

It appears that State and Territory Governments did not see the roll-over of funds as a high risk strategy and there do not appear to have been strategies in place to mitigate risk.

### 6.2. NDIA constraints on roll over

NDIA funds that are unused at plan review are removed from the participant portal. This has caused significant challenges for many participants in meeting leave entitlements and other obligations to employees. In addition, where participants have been deliberately frugal to enable the higher level of support required on a holiday, they are punished at plan review with their savings wiped from the portal and their holiday placed at risk.

#### *Improving value for money recommendation*

*The IAC recommends that the NDIA enable participants to roll over a predetermined level of unspent funds to the next plan as a significant incentive for participants to seek value for money. The NDIA could mitigate any risk of the roll over increases the expectation of an increased base level of support in future years by:*

- *limiting the roll over to 5% of the budget or \$5,000*
- *requiring that the funds be used for items that do not increase the recurrent base such as support for a holiday, the purchase of items of equipment, spring cleaning the home*
- *requiring participants to put forward a plan as to how they would use the support.*

### 6.3. Ability to use or share in the use any savings

Incentives to achieve value for money are negated when participants are unable to use or share in the savings achieved.

Participants achieve savings in a myriad of different ways – purchasing consumables on special at retail outlets, spending time and participating in the community with friends rather than with paid support, living with a housemate without a disability rather than living in shared supported accommodation with other people with disability. Appendix B provides 17 stories of participants achieving savings in their reasonable and necessary support, choosing alternate more ordinary ways to meet their needs. Participants are also conscious that the options cost less and represent value for money. Their motivation to continue to seek value for money is enhanced when they are able to use or share in the savings derived from their efforts.

One potential saving comes from the use of employment platforms. As these platforms typically have lower overheads than traditional service providers, they provide workers at lower hourly rates. The practice of at least one NDIA office reduced the participant budget to take account of the lower unit cost. This response completely misunderstands the NDIA's own principles in establishing benchmark prices for supports. These encompass much more than an hourly pay rate. Self-managers have the same legal responsibilities and face the same challenges in recruiting and retaining staff as other small employers. This includes responsibility for induction and ongoing training, supervision, debriefing and meeting the costs of backfilling absences to name a few. Topping up rates of pay provided by platform operators is also a way that some self-managers choose to recognise and reward staff. Short term clawing back of savings risk consigning self-managers to becoming poor employers.

#### *Improving value for money recommendation*

*The IAC recommends that the NDIA enable participants to use or share in the use of savings that result from seeking value for money.*

#### **6.4. Recognising participant judgement in purchases of Assistive Technology**

For many participants, a request for Assistive Technology (AT) is a continuation of previous supply and participants are able and confident to outline their needs and brief the supplier. Many participants indicate that they know more than the prescriber and that in the absence of their expertise, the AT is unlikely to be fit for purpose.

Professional assessment is sensible when a participant requires the AT for the first time and/or where the participant and their support network will have challenges in understanding/ representing their needs and briefing a supplier. Not all participants are in this situation.

#### **6.5. NDIA constraints on participant judgement**

The NDIA requires a professional assessment prior to the purchase of specialised and complex AT with expert assessment and assistance provided by a person with appropriate qualifications and experience in that technology. This assessment is required for all participants including participants who are more knowledgeable about the pertinent issues than the prescriber.

There are anecdotal reports of situations in which the cost of the OT assessment for AT is more than the cost of the AT, where the assessment recommends specialised disability equipment where off the shelf mainstream options are preferred (e.g. wheelchair tyres from the local bike shop rather than a disability distributor) and where the assessment recommends staffing levels to operate the AT that are unnecessary and highly unlikely to be considered reasonable and necessary (2 staff to operate a hoist).

### Improving value for money recommendation

The IAC recommends that the NDIA reviews the requirement for expert assessment for AT to ensure participant and family knowledge, skills and experience are recognised in determining the need for assessment and in determining the final purchase where an assessment has been required.

## 5. Accountability

The draft *NDIS Guide to Self-Management* could provide a template to assist participants determine whether the service or item would be considered 'reasonable and necessary' while simultaneously providing an assurance mechanism for the NDIA. The *Guide to Self-Management* at p8 (reproduced at Appendix C) uses six easy English questions related to requirements for reasonable and necessary in the NDIS Act.

## 6. Risks

The flexibility proposed is a replication of the flexibility that existed in many State and Territory disability service systems (see Appendix A) where the perceived risks were managed without undue negative impacts.

### 8.1. Risks associated with not increasing flexibility

The paper has argued that increased flexibility in the use of reasonable and necessary support will better assist participants to achieve their outcomes through value for money options that promote Scheme sustainability. Increased flexibility will also drive market change because participants will be able to directly purchase those supports that they believe are important for positive outcomes rather than needing to find surrogates for the fulfilment of those needs in disability services.

The paper has identified a number of risks associated with not increasing flexibility including:

- unnecessary restrictions on the capacity of participants to achieve their goals
- participants required to meet their needs in disability service rather than identify avenues for support tailored to their unique circumstances
- sub optimal costs of support
- loss of opportunity to grow demand and supply of contemporary supports
- risks to Scheme sustainability arising from participants not maximising their independence and increased package costs.

Additional risks associated with not increasing flexibility to enable participants to seek value for money include:

- continued growth of traditional grouped options that do not facilitate independence
- less support for inclusion and an ordinary life
- less support for building informal support
- more participants forced into shared supports
- home share options disbanded

- NDIA policy decisions being made in decisions on appeal to the Administrative Appeals Tribunal.

## 8.2. Risks associated with increasing flexibility

### Risk 1: Increased costs impacting on Scheme sustainability

Risks associated with increased flexibility impacting on participant budgets and Scheme sustainability include:

- that the ability to purchase items that have been seen as the domain of personal responsibility, may increase participant budgets.
- that the roll over a pre-determined level of unspent funds may contribute to increased recurrent participant budgets in future years. This risk must be balanced against the risk of hasty spending at the end of a plan as participants use resources in ways designed to 'not hand any money back' rather than planned support related to a disability support need.
- that the ability to use or share in the use of savings that result from seeking value for money may reduce Scheme capacity for cross subsidisation within total participant budget.

#### **Mitigation strategy**

The participant budget is a dollar amount of reasonable and necessary support based on the participant reference package and the planning conversation. This provides the benchmark for participant costs in line with Scheme sustainability.

This risk is eliminated by requiring participants to work within their budget whether they purchase goods and pay for activity costs that they believe will better assist them to achieve their goals or share in the savings arising action to secure value for money.

The risk that participants will come to expect or rely on increased budgets as a result of rollover can be mitigated by

- limiting the roll over to 5% of the budget or \$5,000
  - requiring that the funds be used for items that do not increase the recurrent base such as support for a holiday, the purchase of items of equipment, spring cleaning the home
  - requiring participants to put forward a plan as to how they would use the support.

In addition, information, capacity building, active support and the use of intermediaries are important risk mitigation strategies to prevent increased flexibility impacting negatively on Scheme sustainability.

### Risk 2: Increased improper payments

The IAC has argued consistently<sup>17</sup> that the achievement of outcomes should be the criteria by which proper and improper use of funds is judged.

The IAC advice on Self-Management demonstrated that most improper use of funds results from a lack of policy clarity or lack of communications as to what can be and cannot be purchased with

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<sup>17</sup> IAC (2016) *Enhancing self-direction and self-management in the NDIS*

reasonable and necessary support. This evidence is pertinent to the question of improper use of funds arising from increased flexibility.

A range of policy settings could be used to provide guidance to participants as to the proper and improper use of funds. Options include doing nothing, developing a list of allowable and disallowable expenses or using an outcomes approach to determining the legitimacy of payments.

Table 1 describes the impact on determining the legitimacy of participation costs via three policy settings

Policy setting	Determination of proper or improper use of funds	Implication of policy setting
No policy	Payment considered proper by those who take an outcomes approach and an error or improper by others	Inconsistency across Scheme Participants feel weary
Legitimacy determined via a list of allowable and disallowable expenses	Payment considered an error or improper	Consistency across Scheme No flexibility Creative options may be lost Value of self-management to participant may be reduced
Legitimacy determined in relation to participant outcomes	Payment considered proper if related to outcomes	Consistency across Scheme whilst enabling an individualised approach Flexibility and value for money promoted Encouragement of self-management

The table demonstrates challenges in creating value for money options if the NDIA decides not to seek policy clarification or uses a list of allowable and disallowable expenses to determine the proper use of funding. An outcomes approach is most likely to lay the ground work for value for money.

### **Mitigation strategy**

Policy clarification and participant education are important preventive strategies that mitigate the risk of improper payments related to increased flexibility. Funds for flexible supports could be self-managed with the plan management option mitigating risk for some participants. As proposed in the work on mitigation strategies for self-managing participants, detection and control strategies including the requirement of a separate bank account to which the Agency has access together with risk assessment matrices and data analytics will identify perceived and actual risk to enable the Agency to take corrective action early. The curtailment of self-management for participants found to be deliberately<sup>18</sup> defrauding the NDIS will send a strong message about the responsibility of self-management.

### **Risk 3: Increased participant vulnerability**

As noted earlier, participants who use their NDIS budget in a more flexible manner will be participants who self-manage or use a plan management provider.

<sup>18</sup> subsequent to policy clarification and education in a format clearly understood by the participant



### **Mitigation strategy**

Participants who self-manage are already assessed for their capacity to manage the associated risks. The NDIA is thereby satisfied they are able to discern value for money arising from greater flexibility. The NDIA can require the use of a plan management provider for participants not able to manage those risks.

### **Risk 4: Increased negative media attention**

In an environment in which the media is critical of the NDIS, information that participants use their reasonable and necessary support to pay for items that some will see as inappropriate, may open the NDIA to further criticism. This criticism needs to be balanced however against current criticism that the NDIS is rigid and unresponsive to participants.

### **Mitigation strategy**

A planned response that demonstrates the way in which the use<sup>44</sup> of reasonable and necessary support in this way represents a value for money solution that enables participants to lead ordinary lives included in their communities. A preplanned response of this nature would demonstrate the careful use of public money and may contribute to raised community expectations about people with disability.

## **7. Removing perverse incentives**

Increased flexibility may be effective in removing perverse incentives of the current price guide approach.

When participants are able to design their support to their specific circumstances, they will have less incentive to maximize their disability to maximize their support. They will also have less incentive to 'spend up big' toward the end of the plan to ensure no money is sent back to the NDIA.

The current supports catalogue approach has perverse incentives that:

- group people with disability in SIL, thereby placing them in situations in which it is difficult to increase informal support to reduce long term need for care and support
- discourage the use of mainstream community services because activities such as exercise, music and dance are provided 'free' in NDIS funded group day programs but cost the participant in mainstream settings.

## **8. The way forward**

Restrictions on participant choice and flexibility have been shown to reduce value for money and are unlikely to maximise participant outcomes and Scheme sustainability. The question becomes how the NDIA can reduce restrictions while ensuring that participants use reasonable and necessary support in ways that promote positive outcomes in line with Scheme goals and sustainability.

The paper has proposed giving participants more responsibility for their support and the ability to use or share in the use of savings derived from their efforts. The paper also called on the NDIA to review the constraints on choice. These steps will reward and encourage participants to continue to seek value for money and maximise the likelihood that support is effective in meeting outcomes. The mitigation strategies identified will give the NDIA confidence that proposed changes enhance

Scheme sustainability.

The building blocks toward removing restrictions involves:

- providing incentives such as those outlined in this paper
- enabling participants to act on those incentives
- facilitating easy ways for participants to seek and achieve value for money
- the NDIA taking an observe and learn approach.

The NDIA must have confidence in Reference Packages to be able to hand control of budgets to participants. It also requires the NDIA to empower and educate participants to care about the decisions they are making, to safeguard themselves and to have a sense of responsibility for reasonable and necessary support.

## Appendix A: Comparison between use of funding under the NDIS and State and Territory systems

Provision	NDIS	NSW	Vic	ACT	WA	SA	QLD	Tasmania
Memberships e.g. gym,	Conflicting information	Yes	If related to disability need and health		Yes where related to health and person unable to fund themselves	Yes	No	No
Lessons from mainstream e.g. singing, dancing	A limited number of lessons to enable a participant to try out an activity and test their capability and interest	Yes	Where costs are prohibitive and could prevent inclusion		Yes	Yes	No	No
Use of mainstream service to replace personal or daily assistance e.g. TAFE hairdresser or barber	No	Yes	No		Yes	Yes	No	No
Nanny rather than drop in support for	No	Uncertain	Uncertain		Yes. Many instances of au pairs from	Uncertain	Yes	No

Provision	NDIS	NSW	Vic	ACT	WA	SA	QLD	Tasmania
child with profound disability					overseas paid a small honorarium in return for in home care			
Flexible holiday costs e.g. airfares and daily stipend rather than hourly rate	No	Yes	Yes – paying in creative ways for support		Yes	No because participants did not directly employ staff and govt unwilling to delegate duty of care	Contracted one off rate for holiday support used. Airfares not paid	Flexible daily rate for staff frequently used. Airfares not paid
Rent subsidy for home sharer	No	“Honorarium” as reimbursement of costs associated with volunteer role	Yes		Yes	No but funded Shared Lives type program	No	No
Petrol for unpaid friend who drives	No	Paid as per km rate in award	Unsure		Yes	Yes	No	No

Provision	NDIS	NSW	Vic	ACT	WA	SA	QLD	Tasmania
Entertainment ticket for unpaid friend	No	Where Companion card not accepted	Companion card		Yes	Where companion card not available	Companion card	Companion card
Mobile phone, watch or other mainstream technology for safeguarding features – give examples	No	Yes	Yes		Yes	Yes	No	From community equipment fund
Additional staff training or buddy shifts to train for individualised support	6 hours per year for all staff	Yes	Yes including payment to attend training		Yes	Uncertain	Yes	Uncertain
Petty cash			\$300/month without receipts to achieve your goals.					
Roll over of unused funds	No	\$5,000	5%		On a case by case basis	No		

## Commentary

**Memberships:** Participants were more able to be active citizens and achieve better outcomes when they could ‘cash out’ support hours to purchase membership of clubs and activities in local communities.

**Rent subsidy for home sharers:** This made rent on a 2 bedroom home affordable, saved on the salary of a support worker and prevented entry into an expensive group home.

**Mobile phone, watch or other mainstream technology:** Represented a one off cost to promote increased independence in a safe way

**Additional staff training:** Buddy shifts critical for personalised training to assist with the introduction of new workers, with practice of 3 shifts per new support worker based on strategy of Watch me, Do it with me and Do it while I watch. More extensive individualised training required with participants with complex communication to lower risk of problems related to WHS arising from participant behaviours related to the stress, anxiety and insecurity of a new worker.

## Appendix B Flexible use of support

The stories described below represent real people and their experience under State and Territory provision and the NDIS. They demonstrate where strategies the participants and supporters believe will be most effective in enhancing independence, social and economic participation and community inclusion comes into conflict with NDIS understanding of items that are the responsibility of the individual.

### Addressing personal care and social support needs in the mainstream

A person who is independent in all areas of personal care other than the ability to wash her own hair:

- NDIS is prepared to fund 5 hours of support worker time
- Woman prefers to have her hair washed twice weekly at local TAFE twice per week which costs less and increases her community participation and connection

A man who needs assistance with shaving:

- NDIS prepared to fund support worker time
- Man and his family prefer a weekly visit to the local barber which costs about the same but increases his independence and assists him to be better known in his community

A woman who wants to wax monthly:

- NDIS prepared to fund 1 hour of support worker time (where support worker is unlikely to be expert in waxing) or pay for the woman to attend a 'pampering day' at a local congregated day program
- Woman prefers to go with her sister to a local TAFE beautician salon and use the resources otherwise allocated to a support worker waxing to pay for beautician

A family with a teenage daughter with profound and complex disability:

- NDIS prepared to fund significant drop in support
- Family used the funds to employ a nanny who cost significantly less and provided more normative support. This also overcame the frustration the family experienced as a result of the lack of reliability of rostered staff. The mother reported that "*her marriage was back on track*".

A man with a psycho-social disability who has a chaotic lifestyle really enjoys singing and wants to participate in a singing group:

- The NDIS is prepared to fund 3 hours for a support worker time to help him get to the group.
- Supporters of this man believe it would be more effective to provide \$10 for transport to and from the group (the main barrier to his participation is that he never has the public transport costs available) because it is cheaper and because a support worker hanging around in the singing group will in fact inhibit others coming forward to engage with him (i.e. the opportunity for informal support)

A man with autism who lives in a rural area reduces his stress by walking. He is very fit and likes to walk from town to town. He used to sleep rough on those occasions exposing himself to significant risks:

- The NDIS is prepared to pay for time in a day program
- People who know the man well believe that paying for him to stay in a motel when he is stressed and goes on his long walks would be a more effective use of the NDIS resources. It would continue to promote his independence and keep him safe.

### **Using support resources for small pieces of equipment**

Many families of people with cognitive impairment are interested in new 'watches' that have built in reminders and alerts that are preprogrammed for when the wearer is worried or in the event of an emergency.

- Families believe this technology will support increased independence of their family member while providing a personal safeguard to enable positive risk.
- The NDIS is not prepared to meet the cost because a watch is a personal responsibility

A man with significant physical disability is alone overnight and needs to establish an emergency plan. He has identified a system by which he can use a touch pad in bed that allows him to call up to 6 numbers and talk directly to people available for emergency assistance. The system however requires him to purchase a special telephone.

- The NDIS is prepared to pay for the monthly fee for Vital Call but not the one off establishment cost of the special telephone (for which there will be no monthly charges)

A young man with intellectual disability needs assistance to manage his day to day commitments and travel independently in the community.

- The NDIS is prepared to fund a support worker to take him to appointments and activities in his plan
- His family would like to help him use apps available on an I-Phone or I-Pad that will significantly increase his independence.



- The NDIS is not prepared to pay for the purchase of the I Phone or I Pad that would enhance his capacity and reduce long term support costs

The Intensive Family Support Guidelines of the Disability Services Commission of WA was able to fund such items/initiatives under a principle that *“the initiative builds the parent/carer/family member’s care capabilities and capacities and will reduce the reliance upon formal supports”* (2009).

## Using support resources for mainstream community participation

A young woman who needs assistance to participate in the community:

- The NDIS will pay for her to attend a disability Zumba class at a day program where she would not have to pay for the class. The NDIS would pay for the day program.
- She would like to use resources to pay for the local community Zumba class with a support person going along to the first 3 classes to assist her to connect with others in the class

A woman with physical disability wants to have a one week holiday:

- The NDIS is prepared to pay \$7,386.12 for support during a 7 day/night holiday.
- The woman wants to go away with a friend who provides personal care support from time to time. The friend does not want to be paid. The woman with disability would like to pay her friend a stipend of \$100/day for ‘out of pocket expenses’. The NDIS is reluctant to approve these costs

A teenager with high and complex needs has never been away on a holiday with the family:

- The NDIS will pay over \$7,000 for support during a 7 day/night holiday
- The family would prefer to pay for the rent on an adjoining apartment for their cousins who will provide take turns to provide support for the young man during the much desired combined family holiday

A woman with disability has indicated an interest in singing that she would like to pursue with her NDIS support. She is however very shy and isolated:

- The NDIS is prepared to pay for a support worker to accompany her to a local choir or to attend a day program that has singing as an activity
- People who know the woman well believe that better outcomes will be achieved if the NDIS pays for 6 singing lessons to build her confidence and short term facilitation to help members of the choir to provide informal support. They argue that this approach builds her capacity in order to reduce her longer term support needs.
- The NDIS will not pay for singing lessons but on the DSP she cannot afford the lessons.

## Home modifications

A family needed to modify their bathroom for their son who used a wheelchair:

- The NDIS allocated \$26,000 to rearrange the bathroom making it technically accessible but too small for function.
- The family wanted the bathroom made bigger and found a builder who was prepared to do the job for \$17,000
- Given that funds for home modifications must be Agency managed, the family were forced to use the more expensive, less useful home modification provider.

A blind man needed a railing at the edge of his porch for safety:

- He was grateful that the NDIS was prepared to pay for a standard functional railing but wanted to add some money from his own resources so that a more attractive railing could be used. He was prevented from doing so.

A man needed bathroom modified. His family and friends were skilled and prepared to do the work but they lacked the resources to purchase the material:

- Under the Community Living Fund in WA, funds were provided for the materials and his family and friends undertook the work
- The NDIS requires the use of an approved home modification provider at significantly higher cost.

## Appendix C NDIS Guide to Self-Management

### What can you buy with your NDIS funding?

<p><b>Will the support help you reach the goals in your NDIS plan?</b></p>	<p>The support you buy must be linked to the support budgets and goals in your current NDIS Plan.</p>
<p><b>Is the support reasonably priced and good value?</b></p>	<p>The support should give you good value-for-money compared to other supports. Remember you can choose to pay less and get more support, or pay more for a higher quality support that meets your needs.</p>
<p><b>Can you afford the support within your support budget?</b></p>	<p>Your NDIS funding needs to last for the length of your plan. Work out your budget early so you know what you can afford. This will help you to track your funding and make decisions about any changes to your supports during your plan.</p>
<p><b>Will the support help you to connect with your community and improve the relationships you have with family and friends?</b></p>	<p>The support should not replace supports that would usually be provided by family, friends and within your community.</p> <p>The support you buy should help you to participate in activities with friends and other members of your community, or help you to find or keep a job.</p>
<p><b>Is the support something that should be funded by other government services?</b></p>	<p>In your NDIS Plan the funded supports will not include support that is provided by other government services. For example, dental, health or hospital services, education, housing and public transport are all provided by other government services.</p>
<p><b>Is the support safe?</b></p>	<p>The support you buy must be legal and should not cause harm or put other people at risk.</p>