

SUMMER 1_Podcast Ep1

- DG Hi, listeners, and welcome to regional and necessary, Australia's premier podcast series on everything you ever wanted to know related to the National Disability Insurance Scheme. I'm your host, Dr. George, and we're going to start off by talking about the very foundations of the NDIS, the NDIS Act itself. Have you ever wondered what the NDIS Act means when it talks about regional and necessary support? Well, stay tuned because I'm about to find out. With me today is Chris Thwaites, our legal advocacy lib at the Summer Foundation. Hi, Chris.
- CT Hi, George, how are you?
- DG I'm really well, how are you?
- CT I'm great, thanks.
- DG Now tell me, you are really passionate about the NDIS Act. You love this act, don't you?
- CT I know, it's our, it identifies me as a real nerd, but I'm a big fan of this act, George.
- DG Tell us why you love it so much.
- CT Well, I like the way it's been structured, but basically, I like what it's supposed to do, the act ensures everybody in Australia against, or supports everybody in Australia who finds themselves with a disability to get necessary, reasonable and necessary supports, it sets out the Australian government's obligation in relation to how it responds to the UN convention on people with a disability, and it sets out a human rights response to that, so it really sets the person, the participant in the middle of the decision making to make sure that they are involved in decisions that are made about them.
- DG Yeah, and as a person with a disability, I'm very thrilled to know that there's now legislation that says that I have an entitlement to support, an entitlement is really important because with an entitlement, you're sort of at the mercy of what the next budget might offer people with disabilities or what the next government might want to do in terms of supporting our human rights, so having more effectively means it's there forever, yeah?
- CT Absolutely, or until they change the law, but it's certainly a different approach in law, so this act really embodies a change from a charity based approach to a rights based approach, so from people getting things because people are charitable or the government is charitable, too, people have a right to ask for these things and have a right for these things to be provided, so that's a big change.

- DG It absolutely is and it's very much in line with our human rights conventions, isn't it, and the fact that we're signatories to the UN convention and the rights of people with disabilities.
- CT Absolutely, so this is a way that Australia is demonstrating how it's implementing their obligation, its obligations under that convention, and I know you don't like me reading stuff out about this act, George, but let me just take you to a couple of highlights in relation to the object of the act, so this is in section 3, it's right up the front, the act is very easy to read, so I'd recommend people grab a copy of it if they'd like, but there's a whole list of objects, objects for this act so that the purpose of this act. One of it is to give effect to Australia's obligation under the convention on the rights of persons with disabilities which was a 2006 convention of the UN, another one is to provide for the National Disability Insurance Scheme in Australia, so it sets up the scheme, it also sets up the agency, the other objection that, objection, the other object of the act that I really like is the object of the act is to support the independence and the social and economic participation of people with disabilities.
- DG That's awesome.
- CT Now that's a great object of an act to have, so that should underline all of the objectives, all of the other objectives and the other things that are done under this act, that's a really, really powerful one and it's also there to enable people with disabilities to exercise choice and control in the pursuit of their goals and planning and delivery of their support, so again, it really centres the participant.
- DG Because they need to remember that the NDIS itself is really around reforming the ways supports are being provided, so it's about looking at the old system that was very much about what funding, it was about having places for people where they could then feel, but it wasn't about people having control over their lives, so this is about moving the funding from providers or from government, putting it in the hands of people with disabilities, so then they can make the choices that suit them, suit us that are related to what we want and what we need and what we know is important to us.
- CT Absolutely, a huge shift, and a big shift that is supposed to be, it's informed by market economics in a way, it's supposed to put the power of the consumer in the hands of the person with the disability so they can go out and choose what supports they want and where they're going to spend their money, they can take that money with them so they're no longer locked in to one locality or one service provider and not be able to move, it's a national scheme in that regard, so it really does shift the goalposts.
- DG All right, so let's look at the act a little bit more closely, let's start with eligibility, what makes someone eligible for the NDIS?

- CT Okay, so there's a number, a few criteria in relation to whether you're eligible for the NDIS, there's an age criteria, a residence criteria, and a disability requirements criteria.
- DG Okay.
- CT So in relation to the age, it's anyone under the age of sixty five at the time they make a request to be, to access the scheme, so as long as you're under sixty five at the time that you request to access the scheme, you tick off that criteria, there are also the residents requirements which generally mean you need to reside in Australia and be an Australian citizen or a permanent visa holder, and the third one is the disability requirement which generally speaking means that you need to have an impairment or a condition that is likely to be permanent or lifelong, and it stops you from doing everyday things by yourself, and there's a very specific section around that, so in relation to the criteria, it sets out, the act sets out age and residence and disability requirements.
- DG Excellent, now when it comes to people being eligible, that's effectively also around having to prove their disability, to some extent?
- CT To some extent, yes, although the rollout is a way, so the rollout is happening across Australia and a lot of information is sharing, being shared between different agencies in the rollout, so some people are rolling in to the scheme without having to do too much paperwork because information from previous schemes are being imported in to the NDIS, so people are rolling in without too many problems if they have that sort of history with another agency.
- DG So I guess if you haven't ever received disability supports, there will be need to prove that your disability is lifelong?
- CT Yep, yep, so you'll need to, you'll need to provide some evidence or some reports in relation to that and you can do that by if you've got any health care professionals working with you or providing supports to write reports that you can use this then with the agency in order to address it, if you want to have a look at the specific section in relation to what you need to address, it's section 24 of the act.
- DG Okay, and that is around lifelong disability and also the disability impacts of your daily life.
- CT If it stops you from doing everything, I think the general words.
- DG Okay, all right, well, that's for the people to know, the next really important part of the act is around looking at this concept of reasonable and necessary and it's, it's really, it's what we call our podcast because that is the essence of what the NDIS is all about, it's about what is then reasonable and necessary for a person with a disability to have an ordinary, everyday life.

- CT Absolutely, so the act sets up general supports which is generally supportive, support provided by the agency and then it's reasonable and necessary supports which they'll fund which is the funding that individuals get and they get to choose then where they spend that money.
- DG Okay, now the act does spend a bit of time covering what it means to have a reasonable and necessary support, I understand that that's six criteria, is that right?
- CT Absolutely, so this is one of my favourite sections, George, section 34, so section 34 sets out the things that the agency has to keep in mind when they're deciding what might be a reasonable and necessary support that they're going to fund, so they have to go through this criteria that they, that the decision maker turns their mind to in relation to whether they'll fund this particular support, whether they find it is a reasonable and necessary support.
- DG Okay, and it's important for people to be familiar with these criteria because when you're putting together your plan, you need to start to think about well, what is it that is reasonable and necessary for me and for my life, so how about we just spend a bit of time looking at, at these one by one and we'll start with the fact that support needs to help a person to pursue their goals and their aspirations.
- CT So the plan that participants will get as they are, as they're rolled in to the NDIS is all about capacity building, about achieving goals and aspirations, so right up the front of the plan, participants are asked what are their goals? What are their aspirations? So these are things that are really important to think about because it's then that that's what your reasonable and necessary supports have to link to, to show why you need them to achieve your goals and aspirations, so it's a really good idea to think broadly about what goals and what aspirations you want to put in to your plan and how they might link to the things that you think you're going to need as far as reasonable and necessary supports.
- DG And legally, it's important as well, because when it comes down to perhaps challenging an outcome of your plan or requested a review, you could say, well, my goal was to live independently, I needed funding for that, so if they fund something that puts them in a group home where you're not having that independence, if that's not what your goal is, then legally, it should be the plan.
- CT Well, that's where the argument is, so absolutely, it's really a good idea to take some time to think about what your goals might be, what your objectives and your aspirations are, and that's the first criteria in this section 34 when the decision maker, the agency turns their mind to what might be reasonable and necessary supports, the first thing they have to think about is whether the support will assist the participant to pursue the goals, objectives, or aspirations included in their plan, so there has to be a pretty clear link to that, so that's the thing to start with, absolutely.

- DG Okay, the second one is around the social and economic participation, and that your funding is tied to that, so I guess that's really important because that means that people can get funding for being out in the community, having a job, having a life, basically.
- CT Absolutely having a life and again, that gets back to the objectives of the act we talked about before, and what the whole purpose of the act is, so again, it's about linking what you're asking for, and showing or at least satisfying the decision maker that the support that you're asking for will assist a participant to undertake activities or to facilitate their social and economic participation, so it's all about getting people out and about in their community and in broader community and to help them to be able to do that, they might need some supports and this is the way that they'll be funded.
- DG And the thing that I love about that is it's not about the old model and the old model was about institutionalising people or keeping people out of the way, this is about getting people out in to the world, being part of regular life and I also think a practical example would be that in the funding, it would be appropriate that you would access the local swimming pool as opposed to a facility that might happen to have a hydro pool somewhere, so it's about making sure that people with disabilities are a visible part of their community.
- CT Absolutely, absolutely, and it is, and that's one of the things that sort of attracts me to this act and thrills me about this act that's all that's what it's about is bringing people in to their community, not taking them away and putting them in to smaller communities that are outside the mainstream, but bringing them back in to the community and supporting them to participate in the community.
- DG Moving along, absolutely, the third one is a tricky one, for some, and that's around values from others.
- CT Yeah, so the decision maker has to think about whether the support that's been requested represents something called value for money in that the cost of the support are reasonable, relative to both the benefit achieved and the cost of alternatives, so that's a bit of a formula, but basically, they have to turn their mind to it so people have to address it, why is this particular support value for money? What's is going to do? Is it going to save money in other areas? Is it going to be less expensive than other supports or it might be more expensive than other supports, but provide a greater outcome, so value for money can be a complex.
- DG Yeah, it doesn't mean it's the cheapest, but it's the one that means the most benefit for the money that is being spent on it.
- CT Yeah, absolutely.
- DG And I know that for a lot of other people, that can be a little bit challenging because a person may be in a situation where they want a certain support, but there's nothing to

compare it to necessarily, so it does require a little bit more thinking than possibly the other ones.

CT Yeah, absolutely and you can go, I think a bit globally when you don't have that sort of nuts and bolts, or those numbers to compare it to, support a will cost this much and support b costs this much, if you don't have that, you can think a bit more globally in relation to what this value for money might be, how it can contribute to global cost assessment of people's supports, so I think people can be creative in relation to how they can value a support in relation to this.

DG And there may be value that occurs after a period of time, so supporting someone in a volunteer role, for example, that would set them up to have paid employment, possibly, down the track, so-

CT Which leads to lower costs, possibly because they can contribute to their own costs if they've got paid employment, so that's sort of a longer term value for money proposition.

DG Yeah, okay, thank you, and this next one is a little bit tricky as well and that's around whether it's likely to have a benefit or impact and is effective with regards to current good practice, so that's about an evidence base, isn't it?

CT It is about an evidence base and it's to ensure that the supports that are funded have an evidence base and are recognised as good practice, so it may mean that some people who might want a support that isn't recognised in a particular profession to be funded, they might come up against some challenges in relation to that, it really is about not necessarily cutting off new and yet to be tested supports, but it is mainstreaming a lot of the good practices and making sure that the supports that are funded are recognised as good practice.

DG So for example, could that be, someone might think that swimming with the dolphins has benefit for their disability, you'd want to come to a planning meeting with a lot of evidence for putting that swimming with dolphins will have benefits or impact.

CT Absolutely, and in relation to support animals in a lot of different categories, there has been some recognition around how they can help with anxiety disorders and other things like that, so I think there's always a movement towards how mainstream supports can be and I think this criteria means that they're not going to necessarily fund the really extreme mainstream, really extreme new types of therapies, but as they, as they get picked up by professions and are used, you can see how those sorts of things can evolve over time to become good practice, so it's something that people can think about, but it will bring them back to sort of professionals and whether they consider it good practice.

DG Yeah, that's right, and it's not just your opinion.

CT No, it's not just what you want.

- DG Or it seems like it could, although it is interesting when you look at some of the case ones that's come out, there was recently some evidence that there are certain things that you could challenge at a review of your plan, so yeah, be prepared and get your evidence together.
- CT Yeah, and that's definitely the case and the case law will show that if you have had some support in the past and you can document that it's been effective and beneficial, that can give you a bit of an evidence base to address this particular criteria, so it's always good to address what you've got and what you've had in the past and what sort of effect it may have had.
- DG This one's around informal networks and taking in to account what is reasonable to expect families, carers and informal networks to provide.
- CT Yeah, absolutely, so as you can sort of tell as we go through these criteria and as you mentioned before, it's a move away from block funding linked to individual fundings, it really is looking at individualised plans and so it places people in context of their environment and what sort of informal supports they might have that looks to family, that looks to carers and informal networks and communities and it says, well, the NDIS isn't going to fund everything if you can get some things from those sort of networks, that environment that you already have it, so it takes that in to consideration.
- DG And it also considers your life in terms of what would be expected of someone at your stage of life, so for example, there'd be an expectation that parents and families would provide a lot more informal support to a child under eighteen, for example, compared to an adult who it would be expected that at twenty five or older would be relatively independent and it wouldn't be expected to have their parents do a lot for them.
- CT Absolutely and that's right, so it's sort of individualises plans and recognises that people's supports will probably change, the type of supports people might want will probably change over the nature, over the length of their lifetime, depending on, as you say, a six year kid is going to have a completely different sort of informal support network around them than a twenty five year old.
- DG And the other thing that I will say to people is to make your plan aware that even though you might have a certain informal support being provided now, that that informal support may then not be available in to the future or maybe it's been provided now because it didn't have the NDIS before.
- CT Absolutely, so it's not, it shouldn't be seen as a way for the NDIS to not fund things, it shouldn't be seen as a way of saying, okay, well, you had a family, so you don't have, your family has to do everything, so we're not going to fund anything, it's, it should recognise people's environments and what's reasonable to inspect from those and those reasonable expectations will change over time.

- DG Okay, and the last one relates to who is most appropriately set up to fund a particular support, so it recognises that we live in a world where there are all sorts of different supports that are provided by the health system, it's a case system, it's a criminal justice system, and the rest, so how would this be considered around someone who might for example think who may be a teacher's aide or some other kind of support?
- CT And this is where the criteria that the decision maker has to turn their mind to is also made explicitly aware that there are other types of agencies that provide some forms of support and some forms of services and that the NDIS isn't going to pick up all of that, and that they're going to work in with other agencies that might be more appropriate to provide those sorts of supports, so it's about how the NDIS or the NDIA as the agency meshes in with some of the other support agencies to ensure that some supports are appropriately funded by the NDIS and others are more appropriately funded by other agencies.
- DG Wow, it's pretty complex, isn't it, when you start talking about all the different aspects of the act, do you think that there is a need to just sit back and reflect on your plan and I guess tick it in in terms of all the different aspects of the act or-?
- CT Yeah, I think so, I think people should take their time to make sure that their plan reflects what they want to do and reflects the sort of goals and aspirations they have, but also the sort of supports that would be reasonable and necessary to do so, and those six criteria that we worked through are supposed to help the decision maker, but also the participant work out what the agency might fund, there are rules around, so the act sits at the top of the sort of hierarchy of what the law is around this, but underneath the act, they've also written rules which are sort of subordinate legislation that helps you sort of understand what the act might be getting at, and they've published some rules in relation to the supports that disabilities get and one of the things that always helps me try and work out what all those different criteria might mean to a specific support also helps the rules also help what they won't fund, so the act says what they need to take in to consideration in relation to what they might fund or what they will fund, but the rules also help define that by saying what they won't fund and it's very clear in the rules that the agency won't fund a support that is likely to cause harm to a participant or pose a risk to others, they won't fund a support that is not related to a participant's disability, they won't fund a support that duplicates or other supports already funded by different mechanisms and they won't fund supports that relate to day to day living costs that are not related to the participant's support needs, so that gives you a sort of fence around which are the sorts of things they won't fund.
- DG And those things are often the one that can be a little bit controversial because people might find it hard to separate their day to day life and their disability life because sometimes when you have a disability, all the costs just feel like there's a disability.

- CT Yeah, and the agency will tease that apart because that's what they're looking at and they need to apply these rules as well, so the day to day living costs I think can be the really complex ones.
- DG Yeah, and we should probably remember that the NDIS wasn't intended as income, it's not income, it is a form of insurance effectively against the cost of the disability.
- CT Absolutely, and it's to help people participate and to engage, but it's not supposed to pay for everything in a person's life, so that's where the decisions start to get really complex.
- DG Wow, Chris, there's a lot there, I hope listeners have found that informal and useful and thanks for your time.
- CT You're very welcome, and good luck, listeners, for all your plans and all your hopes and all your aspirations.
- DG That's all we have time for on today's podcast of reasonable and necessary, brought to you by the Summer Foundation.

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To hear the next podcast as it's released, you can also access the transcript and keep up to date with our latest info on the NDIS.

I'm Dr. George and until next time, stay well and reasonable.

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