

Administrative Review Tribunal of Australia

Butler and National Disability Insurance Agency (NDIS) [2025] ARTA 1579 (28 August 2025)

Last Updated: 1 September 2025

Butler and National Disability Insurance Agency (NDIS) [2025] ARTA 1579 (28 August 2025)

Applicant: Victoria Butler

Respondent: National Disability Insurance Agency

Tribunal Number: 2023/6289

Tribunal: Senior Member B De Villiers

Place: Perth

Date: 28 August 2025

Decision: Pursuant to [section 105\(c\)\(ii\)](#) of the *Administrative Review Tribunal Act 2024* (Cth), the decision under review is affirmed.

Statement made on 29 August 2025 at 2:31pm

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Senior Member B. De Villiers

CATCHWORDS

*NATIONAL DISABILITY INSURANCE SCHEME – Ehlers-Danlos Syndrome – myalgic encephalomyelitis/chronic fatigue syndrome – postural orthostatic tachycardia syndrome – other health conditions – reasonable and necessary supports – consideration of [section 34](#) criteria *National Disability Insurance Scheme Act 2013* (Cth) – relevance of other health conditions not related to [section 24](#) disability requirements – consideration of Schedule 1 and 2 – whether the supports in Schedule 2 are to be read restrictively or expanded to include a support that is not listed but related to the category of supports – consideration of the scope of income supplementation – decision is affirmed*

LEGISLATION

Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (the Transitional Act) (Cth)

[Administrative Review Tribunal Act 2024](#) (Cth)

[National Disability Insurance Scheme Act 2013](#) (Cth)

National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Act 2024 (Cth)

National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth)

National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024 (Cth)

CASES

FSWN and National Disability Insurance Agency (NDIS) [2025] ARTA 114 (20 February 2025)

G v Minister for Immigration and Border Protection [2018] FCA 1229

McGarrigle v National Disability Insurance Agency [2017] FCA 308

Minister for Immigration and Citizenship v Li [2013] HCA 18; (2013) 249 CLR 332

National Disability Insurance Agency v WRMF [2020] FCAFC 79

Public Trustee of South Australia (as litigation representative for Isherwood) v National Disability Insurance Agency (No 2) [2023] FCA 852

Re Drake v Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 60

XYZ v Commonwealth [2006] HCA25; [2006] HCA 25; (2006) 227 CLR 532

Re Drake and Minister for Immigration and Ethnic Affairs (No 2) [1979] 24 ALR 577

YCTK and Chief Executive Officer, National Disability Insurance Agency [2025] ARTA 536

SECONDARY MATERIALS

NDIS – Operational Guidelines – Reasonable and necessary supports

NDIS – Explanatory Memorandum to the Transitional Rules: Issued by the authority of the Minister for the National Disability Insurance Scheme

Statement of Reasons

INTRODUCTION

1. Ms Victoria Kathleen Butler (**‘Applicant’**) is a participant in the National Disability Insurance Scheme (**‘Scheme’**).^[1] The Applicant seeks to have additional supports included in her Statement of Planned Supports (**‘SOPS’**).^[2] The supports requested by the Applicant have been refused by the National Disability Insurance Agency (**‘Agency’**).^[3] The request to include the disputed supports is the subject of this proceeding (**‘disputed supports’**).^[4]
2. The question is whether the disputed supports are reasonable and necessary supports within the meaning of [s 34\(1\)](#) of the [National Disability Insurance Scheme Act 2013](#) (Cth) (**‘Act’**; unless otherwise indicated, all references to a statute is to this Act), read in conjunction with the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) (**‘Support Rules’**) and the *National Disability Insurance Scheme (Getting the NDIS Back on Track No 1) (NDIS Supports) Transitional Rules 2024* (Cth) (**‘Transitional Rules’**).
3. The Applicant is a 44-year-old female. Orders were made on 15 March 2023 by consent that she meets disability requirements under section 24 by reference to the following health conditions: Ehlers-Danlos syndrome (**‘EDS’**), myalgic encephalomyelitis/chronic fatigue syndrome (**‘MG/CFS’**), and postural orthostatic tachycardia syndrome (**‘POTS’**) (together, **‘the s 24 disabilities’**).^[5] These conditions give rise to impairments in the functioning of the Applicant. Those impairments are principally of a neurological, sensory, and physical nature.^[6] It is for the disabilities arising from those impairments that the Applicant seeks the disputed supports.^[7]
4. Clinical geneticist Dr Fiona McKenzie writes in a report that the Applicant experiences a ‘complex disorder’ that requires an ‘integrated management plan’.^[8] It is ultimately for the Tribunal to ascertain what are reasonable and necessary supports for the Applicant at the time of the decision, within the context of the s 24 disabilities of the Applicant (outlined at [3] above), the evidence about her disability supports needs, and the statutory framework.
5. In these reasons for decision, the disabilities that have been found to satisfy s 24 of the Act (at [3] above) are referred to as the **‘s 24 disabilities’** since the Applicant also experiences impairments from several other health conditions that may cause disabilities, but those do not meet the requirements of s 24. Ms Rebecca Allens, who

has been coordinating supports for the Applicant for around 12 months, confirmed in her oral evidence that the s 24 disabilities are the 'primary diagnoses' and basis for the disputed supports. This statement by Ms Allens is supported by the evidence of the Applicant, Dr Collins, and other health practitioners in their oral and written evidence.

6. It is not disputed by the Agency that other health conditions of the Applicant, for example long COVID,^[9] lipo-lymphoedema,^[10] attention-deficit/hyperactivity disorder ('**ADHD**'), complex post-traumatic stress disorder ('**cPTSD**'), scoliosis, and autism spectrum disorder ('**ASD**'), may, in some respects, exacerbate the impairments caused by the s 24 disabilities. The Applicant relies on an extensive healthcare team to coordinate and provide supports for her.^[11]

7. The Applicant had a SOPS approved by the Agency on 26 June 2023 for disability support arising from the s 24 disabilities.^[12] The most recently approved SOPS runs to March 2026.

8. In addition to the s 24 disabilities, the Applicant says she has been diagnosed with other health conditions such as fibromyalgia, borreliosis, Epstein-Barr virus reactivation, cow's milk intolerance, gluten intolerance, lipo-lymphoedema, long COVID, Generalised Anxiety Disorder ('**GAD**'), Debilitating Symptom Complexes Attributed to Ticks ('**DSCATT**'), glandular fever as a child but with ongoing symptoms, major depressive disorder ('**MDD**'), ADHD, cPTSD, scoliosis, and ASD.

9. The Applicant does not, in this proceeding, seek disability supports under s 34(1) that specifically relate to those other health conditions. It is, however, not disputed by the Agency, and I find, that the other health conditions may sometimes impact on, or exacerbate, the nature of the impairments experienced as a result of the s 24 disabilities.

10. The impairments of the Applicant arising from the respective health conditions cannot easily be placed into clearly demarcated categories of disability support. However, as explained in more detail below, s 34 does not provide an avenue for disability support for all non s 24 disabilities on the basis that they may relate in some way to the s 24 disabilities. I must consider if each disputed support satisfies the requirements of s 34(1)(aa)-(f).

11. The Applicant has not yet sought for the other health conditions to be considered under s 24(1). The evidence before me is that the Applicant's treating practitioners regard the s 24 disabilities as the primary basis of the impairments for which the disputed supports are sought. The Agency confirmed in their written and oral evidence that the s 24 disabilities ought to form the basis of any amendment to the SOPS.

12. I find that the disabilities for which the Applicant seeks support are those identified in [3] and being referred to in these reasons for decision as the s 24 disabilities.

13. The Applicant says the report by occupational therapist Camille Connors captures the essential facts of the 'impairments and disabilities' for which the disputed supports are sought. Ms Connors opines as follows:

Victoria's physical and cognitive capacity is restricted by co-morbid conditions related to connective tissue dysfunction with multiple systems. [Hypermobility Ehlers-Danlos Syndrome ('**hEDS**')] is a complex, multisystem connective tissue disorder that affects numerous bodily systems, leading to widespread symptoms and impairments. Its impact extends beyond joint hypermobility and musculoskeletal issues, as it can also involve the cardiovascular, gastrointestinal, neurological, and immune systems. Individuals with hEDS often experience chronic pain, joint instability, frequent dislocations, chronic fatigue, dysautonomia, vascular and blood pressure abnormalities, difficulty with dental and jaw development, spinal involvement, gastrointestinal dysmotility, and central nervous system sensitisation. This multisystem involvement contributes to fluctuating symptom severity and functional limitations, creating challenges in daily activities and necessitating access to a range of adaptive supports and therapies to maintain functional independence and improve quality of life. Victoria experiences severe impairment as a result of Postural Orthostatic Tachycardia Syndrome (POTS), which affects her ability to maintain stable blood pressure, resulting in dizziness, increases risk of falls, fatigue, and difficulties with thermoregulation. This condition limits her capacity to engage in physical activities and necessitates adaptations such as pre-cooling her car before leaving home. Chronic Fatigue Syndrome/Myalgia Encephalomyelitis (CFS/ME) and Post-Exertional Malaise (PEM) further reduce her functional capacity, with even minimal exertion leading to significant fatigue and

prolonged recovery periods. Fibromyalgia and Lipoedema contribute additional layers of physical discomfort and reduced mobility, limiting her ability to perform daily tasks independently, such as vacuuming, showering, and house cleaning. With Victoria's upper limb function is impacted by osteoarthritis - caused by hEDS - in her wrists, which restricts fine motor skills and exacerbates her overall pain levels, particularly during weight-bearing or repetitive tasks.

Psychosocially, Victoria experiences co-occurring impairments, including Depression, Anxiety, Attention Deficit Disorder (ADD), Cognitive Dysfunction, and Post-Traumatic Stress Disorder (PTSD). These conditions collectively impact her emotional regulation, cognitive processing, and executive functioning. Depression and Anxiety further affect her motivation and ability to cope with the limitations imposed by her physical conditions, while ADD and Cognitive Dysfunction reduce her focus, attention, and ability to manage tasks that require organisation and planning. PTSD exacerbates her emotional distress, particularly in response to past trauma and changes in her physical abilities.

Individually, hEDS and its associated conditions impose the most significant physical limitations, affecting Victoria's mobility, fine motor skills, and overall stamina. POTS, CFS/ME, and Fibromyalgia add to these restrictions, creating further barriers to physical activity and functional independence. Psychosocially, Depression, Anxiety, and PTSD contribute to her emotional dysregulation and reduced capacity to manage daily stressors, while ADD, CFS, and Cognitive Dysfunction impair her ability to focus and carry out tasks that require sustained attention. Collectively, these conditions interact to severely limit Victoria's overall functional capacity and psychosocial functioning, impacting her ability to engage in daily activities, self-care, and social participation. These conditions work synergistically to reduce Victoria's mobility, energy levels, and ability to complete daily tasks, as each exacerbates the other, leading to a continuous cycle of fatigue, pain, and physical limitation.^[13]

14. The Applicant says including the disputed supports in her SOPS is reasonable and necessary within the meaning of s 34(1). The Applicant says she is trying to maintain and hopefully build her functional capacity, contain the impacts of her impairments, prevent any deterioration, and to not lose too much more capacity. The Applicant says there is a 'plethora of evidence' about what are reasonable and necessary supports considering her impairments.^[14] She says all the disputed supports fall within s 34(1). The Applicant says she does not have other informal, family, or community supports on which she can rely to provide her with support.^[15]

15. In her Statement of Lived Experience, the Applicant says, in summary, the following about the practical effect of the impairments the subject of the SOPS:

These conditions create a complex web of challenges/impairments that affect every part of my life, including but not limited to severe pain, joint instability, debilitating fatigue (low energy production), cognitive dysfunction (brain fog), autonomic dysfunction, and significant limitations in mobility and daily activities.^[16]

16. The Agency accepts that the Applicant experiences impairments in her daily functioning arising from the s 24 disabilities and that she meets the statutory requirements for disability supports under the Scheme.

17. The Agency takes issue with the disputed supports and the scope of the supports sought. The Agency says the evidence does not justify adding the disputed supports to the SOPS. The Agency contends that an independent medical examination by a rehabilitation physician is required to 'confirm the extent of the Applicant's functional impairments and disability support needs.'^[17] The Applicant did not, however, consent to such an independent medical examination by a rehabilitation physician for reason it 'will just drag the case out for a longer period.'^[18] The Applicant says her experts, Mr Cheok, Ms Allens and Dr Collins, as well as the Ms Connors called by the Agency, agreed with the merit of the disputed supports and hence an additional report by a rehabilitation physician is not required.^[19]

18. The Agency takes issue with the reports of Mr Cheok, Mr Reilly, Dr Collins, Ms McPhee, Ms Allens, and Ms Farnden because they admitted that the Applicant provided to them some form of written communication in which the disputed supports were set out, which they then copied or repeated into their respective reports to the Tribunal without critically considering whether the supports are reasonable and necessary according to their professional assessment. Although Mr Cheok, Mr Reilly and Dr Collins said they had read and agreed with the disputed supports provided to them by the Applicant, the Agency is concerned that it was principally a cut-and-paste exercise and not vetted critically and in depth by the respective practitioners based on their expert knowledge and their duty as experts towards the Tribunal. The same can be said about the evidence of Ms Connors, who, regardless of having made personal observations, basically repeated the supports sought by the Applicant without critically asking if those supports are indeed reasonable and necessary as NDIS supports, or without explaining adequately how she independently formed her opinion about the disputed supports being reasonable and necessary as required under s 34(1).

19. The Agency contends that the Applicant has not established that the disputed supports are reasonable and necessary within the meaning of s 34(1). The Agency says it has formed the opinion for various reasons, being that the disputed supports are either not NDIS supports; the disputed supports are excluded as NDIS supports; the disputed supports are not necessary to address the disability needs of the Applicant; the disputed supports are not current good practice, or the disputed supports do not represent value for money. The Agency is also critical of some of the evidence of health practitioners and support providers on which the Applicant seeks to rely since, according to the Agency, the evidence appears to be more in the nature of advocacy rather than an independent assessment of her s 24 disability support needs. The Agency does not deny that the Applicant has a thorough undertaking and insight of her health conditions, but the Agency is critical of the expert evidence in their uncritical endorsement of the disputed supports as proposed to them by the Applicant.

20. For reasons explained below, I find that the disputed supports are not reasonable and necessary under s 34(1).

BACKGROUND

21. The Applicant is single, with no dependants, and resides independently in a state-provided, two-bedroom unit in a suburb of Perth, WA.

22. On 15 March 2023, the Applicant was accepted as a participant in the Scheme after satisfying the access criteria of s 21.^[20]

23. On 1 May 2023, a delegate of the Chief Executive Officer (**CEO**) of the Respondent, approved the SOPS for the period 1 May 2023 to 30 April 2025. The Applicant requested, on 22 May 2023, an internal review of the SOPS under s 100(2).

24. On 26 June 2023, another delegate of the CEO completed the s 100(6) review and varied the Applicant's SOPS to include increased funding for support coordination (level 2), but otherwise did not approve the Applicant's requests for increased funding for physiotherapy or new funding for remedial massage, reflexology and support coordination (level 3) (**s 100 decision**).

25. On 20 March 2025, an unvaried SOPS was approved by the Agency for 20 March 2025 to 19 March 2026.

SUPPORTS SOUGHT

26. On 25 August 2023, the Applicant applied to the Administrative Appeals Tribunal (**'the AAT'**) for review of the s 100 decision (**the decision under review**). In support of her application to the AAT, the Applicant states:

Not happy with this at all. From the listed documents, it looks as if you haven't even reviewed all the material provided for the review. And have completely ignored my need for more low cost AT, and other items requested.

27. From 14 October 2024, the AAT became the Administrative Review Tribunal (**'the Tribunal'**). Under the transitional provisions in the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) (the **'Transitional Act'**), applications for review to the AAT that were not finalised before 14 October

2024 are taken to be an application for review to the Tribunal. The Transitional Act gives the Tribunal the authority to continue and finalise existing applications.

Applicant's requested supports

28. The Applicant seeks the following disputed supports to be included in the SOPS:^[21]

(a) *Dietetic and Nutrition Services*: 16 hours per year (on an ongoing basis)

- (i) 12 hours of direct dietetic and nutrition services.
- (ii) 4 hours of report writing.

(b) Transport Funding: Level 1

(c) *Psychology*: 26 hours per year

(d) *Occupational Therapy*: 103 hours per year

- (i) 60 hours of direct occupational therapy, including assistive technology assessments and report writing (more may be requested if other funding requests are not met, and external replacement supports reports are needed additionally).
- (ii) 30 hours of home modification assessments.
- (iii) 13 hours of hand therapy.

(e) *Physiotherapy and Exercise Physiology*: 415 hours per year (to be used flexibly between these services), comprising:

- (i) 260 hours of exercise physiology.
- (ii) 155 hours of physiotherapy including but not limited to:
 - (ii) 26 hours of lymphatic drainage.
 - (ii) 6 hours of pelvic floor support.
 - (ii) 18 hours of case management.
 - (ii) 104 hours of injury prevention.
 - (ii) Including approval for: manual therapy specifically for myofascial release provided by a qualified masseuse (to be used instead of a physiotherapist providing this service).

(f) *Support Coordination*: 50 hours per year comprising Level 2 (30 hours) and Level 3 (20 hours) complex support coordination

(g) *Support Worker Assistance*: 47 hours per week. This includes but is not limited to:

- (i) 10 hours to access the community.
- (ii) 2 hours of assistance to clean car and carry out safety checks.
- (iii) 2.5 hours of meal preparation and delivery, with flexible funding to pay for occasional plus delivery service when no meals have been prepared.
- (iv) 1 hour of hair.
- (v) 0.5 hours of nails.
- (vi) 3.5 hours of personal grooming.

- (vii) 1.5 hours of laundry service.
- (viii) 2 hours of car cleaning.
- (ix) 15 hours of domestic assistance.
- (x) 2.5 hours of home and garden maintenance.
- (xi) 10 hours of social and community participation.
- (xii) 8 hours of administrative assistance.
- (xiii) 0.125 hours of webster packs.

(h) *Specifying Funding Periods*: Requesting continuation of 12-month periods. As this is a recent policy issue that needs clarification

(i) *Low-Cost Assistive Technology and Other Consumables*: \$10,139

(i) Detailed in Updated Low-Cost Consumable List at [142].^[22]

(j) *Capital Funding*: funds according to quotes provided including but not limited to:

- (i) Intense Pulsed Light (IPL) hair treatment.
- (ii) Car window tinting.
- (iii) Power assist manual wheelchair.
- (iv) Sit-to-stand chair.
- (v) Compression pump.

(k) *Capital Funding for home modifications* (supply and install)

- (i) Air conditioning.
- (ii) Dishwasher.

29. The Agency opposes the inclusion of the disputed supports in the SOPS of the Applicant.^[23]

30. The current SOPS of the Applicant has a total funded supports of \$201,847.29:

Core Supports	Budget
Funding for assistive technology: \$2000 is included for the purchase of Basic (Level 1) and Standard (Level 2) assistive technology, and minor repairs to your AT, to support you to achieve plan goals and outcomes. Flexible supports to enable maximum independence in personal activities of daily living. These supports can be provided in a range of environments, including but not limited to, your own home. Assistance with daily living inclusive of support with self-care, household cleaning or yard maintenance. Flexible support to explore and participate in community based activities of interest and to develop, build and maintain friendships. Reports to be submitted to enquiries@ndis.gov.au 8 weeks prior to plan review. My Core Supports funding will be: • \$117,808.08 Plan-managed	\$117,808.08
Total Core Supports	\$117,808.08

Capacity Building Supports	Budget
Improved Life Choices (CB Choice & Control) Support to set-up, develop and process monthly statements (administrative functions only). My Stated Supports funding will be: • \$232.35 NDIA-managed Plan Management - Set Up Costs • \$2,506.80 NDIA-managed Plan Management - Monthly Fee	\$2,739.15
Improved Daily Living (CB Daily Activity) \$20,174.96 for Occupational Therapy to assist me to be as independent as possible for as long as possible. \$6,738.60 for Physiotherapy to assist me to be as independent as possible for as long as possible. \$34,733.92 for Exercise Physiology to assist me to be as independent as possible for as long as possible. \$5,819.70 for Podiatry to assist me to be as independent as possible for as long as possible. \$9,026.16 for a Therapy Assistant (Level 2) to support me to implement therapeutic strategies. My Improved Daily Living funding will be: • \$76,493.34 Plan-managed	\$76,493.34
Support Coordination 48 hours of Support Coordination to support me to connect to, engage with and coordinate my chosen service providers. My Stated Supports funding will be: • \$4,806.72 Plan-managed Support Coordination Level 2: Coordination of Supports	\$4,806.72
Total Capacity Building Supports	\$84,039.21

31. The Applicant attended the hearing and was assisted by Ms Glenda Bye from People with Disabilities Western Australia. The Agency was represented by Dr Michael Taylor of counsel, instructed by Ms Diyanna Mimitas from Maddocks Lawyers. The parties and witnesses attended the hearing via video-link.

ISSUE

32. The issue before the Tribunal is whether the disputed supports are 'reasonable and necessary supports' under section 34(1) to be included in the SOPS of the Applicant.

APPLICABLE STATUTORY REGIME

33. On 3 October 2024 and prior to the completion of the application for review of the decision under review, the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No 1) Act 2024* ('the **Amending Act**') made a range of amendments to the NDIS Act.

34. The question arose during the hearing whether those amendments are applicable to this proceeding, or whether the proposed inclusion of the disputed supports should be determined under s 34 of the pre-amended NDIS Act.

35. The Applicant contended that the review of the decision was unnecessarily delayed due to failure on the part of the Agency to process the application with urgency and diligence. As a result of the delays on the part of the

Agency, the Applicant says she may be prejudiced by the disputed supports only now being determined under the amended NDIS Act which seeks to narrow the scope for supports.

36. The Agency says the NDIS Act as amended, particularly in respect of the amendments to s 34, applies to this proceeding.

37. The Amending Act made changes to various planning related provisions of the Act, including changes to s 34 (reasonable and necessary supports). The introduction of the new s 10 (definition of NDIS support) and changes to s 24 (disability requirements) and s 25 (early intervention requirements) are also relevant to the s 34 amendments.

38. Subitem 129(1) of Schedule 1 to the Amending Act provides that ss 33, 34 and 35, as in force on and after 3 October 2024, apply to a SOPS approved, or varied, on or after that date. Subitem 129(2) of Schedule 1 to the Amending Act provides that if a SOPS is varied on or after 3 October 2024, the amendments apply irrespective of whether the relevant plan came into effect before, or on, or after commencement.

39. I find that since the determination of the SOPS, that is the subject of review, is after 3 October 2024, the amended s 34 applies.

EVIDENCE

40. The parties were unable to reach agreement on the filing of a joint bundle of material for the hearing. I therefore made orders for the Agency to file a bundle of material and then for the Applicant, if she believed other material that were not included in the bundle of the Agency ought to be before me, to file an additional bundle of material.

41. The following materials were filed:

- (a) bundle of the Respondent comprising pages 1 – 1946, marked exhibit R.HB;
- (b) bundle of the Applicant comprising pages 1- 940, marked exhibit A.HB;
- (c) list of 'Disputed Supports' as finalised by the Applicant by email on 31 July 2025 and amended on 12 August 2025, marked exhibit 'SD';
- (d) an amended schedule entitled Low-Cost Assistive Tech and Consumables filed by the Applicant on 5 August 2025 and amended on 12 August 2025, marked exhibit 'LCATC';
- (e) amended list of Disputed Supports filed by the Applicant on 2 August 2025; and
- (f) written closing submissions by the parties, filed on 15 August 2025, being cited as Appl.Closing and Agency.Closing respectively.

42. The Applicant gave oral evidence and was cross-examined.

43. The following persons also gave oral evidence and were cross-examined:

- (a) Ms Bec Allens - Physiotherapist
- (b) Mr Liam Reilly - Psychologist
- (c) Mr Ian Cheok – Occupational Therapist
- (d) Dr Catherine Collins – General Practitioner
- (e) Ms Caitlin McPhee – Physiotherapist
- (f) Ms Maria Farnden – Physiotherapist
- (g) Ms Camille Connors – Occupational Therapist

44. I have considered all the written evidence filed with the Tribunal provided in the bundles, the oral evidence provided at the hearing, and the parties' closing submissions. I will refer in my decision to some of the more salient aspects of the evidence. The fact that I do not refer to all parts of the evidence does not mean that I have not taken all evidence into account in reaching my decision. The material was voluminous comprising around 2900 pages,

and it would not be practical to cite each of the documents, emails, letters, reports, citations, sources, or submissions enclosed in the respective bundles.

45. Before reflecting on the evidence, I first provide a brief overview of the statutory regime against which the evidence is considered.

THE NATIONAL DISABILITY INSURANCE SCHEME ACT 2013 (CTH)

46. [Section 34](#) identifies what constitutes a 'reasonable and necessary' support under the Scheme.

47. [Section 34](#) provides as follows:

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:

(aa) the support is necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements (see [section 24](#)) or the early intervention requirements (see [section 25](#));

(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 an NDIS support for the participant.

Note: For the purposes of paragraph (aa):

(a) the time at which the disability requirements or the early intervention requirements need to be met is the time the CEO decides to approve the statement of participant supports; and

(b) a participant's disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.

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)(aa) to (f).

48. [Subsection 34\(1\)](#) is cumulative and therefore all the criteria must be met.

49. I turn to [s 10](#) and the Transitional Supports Rules (made under the Amending Act) to determine whether something is, or is not, an NDIS Support so defined at [s 10](#).

50. [Subsection 34\(2\)](#) provides that the NDIS Rules may prescribe methods or criteria to be applied, or matters to which the CEO must have regard, in deciding whether the criteria under [subsection 34\(1\)](#) are met in respect of a

requested support.

51. Section 35 and the Amending Act respectively provide for the making of rules in relation to prescribing reasonable and necessary supports or general supports that will not be funded or provided under the NDIS. The relevant rules under section 35 in respect of this review are the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* ('**Supports Rules**'), and under the Amending Act the relevant rules are the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* ('**Transitional Rules**').

52. Schedule 1 to the Transitional Rules identifies supports that are NDIS supports, unless otherwise provided, for the purposes of subsection 10(1). Likewise, Schedule 2 to the Transitional Rules identifies supports that are not NDIS supports for the purposes of subsection 10(1).

53. In *McGarrigle v National Disability Insurance Agency*^[24] at [43], Mortimer J (as Her Honour then was) made the following observations in respect of these rules:

The [Supports Rules] are an important element of the legislative scheme, introducing the ability to modify the operation of ss 33 and 34 by, for example, excluding certain kinds of supports from inclusion in participant plans. It is through the Rules that the executive is able to implement...some policy decision-making about the nature and extent of supports to be provided or funded.

54. The phrase 'reasonable and necessary' is not defined in the Act. It is a composite phrase and should be considered as such. In *McGarrigle*, Mortimer J also stated as follows:^[25]

Whether a support is "reasonable" requires a different assessment to whether a support is "necessary". Again, it is not necessary in the context of this proceeding to be definitive about the nature and extent of the meaning of the phrase, or its components. It is enough to observe that using the concept of necessity would appear to tie one aspect of the CEO's assessment to an evaluation of the kinds of factors set out in s 34(1)(a) and (b) and (d). The word "reasonable" would appear to be directed at factors such as those set out in s 34(1)(c) and (f). That is not to say the meaning of each word is exhausted by the factors set out in s 34(1): rather, it is to illustrate the different work that each concept does as an adjective in the phrase "reasonable and necessary supports".

55. The Full Court in *National Disability Insurance Agency v WRMF*^[26] also considered the meaning of 'reasonable and necessary' supports, and stated as follows [149]-[151]:

The phrase is a composite phrase. We accept the Agency's submissions that each limb of the phrase should be given work to do. That task is not difficult, or complicated with these two particular words, which are readily understood as conveying different meanings. However, the Parliament has chosen to use a composite phrase rather than to stipulate two distinct requirements, and therefore, as Gleeson CJ cautioned in *XYZ v Commonwealth* [2006] HCA25; [2006] HCA 25; (2006) 227 CLR 532 at [19], '[t]here are many instances where it is misleading to construe a composite phrase simply by combining the dictionary meanings of its component parts'.

... Both adjectives qualify the noun "support", but they do so as a composite phrase. It is not fruitful to split them off and consider them separately, just as it is neither fruitful nor appropriate to attempt any exhaustive or authoritative judicial definition of them.

Nevertheless, there is no doubt that the contextual use of the phrase in this Act links it to public funding to be provided to a participant. In that context, the phrase connotes supports which meet a threshold which justifies - by reference to the context, objects and guiding principles of the Act and the facts of the case - the expenditure of public funds for that support, for a particular participant. As we have already explained, the phrase also needs to be understood taking into account what has qualified a person as a participant, and the links between a person's impairment and their full

participation in the community, in the same variety of ways as persons without a disability might choose to participate.

OPERATIONAL GUIDELINES

56. The Agency issues Operational Guidelines in relation to what are considered 'reasonable and necessary supports' in a participant's plan. There is no power conferred by the Act to make these Operational Guidelines, and they are issued in an exercise of executive power.^[27] The Tribunal is therefore not bound by any policy set out in the Agency's Operational Guidelines. However, in *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* ^[28], the Federal Court held that a Tribunal should take into account relevant government policy which is not inconsistent with the provisions or objects of the legislation. Further guidance for the proposition that the Tribunal is not bound by policy is found in *G v Minister for Immigration and Border Protection*^[29] where Mortimer J held:^[30]

Justice or injustice is not found within a policy. It is found by looking at the overall circumstances of an individual's case with the principal focus being on the purpose and context of the statutory power, not the executive policy framed to guide it.

57. Accordingly, unless the Operational Guidelines are inconsistent with the provisions or objects of the legislation, they should be considered in a determination of what is a reasonable and necessary support for the Applicant. The Guidelines relevant to this review are the NDIS Operational Guidelines on reasonable and necessary supports.

58. The Rules contained in Part 3 of the *National Disability Insurance Scheme (Supports for Participants) Rules* 2013 (Cth) (the **Supports Rules**) must also be applied in assessing if a requested support is reasonable and necessary for the purposes of section 34(1). The following Rules are relevant in this case:

Value for money

3. 3.1 In deciding whether the support represents value for money in that the costs of the support are reasonable, relative to both the benefit achieved and the cost of alternative support, the CEO is to consider the following matters:

- (a) whether there are comparable supports which would achieve the same outcome at a substantially lower cost;
- (b) whether there is evidence that the support will substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;
- (c) whether funding or provision of the support is likely to reduce the cost of the funding of supports for the participant in the long term ...
- (d) for supports that involve the provision of equipment or modifications:
 - the comparative cost of purchasing or leasing the equipment or modifications; and
 - whether there are any expected changes in technology or the participant's circumstances in the short term that would make it inappropriate to fund the equipment or modifications;
- (e) whether the cost of the support is comparable to the cost of supports of the same kind that are provided in the area in which the participant resides;
- (f) whether the support will increase the participant's independence and reduce the participant's need for other kinds of supports (for example, some home modifications may reduce a participant's need for home care)

Effective and beneficial and current good practice

4. 3.2 In deciding whether the support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the CEO is to consider the available evidence of the effectiveness of the support for others in like circumstances. That evidence may include:

- (a) (a) published and refereed literature and any consensus of expert opinion;
- (b) (b) the lived experience of the participant or their carers; or
- (c) (c) anything the Agency has learnt through delivery of the NDIS.

5. 3.3 In deciding whether the support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the CEO is to take into account, and if necessary, seek expert opinion.

...

Part 5 contains general criteria regarding supports and supports that will not be funded. Rule 5.1 provides:

6. 5.1 A support will not be provided or funded under the NDIS if:

- (a) (a) it is likely to cause harm to the participant or pose a risk to others; or
- (b) (b) it is not related to the participant's disability; or
- (c) (c) it duplicates other supports delivered under alternative funding through the NDIS; or
- (d) (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.

...

59. The NDIS Operational Guidelines are also relevant to making decisions in accordance with the Act. Operational Guidelines represent government policy and should be applied by the Tribunal unless there is good reason not to do so.^[31]

METHODOLOGY TO ASSESS THE DISPUTED SUPPORTS

60. At the commencement of the hearing, I suggested to the parties a pragmatic methodology by which the respective disputed supports and relevant evidence could be assessed against the statutory provisions. This methodology was not intended to substitute or vary the statutory regime, but to guide or assist parties through what could be a very complex and confusing process. The Applicant said in an earlier statement that she found the NDIS-process very complex, legalistic and challenging. I thought the practical methodology may assist to simplify the hearing process.

61. The methodology I proposed was briefly as follows:

- (a) Is the disputed support item not an NDIS support by reference to Schedule 2 of the Transitional Rules;
- (b) If the item is not excluded by Schedule 2, is the disputed support an NDIS support within Schedule 1 of the Transitional Rules; and
- (c) If yes, is the disputed support reasonable and necessary under s 34 when the remaining criteria (aa) to (e) must each be satisfied for a support to be funded are considered cumulatively.

62. For a disputed support to be included in the SOPS as an NDIS Support, the support must be covered by Schedule 1, unless it is not an NDIS support pursuant to Schedule 2. A support included in Schedule 2 excludes the support regardless of Schedule 1.

63. In this respect I adopt the approach taken by Senior Member French in *FSWN and National Disability Insurance Agency (NDIS)* [2025] ARTA 114 (20 February 2025) (**FSWN**), in which the interaction between Schedule

1 and Schedule 2 was considered and explained as follows:

43. Having regard to the provisions of the principal Act as amended, the Transitional Rules, and the Supports Rules, the structure of the enquiry involved in this review involves two stages and the following steps:

Stage 1 Ascertain if the requested support is an “NDIS” Support as defined. This inquiry is focused on the support, not the participant.

Step 1: Determine if the requested support is of a character that falls within the scope of a category of support specified in column 1 of the Table to Schedule 2 of the Transitional Rules by reference to the description of supports that fall within the scope of that category contained in column 2 of the Table.

If the answer to that question is “yes”, then stage 1 is complete. The requested support is not an NDIS Support and cannot be approved for inclusion in a SoPS because of s 34(1)(f) (subject to a replacement support determination being made, as to which see following).

If the answer to that question is “no”, then proceed to step 2 of stage 1:

Step 2: Determine if the requested support is of a character capable of falling within the scope of a category of support specified in column 1 of the Table to Schedule 1 of the Transitional Rules by reference to the description of supports that can fall within the scope of that category contained in column 2 of that Table.

If the answer to that question is “no”, then the requested support will not be an NDIS Support and cannot be approved for including in a SoPS because of s 34(1)(f).

If the answer to that question is “yes”, then the requested support will be an NDIS Support that is capable of being approved for inclusion in a SoPS by operation of s 34(1)(f), and stage 2 of the enquiry is reached.

Stage 2: Ascertain if the requested support satisfies each of the other criteria specified in s 34(1)(aa) to (e) and the associated Supports Rules. There is some overlap of the stage 1 and 2 enquiries. However, in my opinion stage 2 is primarily a participant focused enquiry. That is, it seeks to establish the benefit of the support to the participant. To the extent that stage 2 also requires examination of the efficacy of the support per se it adds nothing to the outcome of the stage 1 enquiry in my opinion.

The question of whether a requested support is, or is not, an NDIS support is a mixed question of fact and law. The issue of fact to be determined is whether the requested support falls within a category of items specified in column 1 of the Tables to Schedules 1 and 2 of the Transitional Rules. If it does, it will either be, or not be, an NDIS support by operation of law.

64. Although I am not required to follow the approach adopted in FSWN, the methodology is, in my view, consistent with the NDIS Act and, therefore, I apply it to this proceeding.

65. Each of the disputed supports will therefore be assessed in respect of whether it is: (a) not an NDIS support under Schedule 2; (b) if it is not excluded by Schedule 2, whether it is an NDIS support under Schedule 1; (c) and if so, whether it is a reasonable and necessary support for the Applicant pursuant to section 34 of the NDIS Act in light of the s 24 disabilities.

66. For a support to be covered by Schedule 2, the support sought must be one of those supports listed in Schedule 2. Those supports that are explicitly listed in Schedule 2 and the supports listed in s10(9), are not NDIS supports.

67. For a support to be covered by Schedule 1, the support sought must either be one of those supports listed in Schedule 1, or the support sought must fall within the Category of supports listed in Column 1 of Schedule 1.

68. In essence, as explained below, whilst the list of supports in Schedule 2 is an exhaustive list, the list of supports in Schedule 1 is open to expansion.

69. If a disputed support falls within Schedule 2, it will be excluded from the SOPS. In *YCTK and Chief Executive Officer, National Disability Insurance Agency* [2025] ARTA 536 at [25], the Tribunal found that the phrase 'supports that are generally not NDIS supports' does not operate to confer a discretion on the Tribunal to treat the requirements of Schedules 1 and 2 in the Transitional Rules as only general rules for guidance. Although I am not bound by this decision, I adopt its reasoning because I am of the view the reasoning is consistent with the legislative scheme. Schedule 2 of the Transitional Rule, when read with subsections 10(6) and (7), makes it clear, in my opinion, that the qualification that supports will 'generally' not be an NDIS support refers to the possibility of a replacement support determination in respect of a particular participant. In the absence of a replacement support determination, the disputed support will be excluded from the SOPS if it is covered by Schedule 2 because s 34(1)(f) will not be satisfied.

IMPAIRMENTS OF THE APPLICANT

70. The Applicant says the impairments forming the basis of the s 24 disabilities affect practically every aspect of her life. She says, in essence, the inclusion of the disputed supports in her SOPS will enable her to achieve her NDIS-stated goals^[32]: to become self-sufficient and less reliant on s 34 supports, and to prevent her s 34 support needs escalating in future. All the health practitioners who gave evidence supported, from their respective area of expertise, the inclusion of the disputed supports in the SOPS of the Applicant. One health practitioner, Ms McPhee, went so far to conclude after a single video consultation with the Applicant that the disputed supports are the 'minimum' level of support that ought to be provided to the Applicant.^[33]

71. In the written materials and oral submissions and evidence, the concepts 'diagnoses', 'condition', 'disability', 'impairment', and 'symptom', were often used interchangeably. This does not however detract from the substance of the evidence about the impairments of the Applicant, the disability caused by the impairments, or the Applicant's stated need for the disputed supports. In essence, the focus of s 34(1) is to establish the supports that are reasonable and necessary in respect of the impairments experienced by the Applicant giving rise to the s 24 disabilities.

72. The nature of the impairments of the Applicant for which the disputed supports are sought are reflected in the following excerpts of the evidence of the Applicant:^[34]

I have been accepted onto the scheme for my diagnoses of Ehlers-Danlos Syndrome (EDS), Chronic Fatigue Syndrome/Myalgic Encephalomyelitis (CFS/ME), and Postural Orthostatic Tachycardia Syndrome (POTS) and their severe associated impairments.

I have pursued this review due to the belief that my access and planning meeting evidence and requests were not carefully considered or factored into my funding and plan. Despite documented medical evidence, the funding allocated in my NDIS plan does not adequately cover my essential supports, leading to significant gaps in my care, and has caused my allocated funding to be used disproportionately in the time frame it was given for, which has been unavoidable due to the level of care I need.

I am also requesting Capital Funding for several high-cost assistive technology items that have been recommended, and minor home modifications, that have been unable to be actioned while my plan is in review.^[35]

.....

Dietary management is essential due to permanent impairments (GASTROINTESTINAL DYSFUNCTION (IBS) – bloating, diarrhoea, constipation, stomach pains, vomiting & reflux, stomach & mouth ulcers, cracked & bleeding lips, nausea & fatigue & weakness, Hypersensitivities to: Food, Medications, Odours or Chemicals, gastroparesis) related to EDS, CFSME, and POTS, gastrointestinal issues that cause severe dietary restrictions, nutritional deficiencies, malnutrition, and intolerances.^[36]

.....

Due to my reduced proprioceptive acuity and grip strength issues caused by EDS, severe fatigue, PEM and muscle weakness caused by CFSME, falls risk and thermoregulation dysfunction caused by POTS, I require many adaptive tools to perform daily tasks safely, and keep my household running.^[37]

.....

My impairments are complex, and therapies are necessary to maintain the best mobility, strength, balance, etc that I can achieve. They are very important to reduce further functional decline. They will not make it possible for me to beat PEM (energy production problems), beat thermoregulation dysfunction, will not prevent me from dislocations from unsafe practices that are high risk (walking up inclines/declines, stairs, unsupported seating, jostling bus movements, walking between stops etc).^[38]

.....

Due to my restricted mobility impairments preventing me from being able to walk more than 100m, inability to walk up stairs and inclines, inability to cope with direct heat, joint instability, severe fatigue, PEM, thermoregulation dysfunction, cognitive dysfunction, postural intolerance, and sensory sensitivities (to light, chemicals and scents) caused by POTS, EDS & CFSME, I cannot use public transport.^[39]

.....

Standing, having my head tilted down, being unable to sensitive to the heat of appliances, severe fatigue and tremors, and general cognitive dysfunction, and management of PACING, all contribute to making meal preparation unsafe and unachievable.^[40]

.....

Due to severe fatigue, PEM, muscle weakness, joint instability, falls risk, thermoregulation dysfunction, easy wounding/poor wound healing, syncope/presyncope/falls risk due to EDS, POTS and CFSME, using IPL to permanently remove leg, underarm, and pubic hair over a 2-year period, with occasional maintenance beyond, will significantly reduce unnecessary joint injury, PEM, and wounds.^[41]

.....

Cognition Issues, Brain Fog, Neurosensory & Perceptual Issues, Poor Motor Coordination, Reduced Balance, Auditory Processing Disorder, Impaired Proprioception, Orthostatic Intolerance, Thermoregulation Dysfunction, Syncope/Presyncope, Joint Instability & Hypermobility, Reduced Muscle Strength & Endurance, Altered Gait, Pain, Displaced Joints (including scoliosis, TMJ, and twisted pelvis), PEM, Reduced Exercise Intolerance, Unrefreshed Sleep, Damaged Energy Production, Shortness of Breath, IBS, Gastroparesis, Incontinence, MCAS, Nausea & Vomiting, Altered Skin Quality, Wound Healing & Severe Bruising, Hydration Issues, etc.^[42]

.....

Without specialised support, I cannot hope to get on top of incontinence, bowel or sexual dysfunction.^[43]

.....

Shortness of breath, Wound Healing Issues, Severe Bruising, Reduced Exercise Tolerance, Persistent Fatigue, Post-Exertional Malaise (PEM), TMJ, twisted pelvis, scoliosis, myofascial pain, fibromyalgia like symptoms, myo-fascial pain, reduced muscle endurance, joint instability & hypermobility, Impaired Proprioception.^[44]

.....

Lipo-Lymphoedema is a connective tissue disorder and highly comorbid with EDS. Due to the impairments in my hands, and my severe levels of fatigue, PEM and syncope/presyncope, I cannot self-administer this very important lymph drainage. Not continuing this work, will result in progression of both conditions and permanent, irreversible loss of mobility.^[45]

.....

Restless Legs, Neurosensory and Perceptual Issues, Impaired Proprioception, Blood Pooling, Altered Heart Structure & Function, Venous Insufficiency, Myo-Fascial Pain, Altered Skin Quality, wound healing issues, severe bruising.^[46]

.....

There is some evidence linking Ehlers-Danlos Syndrome (EDS) with impaired mucous membranes, though it's not always well-researched in every subtype.^[47]

.....

My conditions cause severe and significant disabilities that impair me across all the 6 domains, though some worse than others. They are complex, so where one impairment could be managed to complete a task, another impairment thwarts that progress.^[48]

73. The medical and allied health practitioners who gave evidence agree with the Applicant in her descriptions of the impairments, for example:

(a) Mr Liam Reilly opines: 'Her mental and emotional functioning has deteriorated in recent months due to exacerbation of her physical conditions, and several psycho-social stressors including interpersonal issues. These have elevated her distress and beliefs around failure, hopelessness and feeling like a burden to others.'^[49] In oral evidence, Mr Reilly said the chronic health illness of the Applicant giving rise to anxiety and depression, is 'anchored' in her 'disability-related stress'. Mr Reilly says the deterioration of the physical condition of the Applicant leads to deterioration of her mental health and vice versa. He stressed that, in his opinion, the NDIS was set up to provide supports to a person such as the Applicant with her extremely complex health needs.

(b) Mr Ian Cheok opines: 'The impairments related to Victoria's condition impact on her day-to-day functioning and necessitate additional formal support. Without the support as recommended in this report, Victoria faces difficulties in maintaining her independence at home and participating socially in her community. Lack of support will lead to further decline in her function and capacity.'^[50] In oral evidence, Mr Cheok said he has been working with the Applicant for around 4 years and that her condition has 'gone backwards' since April 2022. He spoke about her thermoregulation dysfunctions arising from POTS, the impact of EDS on her daily activities, her constant risk of injury even when performing basic household tasks, the impact of the disabilities such as chronic fatigue on her mental health, her risk of falls which is 'very high', and the interaction between the disabilities and her other health conditions.

(c) Ms Rebecca Allens opines: 'Victoria has experienced significant decline in her physical function and energy. She is severely impacted by her increased fatigue and regular bouts of dizziness. Due to severe and worsening joint instability, she is struggling to use her hands to chop and prepare food.

This coupled with inadequate meal support has meant that she is increasingly relying on poorly nutritious food options. Increased difficulty with her executive function, meaning that she is struggling to make food decisions and not able to read her hunger cues the same way. There has been a noticeable decline in her ability to focus during sessions and she is not able to recall her pattern of eating in the same way. Victoria has shown significant and measurable decline in her physical function and independence. She is severely affected by increased fatigue, lack of stamina, endurance and sleep due to her CFS, causing an obvious reduction in her ability to attend and undertake exercise classes, as well as perform activities of daily living.... Victoria has been experiencing a functional decline with greater impact of symptoms relating to her EDS, CFS and POTS particularly in the previous 12 months. This has limited her ability to participate in activities of everyday living, access her community, maintain her health and connect with friends and family in the ways she was previously able.^[51] Ms Allens explains that the s 24 disabilities impact on other health needs, both physical and mental, of the Applicant and vice versa. She says it is not always possible to make a clear distinction between the impairments arising from the s 24 disabilities and the other health conditions of the Applicant. Ms Allen noted that, particularly since contracting Covid in October 2024, the condition of the Applicant has declined.^[52] Psychologist Annette Wells adds that, since September 2024, the Applicant has experienced a 'significant decline' in daily functioning both physically and cognitively.^[53]

(d) Dr Catherine Collins opines: 'Victoria's diagnoses are supportive of self-reported symptoms, which include but are not limited to: Extreme Fatigue... All-encompassing/full body physical weakness and heaviness... Heavily reduced executive function... Thermoregulation Dysfunction... Pre-syncope and Syncope... Instability and hypermobility of joints causing subluxations and dislocations without cause... Fragility of soft tissues... Poor hygiene... Severely reduced function to twist, turn, squat, lean, sit, stand, lift, descend or climb stairs.'^[54] Dr Collins says the condition of the Applicant 'has been declining in recent months due to lack of support workers.'^[55] Dr Collins says the 'simplest of tasks' cause exhaustion due to CFS/ME. The 'impairments and disabilities' of the Applicant relate to 'CFS/Me, POTS, and EDS' and this in turn 'significantly' impacts on her mobility.^[56] Dr Collins says 'ongoing treatment' is essential to prevent deterioration of the physical and mental health condition of the Applicant.^[57] In oral evidence, Dr Collins emphasises that the extent to which a 'specific condition may affect her may vary over time, for example CFS may relapse or another trigger may cause a regression or relapse' in her condition. Dr Collins says in evidence that when all the health conditions of the Applicant are considered 'overall it adds up to reduced functional capacity with no improvements.'

(e) Ms McPhee opines:^[58] The overall health condition of the Applicant comprises a 'Complex multi-system' presentation of EDS, POTS, CFS, and long COVID as 'primary conditions'. She adds 'ongoing PTSD, anxiety, and depression', and 'fatigue, orthostatic intolerance, and hand/wrist pain'.^[59] She says the Applicant has had long COVID symptoms since 2024.^[60] The 'primary concerns' of the Applicant are 'severe fatigue and post-exertional malaise exacerbated by long COVID', dizziness, hand, wrist, and thumb pain, thermoregulation dysfunction, and digestive issues.^[61] In oral evidence, Ms McPhee explained that her report was solely based on information provided by the Applicant via a single telehealth consultation.^[62]

(f) Ms Connors opines: 'Victoria presents with a complex and interrelated set of physical and psychosocial impairments, primarily related to her diagnosis of Hypermobile Ehlers-Danlos Syndrome (hEDS). This lifelong condition, characterised by joint hypermobility and connective tissue abnormalities, is further complicated by Victoria's report of the 'Stiff Type' of hEDS contributing to significant muscle tension and spasm. Previous specialist and allied health documentation provided

by Dr Krista Makin and Robyn Hickmott report that Victoria also demonstrates Marfanoid Features (however, does not meet criteria for Marfan Syndrome), which contributes to her tall stature of 194cm. hEDS significantly impacts Victoria's musculoskeletal system, contributing to joint instability, chronic pain, and fatigue; with further multisystem involvement affecting her vascular and gastrointestinal system, including Postural Orthostatic Tachycardia Syndrome (POTS).^[63] The s 24 disabilities are the primary cause of the impairments, but other health conditions also impact on and impair the capacity of the Applicant. Ms Connors then explained in detail what she observed during her home visitation at the Applicant.^[64]

CONTENTIONS OF THE PARTIES

74. The Applicant says the disputed supports satisfy the requirements of s 34(1) since the funding allocated to the current SOPS 'does not adequately cover my essential supports, leading to significant gaps in my care...'^[65] The Applicant says the disputed supports would enable her to achieve her NDIS goals. The Applicant says she has been treated poorly by the Agency, that the process has been conducted in an adversarial style, that she had to direct much of her NDIS supports towards this proceeding, and that she is not 'greedy' but merely putting together a holistic support package.^[66] The contentions of the Applicant in respect of the specific disputed supports are considered below.

75. The Agency says none of the disputed supports, except 2 hours of additional support worker assistance per week, meet the requirements of s 34 for reason that the disputed supports are not NDIS supports, the supports are not reasonable and necessary to address the s 24 disability needs of the Applicant, and the supports are not necessary or value for money. The Agency says the Tribunal cannot be positively satisfied that, based on the evidence before it, the disputed supports are reasonable and necessary within the meaning of s 34(1).^[67] The Agency also takes issue with the evidence of several witnesses, for example the conflation of impairments of other health conditions with the s 24 disabilities, the repeat of recommended supports as provided to them by the Applicant without critical analysis, and the use of  **artificial intelligence**  to produce reports without adequate quality control. The contentions of the Agency in respect of the specific disputed supports are considered below.

INTERACTION BETWEEN SCHEDULE 1 AND SCHEDULE 2 OF THE TRANSITIONAL RULES

76. The question arose during the hearing if the supports that are listed in Schedule 2 should be read restrictively or whether they could be expanded with other type of supports of similar nature or scope being implied. The Agency sought to adopt what could be described as an expanded approach to the excluded supports in Schedule 2 by reading a support not explicitly listed, as being impliedly excluded as an NDIS support. Two examples illustrate this approach: (a) The Agency seeks to rely on Item 4(f) of Schedule 2 related to 'standard home computers, standard computer accessories, consoles and games, and subscriptions for streaming services, to regard a Kindle reader and accessories thereto as not NDIS support; , and (b) the Applicant seeks a support for tinting of car windows, which is not explicitly stated as a non-NDIS support in Schedule 2, but a submission was made that it is not an NDIS support pursuant to an expanded reading of item 6(b) of Schedule 2 which deals with 'vehicles'.

77. The Explanatory Memorandum to the Transitional Rules provides, in relation to schedule 2, that 'while the instruments in the list are exhaustive, the below provides a more general outline and explanation of the supports that are not NDIS supports and does not enumerate all of the supports that are captured'. Under 'Day-to-day living costs', the Explanatory Memorandum provides examples (not dissimilar to those in Schedule 2) for travel and transport (under which the example of window tinting falls): 'this includes cruises, holiday packages, holiday accommodation, standard vehicles, petrol and personal mobility devices (which are different from the mobility devices required by a participant as a result of their disability)'. Taking the window tinting as an example, this could technically come under the 'umbrella' of the examples in 'travel and transport' (most likely under 'standard vehicles') given the statement in the Explanatory Memorandum that the examples don't enumerate all of the supports that are captured under Schedule 2. As such, there could be an argument that window tinting could fall

under item 6(b). However, the conflict that arises in the Explanatory Memorandum is the explanation that 'Column 2 provides an exhaustive list of the supports that are included in that category and are therefore declared not to be NDIS supports'. This is in direct contradiction to the notion explained above that the list in the Explanatory Memorandum is actually not exhaustive. With no mention of window tinting in item 6(b) (or elsewhere in Schedule 2), then it could be said that the support is not a support that falls within the confines of Schedule 2.

78. Given this inconsistency in the Explanatory Memorandum as to the way in which Schedule 2 is to be applied and the beneficial purpose of the statutory scheme, I adopt the following approach:

(a) For a support to be covered by Schedule 2, the support sought must be one of those supports listed in Schedule 2, or the support sought must be clearly covered by the scope of a support that is not an NDIS support. This approach flows from the use of the introductory words - 'The following...' - in respect of each of the categories of supports in Column 2 of Schedule 2. The Tribunal must be slow to insert or imply a support into the list of not NDIS supports, or expand upon the listed supports to thereby imply additional excluded supports.

(b) For a support to be covered by Schedule 1, the support sought must either be one of those supports listed in Schedule 1, or the support sought must fall within the Category of supports listed in Column 1 of Schedule 1. This approach flows from the use of the words - 'This includes the following...' - in respect of each of the categories of supports in Schedule 1.

CONSIDERATION OF THE DISPUTED SUPPORTS

79. For the sake of convenience, I will identify by reference to the disputed supports each of the supports sought; whether the disputed support is covered by Schedule 2; if not, whether the disputed support is an NDIS support covered by Schedule 1; and if so, does the disputed support satisfy the requirements of s 34(1).

80. This assessment of the merit of disputed supports is a highly personalised and fact-intensive process since the disability support needs of the Applicant must be assessed within the context of her s 24 disabilities at the time of my determination. In *Minister of Immigration and Citizenship v Li*, the individualised nature of this type of administrative decision-making process was described by French J as 'decisional freedom' since the decision-maker must assess, within the context of the statutory framework and the evidence related to the specific person, whether a support falls within s 34(1).^[68] I must be positively satisfied about each requirement arising from s 34.^[69] That satisfaction must be reasonably and rationally formed, not taking into account irrelevant considerations, and taking into account any relevant considerations, but otherwise it is for the decision maker to form the requisite state of satisfaction on the given material.^[70]

81. I note that, for the purposes of assessing the necessary supports of the Applicant under s 34(1)(aa), the time at which the disability requirements need to be met is the time when I determine the SOPS for the Applicant. I must therefore make the assessment on the basis of the disability support needs of the Applicant at the time of my decision.

82. In *Public Trustee of South Australia (as litigation representative for Isherwood) v National Disability Insurance Agency (No 2)* [2023] FCA 852 ('*Isherwood*'), Colvin J's reasoning below provides the basis on how to approach 'reasonable and necessary support':

[25] However, what is significant when it comes to the interpretation of s 36 in the context of the Act as a whole is to bear in mind that the six criteria are concerned with the extent to which it may be appropriate for a reasonable and necessary support to be funded from the NDIS. They are not concerned with defining the scope of the concept 'reasonable and necessary support'.

....

[29] Therefore, although it is convenient shorthand to refer to the statutory task as being whether a support is 'reasonable and necessary', that terminology is deficient in exposing the precise nature of the deliberative task that is required to be undertaken. Rather, the task of the CEO is to consider as to each support that might be included

in the participant's plan: (a) whether it is a reasonable and necessary support; and (b) whether the CEO is affirmatively satisfied as to each of the six criteria in s 34(1) in respect of the support.

83. Importantly, the criteria in s 34(1) 'are not concerned with defining the scope of the concept 'reasonable and necessary support.'^[71] Cumulatively, each of the requested supports are to satisfy the criteria of s 34(1)(aa)-(f), which means if I find that any one of the criteria in s 34(1) is not met, there is no need to proceed to apply the other criteria.

Item 1: Dietetic and Nutrition Supports

84. This disputed support entails 16 hours of dietetic and nutrition supports per year on an ongoing basis, comprising: 12 hours for direct dietetic and nutrition supports and 4 hours for report writing.

85. The Applicant says this support item is not covered by Schedule 2 as not being an NDIS support. The Applicant says the item is covered by items 14(a), 16(a), 23(a), and 34 of Schedule 1 as an NDIS support. The Agency says this support item is covered by Item 12 of Schedule 2, and it is therefore not an NDIS support. Both parties cite the written report of dietician, Ms Nicola Lowth, in support of their respective contentions.

86. The Applicant submitted Ms Lowth's report,^[72] but the Applicant did not call Ms Lowth or another dietician to explain the nature of the support proposed, the relation of the proposed support to the s 24 disabilities of the Applicant, or why the support should be regarded as therapeutic rather than clinical in nature in respect of the s 24 disability needs of the Applicant, or why the support is necessary pursuant to s 34(1)(aa) and value for money pursuant to s 34(1)(c) in light of the current SOPS and the cognitive capacity of the Applicant to be aware of her dietary needs. The Applicant submits that, generally, there is a 'blurring of boundaries' between what constitutes medical treatment and what is therapeutic intervention.^[73] The Applicant says, in essence, that the supports she seeks are not to cure the s 24 disabilities, but to treat them therapeutically.^[74] This is a theme that resonates through all the disputed supports.

87. In her report, Ms Lowth states as follows: 'Due to [the Applicant's] chronic health condition (Ehlers-Danlos Syndrome, Chronic Fatigue Syndrome, POTS, and Lipoedema) it is essential that she takes a number of specific supplements to support her energy levels, gut function and prevent further decline in functioning...I believe that having access to regular dietetic support as well as support for the preparation of nutritionally adequate meals is essential.'^[75] Ms Lowth also recommends home delivery for the dietary needs of the Applicant,^[76] but Ms Lowth does not seem to give consideration to the SOPS-support for food preparation already provided to the Applicant.

88. Ms Connors notes that a dietician can provide 'tailored nutritional guidance' to the Applicant to help 'regulate bowel function, improve gut mobility, and prevent further complications'.^[77] However, Ms Connors does not explain why similar quality support cannot be provided by the support persons already provided for in the SOPS to assist the Applicant with the preparation of her meals.

89. I do not agree with the Agency that the disputed support is clinical in nature and hence not an NDIS support. I accept the evidence that s 24 impairments require the applicant to follow a restricted diet. The diet may assist to treat the 'low energy levels' and 'poor gut functioning' of the Applicant. Ms Connors is not a dietitian, but I conclude from her evidence that aspects of a proposed diet, at least as she describes it, are of a therapeutic nature and, therefore, consistent with my understanding of what Ms Lowth says. Ms Lowth includes the treatment of the condition of lipoedema in her assessment of dietary supports, although this is not a s 24 disability of the Applicant. Had Ms Lowth given oral evidence, she may have been able to clarify what the exact nature is of the disputed support and how the proposed support would address the s 24 disabilities, but I only have her written report. I am not satisfied that the evidence supports that the additional dietary is necessary pursuant to s 34(1)(aa) in light of the current SOPS of the Applicant and the cognitive capacity of the Applicant to be well aware of her dietary needs. The Applicant is capable of making informed choices about her diet, to be involved in the purchasing of food, and to oversee the preparation of meals. I am also not satisfied that the disputed support is value for money under s 34(1)(c) in light of the support already being provided to the Applicant. This finding is consistent with the opinion expressed by Dr Hugh Derham that further diet monitoring and review are required.^[78] The Applicant has shown herself to be highly researched as far as her treatment needs in general and dietary needs in particular are

concerned. The additional involvement of a dietitian is not value for money. I am not satisfied that the disputed service is necessary under s 34(1)(aa) or value for money pursuant to s 34(1)(c).

90. I find that this disputed support is an NDIS support, but that s 34(1)(aa) and (c) are not satisfied.

91. Item 1 of the disputed supports is not to be included in the SOPS of the Applicant.

Item 2: Transport Funding

92. This disputed support entails level 1 transport funding.

93. The Applicant seeks transport funding to better interact with, and integrate into, the community, to visit her father on his farm, to visit health practitioners, to maintain contact with friends and her church, to be able to socialise and contribute to community volunteering, and to generally achieve her NDIS goals of self-sufficiency and independence. The nature of the funding is to have access to shared drive options such as taxi or other pay-as-you-go private transport supports. The Applicant says the item is covered by items 6 and 27 of Schedule 1. The Agency does not contend this, nor argues that this disputed support is covered by Schedule 2. I find that the proposed support is not covered by Schedule 2.

94. The question is if the disputed support is covered by Schedule 1.

95. The Applicant contends the disputed support is covered by items 6 and 27, Schedule 1. The Agency does not dispute that transport funding as a general support is covered by items 6 and 27, Schedule 1.

96. I find that the disputed support is covered by items 6 and 27, Schedule 1 as being support for transport for a participant that cannot travel or use public transport independently.

97. The next question is if I am satisfied that this disputed support satisfies the requirements of s 34(1).

98. The Applicant says she needs the disputed support to achieve her NDIS goals, to travel to her father on his farm, to reconnect with friends, to integrate with the community, to do her own shopping, and to attend health-related appointments.^[79] The Agency says that travelling may put the Applicant at risk given her current physical condition, there is already support available in her SOPS for social and community interaction, the Applicant already uses her own car independently, and the disputed support has not been shown to be 'necessary' pursuant to s 34(1)(aa) or value for money under s 34(1)(c).

99. I am not positively satisfied that this disputed support is reasonable and necessary as required per s 34(1).

The disputed support does not satisfy s 34(1)(aa) as being necessary or value for money pursuant s 34(1)(c). I find so for the following reasons:

(a) The evidence is that the physical condition of the Applicant has deteriorated to such an extent that she can barely leave her house. I am not satisfied that the requested support is necessary under s 34(1)(aa) to address the needs of the Applicant nor that it is value for money under s 34(1)(c) given her physical and mental state and her lack of mobility. The Applicant says she is fatigued, she moves with great difficulty, she requires something to lean on or she pushes against the walls and furniture when she walks, she cannot shower or perform basic health care without pain and fatigue, she can injure herself by basic functions such as bending, standing up, or getting dressed, she is prone to dizziness and losing her consciousness, and she experiences relentless pain. Mr Cheok says the Applicant has had multiple falls.^[80] The Applicant says she spends around 95% or more of her time in her house and around 90% of her time on her bed.^[81] This is supported by Ms Allens. The social interaction of the Applicant is 'minimal'.^[82] Ms Connors says in oral evidence that the condition of the Applicant has deteriorated visibly since she had visited the Applicant in her house in 2024. Ms Connors describes the physical condition of the Applicant as 'instability at her hips, knees, ankles, and pelvic rotations'; an absence of 'symmetrical patterns can cause a joint just to go'; and she compared the Applicant's body to a 'house made of elastic bands rather than made of bricks.' I am not positively satisfied that the support sought by the Applicant to achieve her NDIS goal of community interaction and travel, is necessary or value for money in light of her current mental and physical condition.

(b) The Applicant explained that regardless of her current disability requirements, she continues to self-drive her manual car, albeit for short distances. This raises a potential contradiction in the evidence: on the one hand it is not clear how the Applicant could be driving her car given the impact of her impairments without putting herself and the public in danger, while on the other hand, the Applicant seeks the disputed support to use public transport and ride-share supports unassisted regardless of her described fatigue, pain, instability and other impairments. In her written report, rheumatologist Krista Makin observes that the Applicant 'is often unable to drive safely'.^[83] This report was written in May 2022, when it is agreed by the experts the condition of the Applicant was markedly better than at time of this hearing. The Applicant says she cannot use public transport due to 'insufficient head support',^[84] although she drives her car independently and proposes to use hired transport that may not be disability-specific or with window tinting (see below). She adds that public transport is also dangerous because of her risk of fainting,^[85] raising the question how she can safely drive her own car or utilise hired transport. Mr Cheok says during his home visit he observed the Applicant becoming dizzy by her just standing up from her chair. This raises the question whether this disputed support is necessary or value for money for her to interact with the community, visit the farm, or go to the beach. Ms Connors observes that even the use of an electronic toothbrush causes 'significant discomfort' in the wrists of the Applicant,^[86] and the Applicant says she runs the risk of dislocation of her wrist and fingers by reading a book. This raises the question how the Applicant is capable of safely manually changing the gears of her car and performing functions required for safe driving of a vehicle. I find that, in light of the use of her own car and the stated condition of the Applicant, this disputed support is not value for money under s 34(1)(c) and that the disputed support has not been shown to be necessary under s 34(1)(aa).

(c) I am not satisfied that the decline in social support and participation by the Applicant is attributable only to the s 24 disabilities. The Applicant also experiences other health conditions that impact on their social interaction and participation. For example, Mr Reilly opines that although the 'CFS does limit some aspects of participation in social activities, this is largely due to ongoing issues with depression and PTSD.'^[87] He then goes on to speak about her loss of social interaction due to her not having employment, her 'chaotic upbringing', violence experienced at home, and otherwise little family or social support. I am not satisfied that the additional support sought to be included in the SOPS of the Applicant is necessary given her s 24 disabilities. I am not satisfied that it necessary pursuant to s 34(1)(aa) or value for money pursuant to s 34(1)(c) for additional disputed supports to be included in the SOPS for purposes of social interaction.

(d) The existing SOPS of the Applicant provides for 5 hours per week social, civic and community assistance. The evidence does not support the proposition that it is necessary for the Applicant, at this time, to receive the increased disputed support. Furthermore, in light of the current health condition of the Applicant and her level of immobility, the disputed support is not value for money under s 34(1)(c). I am therefore not satisfied that based on the evidence before me, the Applicant has established that the existing support in the SOPS should be increased in light of her s 24 disability support requirements. The disputed support does not satisfy s 34(1)(aa) or s 34(1)(c).

100. Item 2 of the disputed supports is not to be included in the SOPS of the Applicant.

Item 3: Psychology

101. This disputed support entails 26 hours of psychology per year, with additional hours for report writing provisioned in the plan under capacity-building.

102. The Applicant says psychology treatments assist her to build her resilience, to better cope with her s 24 disabilities, to achieve her NDIS goals, to deal with her mental illness, and to improve her physical functioning. Mr Reilly, in several reports, explains the rationale for access to psychological treatment.^[88] The Applicant accepts

that aspects of her mental health conditions are not covered by the s 24 disabilities, for example ADHD, PTSD, and ASD,^[89] but she says the s 24 disabilities also give rise to severe mental illness and depression. The psychological treatment therefore focuses on mental health issues arising from the s 24 disabilities as well as other health conditions.^[90] The Applicant says the *2021 NICE guidelines for ME/CFS* recommends psychologist support as a 'key part' of care for the Applicant.^[91] The NICE Guidelines also emphasise that 'individual needs' of persons are to be considered when suitable treatment is determined.^[92] It is a 'fluctuating medical condition', with each person being differently affected, and it can be self-managed with supports and advice.^[93] The Applicant says the Acceptance and Commitment Therapy (ACT) provided by Ms Reilly has improved her resolve not to be overcome by the wide range of health conditions.^[94] This evidence of lived experience is supported by Mr Reilly who says, in oral evidence, the ACT is not a clinical treatment but rather used as a disability support to help the Applicant 'manage the functional impacts of her NDIS-acknowledged impairments'. The Applicant says the supports are covered by items 15(d), (f) and (g); 16, 27(b), and 34 of Schedule 1.

103. The Agency says the proper characterisation of the psychology support, in particular ACT, is that it is clinical in nature and not therapeutic. The Agency says Ms Reilly has 'reinvented' his portrayal of ACT to better suit the NDIS requirements under Schedule 1, without changing the nature, content and objectives of the ACT.^[95] Mr Reilly described, in oral evidence, the benefit of ACT as focusing on mindfulness and present mind awareness. The Agency says the ACT is not principally directed at improvement of the functional capacity of the Applicant associated with the s 24 disabilities, but directed at her recovery for long standing mental health conditions not related to the s 24 disabilities in addition to improving her functional improvement. Importantly, the ACT seeks to address other mental health conditions of the Applicant that fall outside the scope of the s 24 disabilities. The Agency also takes issue with the veracity and scientific credibility of the reports prepared by Mr Reilly.^[96]

104. I find that this disputed support item is covered by Item 13(d) of Schedule 2 and, therefore, is not an NDIS support, and, even if aspects of the disputed support item were therapeutic and covered by Schedule 1, I find that it is not necessary or value for money. The reasons for my finding are:

(a) I am not positively satisfied that the nature of the disability support sought is not principally clinical in nature. Although Mr Reilly says the support he offers through ACT is therapeutic and that he is not a medical professional, the explanations he gave of the treatment sought to cover both the fields of recovery from mental illness and improving functional capacity.^[97] I also note that Mr Reilly may be in a position of conflict since he is the person who offers the ACT to the Applicant and is likely to benefit if the support is included in her SOPS. Hence, he may be describing ACT in a manner that reflects Schedule 1 supports. ACT, as described by Mr Reilly, is, in my assessment, captured by item 12(a), Schedule 2 that declares clinical treatment of health, including ongoing or chronic health conditions, as not an NDIS support. Even if the disputed support is covered by Schedule 1, I am not satisfied that the increase in support is necessary as under s 34(1)(aa). As I explained above, it is the supports sought that must be sustained by evidence, not the general merit of the support. The Applicant already receives support and hence I must be comfortably satisfied that the additional support is necessary. I am also not satisfied that the increase sought is value for money as under s 34(1)(c). Mr Reilly could not explain to my satisfaction why the additional support is necessary or value for money other than to repeatedly state that it is in the best interest of the Applicant. Even if the support was increased, Mr Reilly's evidence is unpersuasive it would present value for money.

(b) The Applicant has a range of mental health conditions, some since childhood, that fall outside the s 24 disabilities, for example, PTSD, autism, and ADHD. The disputed support does not adequately distinguish between those other mental health conditions and the s 24 disabilities. Mr Reilly speaks about the 'long-term' psychology support required by the Applicant to 'manage her ongoing mental health conditions'.^[98] Mr Reilly opines as follows: 'she faces severe mental distress mostly stemming from significant adverse childhood experiences, cognitive difficulties from ADHD and possible ASD, and ongoing and persistent issues caused by depressive disorder and PTSD'.^[99] The psychological

treatment of those conditions is not an NDIS support pursuant to item 13(d) of Schedule 2 since the Applicant has not exhausted all clinical treatments and medication that may be available for the treatment of her mental health. The Applicant says she has attempted medication, but she was ambivalent about using new mental health treatment products that may be available.

(c) The written and oral evidence of Mr Reilly lacks independence and expert-veracity in respect of whether the nature of the disputed support is clinical or therapeutic in light of the s 24 disabilities of the Applicant, and whether the disputed support is necessary and value for money. Mr Reilly seemed to advocate for the Applicant and the support he offers, rather than provide an independent assessment of the necessary s 24 disability support needs of the Applicant and a proper characterisation of those needs in respect of being clinical or therapeutic, and whether the additional support sought is value for money. Mr Reilly opined, in oral evidence, that the NDIS is responsible for 'bureaucratic punishment' of the Applicant. Although I note that the disputed support may possibly contribute to the improved functional capacity of the Applicant, such a beneficial outcome does not alter the fundamental nature of the support being predominantly clinical, and, even if the disputed support is covered by Schedule 1, I am not satisfied that it is value for money.

(d) The evidence of Ms Allens, Ms Farnden and Ms McPhee about the supports needs of the Applicant was of little assistance. Ms Allens basically collated information provided by others to compile her report. It appeared that the reports prepared by Ms Farnden and Ms McPhee were exclusively based on material provided to them by the Applicant; they had limited interaction with the Applicant via telehealth;^[100] the reports were produced with the assistance of an  **artificial intelligence**  program and although they insisted that they had read each report in detail, Ms McPhee could not explain to my satisfaction why, in her report, she initially referred to the 'rural' location of the Applicant to justify the nature of supports recommended by her despite the Applicant living in an urban area,^[101] whether all the citations in the report had been checked for accuracy, and who inserted the words that the supports, as expressed by the Applicant, are the 'minimum necessary' to be funded by the NDIS.^[102] Ms McPhee said, although she was the author of the report, she does not recall using the words 'minimum necessary', but because the report was prepared with the assistance of an **artificial intelligence** program she could not rule out that the expression 'minimum necessary' may have been added by the program, or that her supervisor may have added the words without discussing it with her as author of the report.^[103] In any event, Ms McPhee, who is said to be the author of the report, was unconvincing in her evidence. The Applicant sought in closing submissions to explain and defend the use of  **artificial intelligence**  to prepare the respective reports.^[104] I did not take issue during the hearing or in the assessments with the principle of a practitioner utilising  **artificial intelligence**  to reduce to writing the observations and assessments made personally by the practitioner.^[105] The practitioner must, however, be responsible and accountable for the content of a report. My concern is that citations he used that had to be corrected by Mr Reilly, and conclusions were drawn by Ms McPhee and Ms Farnden of which the rational basis could not be explained to my satisfaction.^[106]

(e) I find that the written reports by Dr Collins and her oral evidence about the required supports for the Applicant were lacking in independence and expert-assessment.^[107] While I accept that Dr Collins can be guided by the lived experiences of the Applicant and the 'self-reported symptoms' of the Applicant,^[108] and the Applicant's research about expert opinions concerning her respective conditions may be cited by Dr Collins, I would expect for Dr Collins to adopt a greater position of independence and critical assessment when specific recommendations are made to this Tribunal for NDIS-funded disability supports. Recording symptoms as provided by the Applicant should not be confused with making expert recommendations about appropriate disability supports. The recommendations by a medical practitioner such as Dr Collins for expenditure of public funds ought

to carry weight but, in this case, Dr Collins only repeated what she had been given by the Applicant. Dr Collins confirms that she had received from the Applicant a list of supports that the Applicant believed she needed, and that Dr Collins basically repeated those in her report for this proceeding.

[109] In doing so, Dr Collins makes no mention of the impact of long COVID or other health conditions of the Applicant on the s 24 disabilities; Dr Collins speaks about the Applicant having 'deteriorated significantly' but she does not assess how the deterioration may impact on the necessity or value for money of the supports that she recommends; that the Applicant is presently bedbound due to extreme fatigue, and that 415 hours of physiotherapy are recommended but the Applicant continues to drive her own manual vehicle and would have to adhere to a very active and challenging treatment program if the recommendations of Dr Collins were to be adopted. Furthermore, the recommendations about the necessity and value for money of the disputed supports made by Dr Collins mostly fall outside of her expertise or her personal assessment of the Applicant and are merely a repeat of the list of supports she had been given by the Applicant. That undermines the credibility of Dr Collins' opinion and reduces the weight I can put on those recommendations.

(f) Finally, under rule 5(1) of the Transitional Support Rules, a support covered by Schedule 1 is subject to rule 5(2) to the effect that if the support is also covered by Schedule 2, it is not an NDIS support.

105. Item 3 of the disputed supports is not to be included in the SOPS of the Applicant due to it not being an NDIS support pursuant to s 34(1)(f), and, even if the supports were covered by Schedule 1, they are not necessary pursuant to s 34(1)(aa) or value for money pursuant to s 34(1)(c).

Item 4: Occupational Therapy

106. This disputed support entails 103 hours of occupational therapy per year, comprising: 60 hours for direct occupational therapy, including assistive technology assessments and report writing (more may be requested if other funding requests are not met and external replacement supports reports are needed additionally), 30 hours for home modification assessments, and 13 hours of hand therapy.

107. The first question is whether the disputed support is not an NDIS support pursuant to Schedule 2. The Applicant contends that the disputed support is not covered by Schedule 2. The Agency contends that some elements of the disputed support are covered by Schedule 2. I find that the disputed support is, unless otherwise stated below, not included in Schedule 2 as not an NDIS support. In general, therapeutic supports and home modifications are respectively covered by items 34 and 22 of Schedule 1. However, when the specific disputed supports sought by the Applicant are assessed, I agree with the Agency that some of the supports are covered by Schedule 2, and hence not an NDIS support.

108. The second question is whether the disputed support is an NDIS support pursuant to Schedule 1. The Applicant says the entirety of the disputed support is covered by items 7(b), 8, 9(g), 13(d), 15(d), 16(d), 18, 22(a) and (c), and 28(d) of Schedule 1. The Agency says that even if an aspect of the disputed support appears to be covered by Schedule 1, if the support also appears in Schedule 2, it is not an NDIS support. As explained above, I am satisfied that, in general, the disputed support is covered by Schedule 1, but, in assessing the needs of the Applicant, I find for reasons explained below that some aspects of the disputed support are not NDIS supports.

109. The next question is whether the disputed support satisfies all the other requirements of s 34(1). The Applicant says the disputed support is reasonable and necessary pursuant to s 34(1), whilst the Agency says aspects of the disputed support are reasonable, but with reduced hours to those proposed by the Applicant. The Applicant says she needs the disputed support to achieve some level of normality, to reduce her reliance on other supports, to mitigate her pain, to improve her bodily and mental health functions, and to achieve her NDIS goals.

110. The Agency contends that 52 hours per year for occupational therapy, consistent with the Applicant's current plan, is a reasonable and necessary support for the Applicant. As to the balance of this request: the Agency rejects any further provision of occupational therapy if other funding requests are not met, and external replacement supports reports are needed additionally; and the Agency maintains that 30 hours of occupational therapy for home modification assessments is not required because the Applicant's contemplated home modifications are

excluded as NDIS supports under Schedule 2. Also, the Agency considers that the evidence before the Tribunal suggests that the Applicant's current need for occupational therapy support is substantially reduced. The Agency considers that the Applicant's requests for occupational therapy assessments for assistive technology relate to items excluded by Schedule 2, and the Agency contends that 52 hours per year should be inclusive of all types of occupational therapy and associated reporting/assessment so as to limit supports to s 34(1)(aa) disability support needs.

111. I find that the disputed supports sought are not necessary to address the s 24 disability needs of the Applicant pursuant to s 34(1)(aa) or value for money pursuant to s 34(1)(c).

112. My reasons for this finding are:

(a) the allocated hours for occupational therapy must be assessed within the context of the other disability supports of the Applicant, for example, support worker assistance, exercise physiology, and physiotherapy. The Applicant has, in her calculation of supports and hours, included supports that overlap with, or even duplicate, other supports sought. I am not satisfied that the Applicant or any of the experts adequately explained to my satisfaction why the additional support is necessary. Such an overlap or duplication exceeds what is necessary or value for money in respect of her s 24 disabilities. The benefit sought to be achieved by the additional hours in proportion to the cost thereof and the availability of support in the current SOPS, does not present value for money as required under s 34(1)(c). The Applicant has not satisfied me that the current SOPS is not adequate for the Applicant to self-organise the support that she may find most beneficial at a particular time, taking into account her current physical and mental condition;

(b) the current SOPS allows for weekly occupational therapy at a time and choice of the Applicant. Such allocation of time is reasonable and necessary for the Applicant to achieve her NDIS goals and to self-organise the occupational therapy supports. The Applicant, supported by several health providers, seeks increased hours of support, but I am not satisfied that, in the current condition of the Applicant, the benefit she may achieve, in light of the risk to her health, the cost of the additional supports, and the increase in hours, is necessary or value for money. The evidence supports, in principle, this category of support for the s 24 disabilities of the Applicant, but the witnesses are not analytical of, or independent in respect of the increased support recommended. The respective experts seem to reflect, without critical assessment, the wishes of the Applicant rather than assess independently what is a necessary support, what overlaps, and what may be value for money. I am also concerned that some of the witnesses who recommend the increased support are likely to benefit from any such increase;

(c) the proposed assistive technology assessments at the home of the Applicant cover work that has been done for purposes of this hearing, with detailed proposals already being made for support to acquire assistive technology. For example, the amended Low-Cost Assistive Tech and Consumables schedule of 5 August 2025 covers in detail the assistive technology needs of the Applicant. I am not satisfied that the Applicant has shown that it is necessary for an additional assessment to be done, or that it is value for money to do a further assessment. I am, therefore, not positively satisfied, based on the evidence before me, that this aspect of the disputed support is sustained as being necessary or value for money;

(d) although the Applicant does not specify what specific assistive home technology she may need in future, I note that day-to-day living costs, lifestyle costs of a household, and standard home improvements, are not an NDIS support pursuant to items 1 and 4 of Schedule 2.

(e) 13 hours of hand therapy or a similar therapy is likely to be covered by the existing SOPS in respect of occupational therapy and physiotherapy supports. The provision of such a support as a separate category of support is at risk of duplication of support, and is not value for money in that the costs of the support have been established to be necessary relative to both the benefits achieved and the cost of alternative support. Added thereto, the outcome of the proposed support can be

achieved through the existing support provided to the Applicant and she can self-organise when she needs a particular support; and

(f) 30 hours of home modification assessments are not necessary or value for money since the evidence that sought to support the proposal was vague, and the proposed support is not an NDIS support pursuant to items 19(c) and (e) of Schedule 2.

113. I find that the disputed supports sought in item 4 are not to be included in the SOPS of the Applicant due to the criteria of s 34(1)(aa), s 34(1)(c), and s 34(1)(f) not being satisfied.

Item 5: Physiotherapy and Exercise Therapy

114. This disputed support entails Physiotherapy and Exercise Physiology of 415 hours (to be used flexibly between these services), comprising: 260 hours per year of exercise physiology; 155 hours per year of physiotherapy, including but not limited to: 26 hours per year for lymphatic drainage, 6 hours pelvic floor support, 18 hours Case Management, and 104 hours injury prevention. This includes approval for: manual therapy specifically for myofascial release provided by a qualified masseuse (to be used instead of a physiotherapist providing this service).^[110]

115. The first question is whether the disputed support is not an NDIS support pursuant to Schedule 2. The Applicant contends that the disputed support is not covered by Schedule 2. The Agency contends that some elements of the disputed support, for example the use of a masseuse or other massage therapists, are covered by Schedule 2. I find that the disputed support is, unless otherwise stated below, not covered by Schedule 2 as not an NDIS support. In general, physiotherapy and exercise physiology that are evidence-based are covered by item 34 of Schedule 1. However, when the specific disputed supports sought by the Applicant is assessed, I agree with the Agency that some support, for example a masseuse, is covered by item 10(a) of Schedule 2 and hence not an NDIS support.

116. The second question is whether the disputed support is an NDIS support pursuant to Schedule 1. The Applicant says the entirety of the disputed support is covered by items 7(b), 9(g), 16(a) and (d) 18, and 34 of Schedule 1. The Agency says that aspects of the disputed support are covered by item 34 of Schedule 1, but that some aspects are covered by Schedule 2, and hence those parts of the disputed support is not an NDIS support. As explained above, I am satisfied that, in general, the disputed support, if it is evidence-based, is covered by Schedule 1, but, in assessing the needs of the Applicant, I find that some aspects of the support sought are not NDIS supports.

117. The next question is whether the disputed support satisfies all the other requirements of s 34(1). The Applicant says the disputed support is reasonable and necessary pursuant to s 34(1). The Applicant says the disputed support is reasonable and necessary in light of her s 24 disabilities; there is adequate evidence that the disputed support is best practice for the s 24 disabilities, the disputed support can prevent further harm or injury to the Applicant, and the myofascial release is supported by the evidence.

118. I find that the disputed supports are not necessary or value for money under s 34(1)(aa) and s 34(1)(c). My reasons for this finding are:

(a) I am not positively satisfied based on the evidence that the additional supports sought by the Applicant are necessary pursuant to s 34(1)(aa). Whilst I accept that the Applicant wishes to be at liberty to self-organise the wide range of physiotherapy and exercise therapy supports, there is not adequate evidence to sustain the increased hours sought by the Applicant in light of her current disability support needs and the extent of her s 24 disabilities. The hours sought imply a high-intensity treatment regime that, in my assessment of the evidence, is not consistent with the description of the current physical and mental health conditions of the Applicant. The additional support also does not satisfy the s 34(1)(c) requirement of value for money. It was acknowledged in evidence that it may take the Applicant some time, likely many months or even longer, to return to the physical and mental state she was at in 2022/3 when the supports were sought.^[111] The Applicant is physically not in a state where the extent of the disputed supports are necessary or value for money.

(b) I am not satisfied that the additional hours of the proposed treatment program are necessary or value for money, in light of the current state of fatigue of the Applicant and the time it may take for her to recover to where she was prior to contracting COVID-19 in October 2024. The Applicant, and several witnesses, spoke about the impact long COVID and other health conditions have had on the Applicant since October 2024.^[112] The general opinion shared by the witnesses is that her condition has worsened substantially since October 2024. I noted during the hearing that the Applicant seemed to have had great difficulty participating in the hearing and she said she would require several days of sleep due to exhaustion. Mr Renner speaks in his report about other health conditions of the Applicant requiring therapy, being osteoarthritis, scoliosis, and Debilitating Symptom Complexes Attributed to Ticks (DSCATT).^[113] The proposed increased hours and the physical state of the Applicant to be able to actively participate in such a treatment program, as described by her and the respective witnesses, is disproportionate. Several witnesses spoke about the high level of fatigue of the Applicant; that she can barely leave her house, that she spends most of her time on her bed, that she is at risk of injury when standing up or walking, that she can injure herself just by moving around in the house, and that she experiences relentless pain. I am not satisfied that the additional hours of physiotherapy are necessary or value for money, in light of the impact of those impairments.

(c) It has not been shown that the increased supports sought are reasonable and necessary and value for money given that the Applicant can organise the existing supports in a way that best suits her current state. The increased supports sought do not adequately take into account the current state of fatigue of the Applicant, her limited mobility, her time to recover, and her risk of injury. If the Applicant recovers to a state where more extensive supports are reasonable and necessary pursuant to s 34(1), a variation of the SOPS may be sought, but, for now, I find that the additional disputed supports are not necessary under s 34(1)(aa) or value for money under s 34(1)(c).

(d) The proposed supports of 'masseuse' for myofascial massage and reflexology are not NDIS supports pursuant to item 10(a) of Schedule 2 and, therefore, do not satisfy s 34(1)(f).

(e) Some of the proposed physiotherapy treatments do not relate to the s 24 disabilities of the Applicant, for example to the treatment of lipo-lymphoedema. I note the evidence of Ms Connors that physiotherapy may assist simultaneously with aspects of the s 24 disabilities and lipo-lymphoedema,^[114] but the hours as allocated are, in my assessment, not necessary or value for money to the s 24 disability support needs of the Applicant. Ms Bootsma, who was not called to give evidence, speaks about the benefits of the treatment she offers to limit progression of the disease but without explaining to my satisfaction whether the support is clinical or therapeutic in nature. Ms Bootsma adds that the management of lipedema includes 'liposuction' and a 'relevant diet'.^[115] Ms Bootsma also explains the use of a pneumatic compression pump, which is one of the supports sought by the Applicant, but I note this condition does not form part of the s 24 disabilities of the Applicant. I also note above there are several other health conditions for which the Applicant requires physiotherapy treatment. In this respect, I also note the opinion of Ms Borman that the pelvic physiotherapy sought by the Applicant is related to her vulvodynia, which is not a s 24 disability.^[116] Added thereto, Ms Borman raised the possibility of dietary changes as well as acupuncture to address the s 24 disabilities.^[117]

(f) I find that there is inadequate evidence about what proportion of the additional hours sought relates to the s 24 disabilities of the Applicant, and hence I am not positively satisfied that those additional hours are necessary or value for money under s 34(1)(aa) and s 34(1)(c).

119. I find that the additional item 5 supports sought are not to be included in the SOPS of the Applicant due to s 34(1)(aa) and s 34(1)(c) not being satisfied.

Item 6: Support Coordination

120. This disputed support entails Support Coordination: 50 hours per year for Level 2 (30 hours) and Level 3 (20 hours) complex support coordination. The current SOPS includes level 2 support. The Applicant seeks Level 3 support due to the complexity of her conditions as well as the possibility to relocate to a more suitable dwelling.

121. The parties agree that the disputed support is an NDIS support covered by item 33(d) of Schedule 1. I find that the disputed support is covered by 'support coordination' as recognised as an NDIS support in items 33 of Schedule 1. The disputed support anticipates building the capacity of the Applicant to connect with supports, to understand and utilise her SOPS, to connect with providers and mainstream supports, and to address barriers and reduce complexity in the support environment.

122. The parties disagree about the appropriate level of support coordination in light of the s 24 disabilities of the Applicant. The Applicant says the complexity of her needs requires Level 3 support coordination,^[118] whilst the Agency says the Applicant only meets the requirements for Level 2 support coordination. I must ascertain if Level 3 support is reasonable and necessary in light of s 34(1) given the s 24 disabilities of the Applicant.

123. The Applicant says that Level 3 support is reasonable and necessary by the complexity of her health conditions, the amount of paperwork required, the coordination of several supports, possible relocation to a more suitable residence, and managing the complexity of the NDIS process.^[119] The Applicant explains how difficult a day is in her life, and the supports she requires just for some level of normal functioning.^[120] The Agency says the Level 3 support has not been shown to be reasonable and necessary in the context of the s 24 disabilities of the Applicant.

124. I find that the requested support for Level 3 is not reasonable and necessary in light of the specific s 24 disabilities of the Applicant. I find so for the following reasons:

- (a) Level 3 coordination support is for a level of complexity that it not necessary in light of the s 24 disabilities of the Applicant. I accept that the Applicant overall has complex supports needs, but I am limited to consider her supports needs pursuant to s 34(1) as they arise from the s 24 disabilities. The evidence before me is inadequate to be positively satisfied that Level 3 support for the Applicant is necessary or value for money. I do not accept the opinion of Ms Connors that Level 3 support is necessary^[121] because Ms Connors does not explain to my satisfaction why the current level 2 support is inadequate and why level 3 support is necessary or value for money in respect of the s 24 disabilities of the Applicant. It seems as if Ms Connors merely reflects what she had been told about the needs of the Applicant rather than to form her own, independent opinion.
- (b) The Applicant is high functioning in terms of coordinating and communicating, and she effectively coordinates her respective supports with and without NDIS support coordination. This is illustrated by the close interaction of the Applicant with the respective support providers, her providing them with reading material about her health conditions, and her assisting them with the production of reports for the purposes of this proceeding. She articulated herself well during the hearing, kept notes, engaged constructively in examination of witnesses, settled the closing submissions, and sometimes presented her case without the assistance of Ms Bye. I am not satisfied that the increased coordination support for Level 3 is necessary to meet the current s 24 disability needs of the Applicant, or that it is value for money in light of her ability to self-articulate and her use of the Level 2 supports.
- (c) I am not comfortably satisfied that the Applicant has demonstrated with adequate clarity and specificity what the shortcomings are of the current Level 2 support coordination and what is sought from the Level 3 support coordination as far as the s 24 disabilities are concerned. I must be satisfied that the proposed increase of support at Level 3 satisfies the requirements of s 34(1)(aa)-(f), and I find that it is not necessary or value for money.

125. I find that the disputed item 6 supports, particularly Level 3 support sought, are not to be included in the SOPS of the Applicant since s 34(1)(aa) and s 34(1)(c) are not satisfied.

Item 7: Support Worker Assistance

126. This disputed support entails Support Worker Assistance: 47 hours per week. This includes, but is not limited to, 10 hours per week to access the community, 2 hours per week for assistance to clean car and carry out safety checks, 2.5 hours per week for meal preparation, plus delivery service, and a laundry service.^[122]

127. The parties agree that the disputed support is an NDIS support covered by Schedule 1. I find that the disputed support is covered by items 6(a), 14(a), (d) and (e); 15(d), (f) and (g); 23, and 27 of Schedule 1.

128. The parties disagree about the nature and extent of support to be provided, with the Agency proposing an additional 2 hours per week as being reasonable and necessary supports. The Applicant says due to the complexity of her s 24 disabilities, the supports as requested, are justified. The Applicant says she needs the support to 'cover all areas of daily living, hygiene & domestic tasks, meal preparation & delivery, administration & social and community participation, etc.' The Agency says the level of support in the current SOPS is reasonable and necessary, but that the additional supports sought are not necessary, it seeks to cover support not related to the s 24 disabilities, and it is not value for money.

129. The Agency proposes that an additional 2 hours per week of support worker assistance be added to the SOPS in addition to the current 15 hours per week. The Agency submits that the additional 2 hours per week is reasonable and necessary in accordance with s 34(1). I am not comfortably satisfied that the evidence supports an increase in the support worker assistance, even though a very limited increase is proposed by the Agency. I must be satisfied that the proposed additional 2 hours per week are addressed at a specific support need under s 34(1) that cannot be satisfied by the current 15 hours per week. This is considering that the Applicant seeks 47 hours per week. I am not satisfied that an increase in support is necessary or value for money in light of the impairments of the Applicant consideration her s 24 disabilities. I find so for the following reasons:

(a) The disputed supports do not delineate, with adequate clarity, the supports that relate to the s 24 disabilities of the Applicant and support for the other health conditions of the Applicant. Although I accept that the Applicant experiences several other physical and mental health conditions, my function is limited to consider supports within the context of the s 24 disabilities and the application of s 34(1). The additional support sought is not necessary in respect of the s 24 disabilities and it is not value for money due to the risk of overlap with other supports and the lack of demonstrated benefit to be achieved.

(b) On proper analysis and consideration, the evidence does not support a finding that it is necessary to increase the support worker assistance. The Applicant explained that, since the proceedings commenced in the AAT and later in the ART, substantial supports resources had been consumed by the litigation process. With the legal proceeding now concluded, those supports can be redirected by the Applicant to where she most needs it. This finding does not preclude the Agency to add, if the circumstances justify, additional hours of support work when a review of the SOPS is done.

(c) The disputed supports overlap with other supports sought, for example, the Applicant seeks assistance with meal preparation and laundry services but, under another item, she seeks home delivery meal services and support worker assistance with laundry. Added thereto, whilst I note that the Applicant may prefer a meal delivery service, I must consider what is necessary as well as what is best value for money and how different supports can be integrated and coordinated. The current allowance in the SOPS for assistance with food preparation reflects the needs of the Applicant who says she does not eat much, it provides her an opportunity to socially interact with the support worker, it enables her to be part of the food preparation when the support worker is on site and thereby achieve her NDIS goals, it enables her to make decisions about her dietary needs, and is necessary as well as being value for money as submitted by the Agency.^[123] The evidence is unpersuasive that the additional disputed supports are necessary or value for money.

(d) The disputed support such as car cleaning and safety checks on the car is not covered by Schedule 1 or Schedule 2. I do not accept the submission of the Applicant that this requested support

is covered by Schedule 1, item 6. It is therefore not an NDIS support. Even if this service was an NDIS support, I find that it is not necessary for purposes of the s 24 disabilities of the Applicant. This requested support again highlights the inconsistency in evidence I highlighted above about the use of a manually operated vehicle by the Applicant. On the one hand, the evidence is that the Applicant is at high risk to walk, to stand, to self-injure, to move, or to be in public transport, while, on the other hand, the evidence is that the Applicant self-drives the vehicle, gets in and out unassisted, uses manual-gears, and parks unassisted at her home and at service providers. I am not satisfied that even if the supports sought were an NDIS support, that it is necessary in light of the current physical and mental impairments of the Applicant pursuant to the s 24 disabilities or value for money for an additional resource to wash and clean the car.

(e) Elements of the disputed support, for example hairdressing and a nail technician, are covered by item 5(d) and (e) of Schedule 2 as not an NDIS support.

(f) I am not comfortably satisfied that, based on the evidence, a home meal delivery support is necessary to address the s 24 disabilities of the Applicant, that it offers value for money given the alternative options, or that it does not duplicate a support already in the SOPS of the Applicant.^[124]

Mr Cheok speaks about the limitations of the Applicant preparing her own meals ‘independently’,^[125] but this does not reflect that support is already made available to the Applicant to assist her with meal preparation and for her to be part of the process of determining her dietary needs and preferences. Mr Cheok says the Applicant can injure herself with basic kitchen utensils, but there is inadequate evidence before me of such injuries having occurred, or of their treatment. Ms Connors says that home delivery is a ‘cost-effective alternative’,^[126] but without her providing a detailed calculation to sustain her conclusion. It seems as if Ms Connors merely repeated what she had been told by the Applicant. The evidence before me is unpersuasive that a meal delivery support is necessary, or value for money in comparison to the current arrangement based on personal support preparation for meals.

(g) The Applicant describes herself as ‘very detailed’, ‘highly anxious’, and ‘very demanding’.^[127] Although I must make a decision in respect of the current s 24 disability supports that are reasonable and necessary as far as the Applicant is concerned, I must also approach the answer to the question objectively to ascertain what supports are necessary based on the evidence of the s 24 disabilities of the Applicant. While the Applicant may, as a result of her personality, demand greater support, I am not satisfied that the additional support sought is necessary.

(h) I am not satisfied that what the Applicant refers to as ‘outsourced services’ – for example, a hairdresser, laundromat, carwash, dishwasher, and nail technician – are ‘cheaper’ as support cost since the Applicant has not shown that she has reduced the support hours in other categories of her SOPS commensurate to these new requested supports, and there is no empirical basis for the proposition put by the Applicant that the request is value for money.

(i) I am therefore not comfortably satisfied that the disputed support, as sought by the Applicant in addition to the support provided for in the current SOPS, is a necessary support or value for money.

130. I find that the requested support for the increase in support worker is not necessary as required by s 34(1)(aa) or value for money as required by s 34(1)(c). For the reasons set out above, none of the other item 7 supports sought are to be included in the SOPS of the Applicant.

Item 8: Funding period to continue after 12 months

131. This disputed support entails that the Applicant seeks assurance that the SOPS, as approved, will continue for longer than 12 months. The Agency says the s 33(2C)(b), read with s 33(2D)(a), provides that the SOPS of a participant is for a maximum period of 12 months. The request of the Applicant for supports to automatically roll

over from one funding period to another, or to be included in the SOPS for an undetermined period that exceeds 12 months, is not consistent with the NDIS Act.

132. I find that the requested support must be dismissed because it is inconsistent with the statutory provisions since there is no power to approve an NDIS support on an ongoing basis for an undetermined period.

133. Item 8 is not to be included in the SOPS of the Applicant.

Item 9: Low-Cost Assistive Technology and Other Consumables

134. This disputed support entails what the Applicant calls 'proposed future spending' of a wide range of around 55 items. The current SOPS of the Applicant includes \$1000 per year for expenditure of this nature. The list of requested items was finalised by the Applicant at my direction on 5 August 2025 and then amended at the closing of the hearing. The Applicant emphasises that the supports sought are not 'income replacement' under item 24(c) of Schedule 2 as submitted by the Agency, but rather supports covered by Schedule 1 to enhance capacity building. The Applicant says the supports are covered by Item 7 (b) and (c), Item 8, Item 9 all except (d), Item 11, Item 13, Item 14 especially (a), (d) and (e), item 16(a) and (d), item 22 (a) and (c) and item 28(a) of Schedule 1.

135. The list, as provided by the Applicant, entails the following:

Low-cost assistive tech and consumables – V. Butler, August 2025		
Proposed Future Spending		
LOW-COST ASSISTIVE TECH & CONSUMABLES	COST	HOW OFTEN
PRIORITY ITEMS		
Vehicle Window Tinting - see quote from TKO ... see letter from cardiologist Dr Lee, see optometrist letter, see OT recommendation. [(not necessary or value for money 34(1)(aa) and (c)]	\$725.00	ONCE
SmartCrutch Set -forearm crutches as recommended by EDS society and IME OT and physio [(not necessary or value for money 34(1)(aa) and (c)]	\$350.00	ONCE
Appliance Slide Boards for heavy appliances [2: 12(e)]	\$39.95	ONCE
CUSTOM SILVER RING SPLINTS - per HULC OT recommendations (\$20-\$50 ea) [2: 12(e)]	\$30.00	AS REQUIRED
Front Closure Bras (3 per year) - Big Girls Don't Cry [2: 5(c)]	\$59.95	REPEAT
Smart switches- for AT appliances (TV, vacuum, dishwasher, hydrosense etc (6) [2: 1(e)]	\$395.70	ONCE
Sensibo Air Pro AC smart controllers x 2 (living and bedroom) - see letter/quote from JK Automation	\$740.00	ONCE

Laptop riser/board (flexi pad) [2: 1(e)]	\$149.95	ONCE
Automatic Water Mister (fruugo or amazon) [2: 1(e)]	\$74.00	ONCE
Smart Watch with Fall Detection & Emergency Process (and software?) - as recommended by OT and ex physio RL/Biosymm - medAlert Personal Medical Alert Watch 4G with GPS [2: 4(f)]	\$499.00	ONCE
label maker - DYMO Label Maker with Adapter LabelManager 420P High-Performance Label Maker, Rechargeable, PC and Mac Connectivity, Bright Backlit Display, Easy-to-Use, Portable, for Home & Office Organization [2: 4(f)]	\$159.38	ONCE
A4 laminator [2: 4(f)]	\$21.00	ONCE
smarten existing curtains x 1 in bedroom and x 1 in living room with (And installation) [2: 1(e)]	\$279.98	ONCE
Pen grips - for when i need to write/sign a document personally [not necessary 34(1)(aa)]	\$21.85	AS REQUIRED
Warming Placemat or Insulated Meal Warmer (adwin) [2: 1(i)]	\$55.90	ONCE
Sonic Flosser [2: 1(i), [2: 6(b); (not necessary 34(1)(aa)]	\$169.00	ONCE
Stickman Communication Cards/magnets – [2: 1(i), [2: 6(b); (not necessary 34(1)(aa)]	\$200.00	AS REQUIRED
Arm strap device for holding phone to my arm without using hands. [2: 1(i), [2: 6(b); (not necessary 34(1)(aa)]	\$18.38	ONCE
pot plant self-watering spikes – each [2: 1(i)]		ONCE
The Pan Buddy (pot handle holder) x 2 [2: 1(i)]	\$81.00	ONCE
circadian rhythm sleep RETIMER glasses - please see sleep OT letter [2: 12(e)]	\$299.00	ONCE
REPLACEMENT SUPPORTS		
Smart Retic - rainbird RC2 [2: 1(e)], [2: 6(b); (not necessary 34(1)(aa)]	\$310.00	ONCE

Electric Automated Kitty Litter Receptacle [2: 1(i), [2: 6(b); (not necessary 34(1)(aa)]	\$421.00	ONCE
WEARABLE SUPPORT		
Custom Orthotics - 1 pair annually - as recommended by podiatrist and OT [2: 5(c)]	\$400.00	REPEAT
Incontinence Underwear - Modibodi reusables- every 2 - 3 years - 14 pairs (2 a day) [2: 5(c)]	54.99ea	REPEAT
Custom Compression Garments - 2 pairs every 12 months - as recommended by rheumatologist, cardiologist, physios, OTs, GP - please see CAEP and Lipodema physio letters [2: 5(c)]	\$1,760.00	REPEAT
Custom Wrist Splints (L & R) - every 5 - 8 years - as recommended by hand OT from HULC (2 different types) – varied prices [2: 5(c)]		AS REQUIRED
Body Braid (reg CORE) [2: 5(c)]	\$299.00	ONCE
Neck Pillow - TRTL pillow plus (tall) - [2: 5(c)]	\$134.99	ONCE
Zippered Podiatrist Recommended Shoes - every 2 years - Every Human zippered orthopaedic sneakers [2: 5(c)]	\$145.00	AS REQUIRED
Elastic laces [2: 5(c)]	\$7.99	AS REQUIRED
extra-large adults bib for spills [2: 1(i)]	\$17.99	ONCE
HOT/COLD/THERMO SUPPORT		
cooling blanket - nuvo dreams cooling blanket – queen [2: 1(i)]	\$149.99	ONCE
Hot/Cold Pack for Neck/Shoulders [2: 1(i)]	\$208.00	AS REQUIRED
Thermal Compression Gloves – Thermoskin [2: 1(i)]	\$24.95	AS REQUIRED
Heated Vest - Dick Smith [2: 1(i)]	\$60.99	ONCE
neck fan [2: 1(i)]	\$100.50	ONCE
KINDLE 6" 2024 model [2: 4(d)]	\$199.00	ONCE
Kindle Page Turner (remote) – Sycelu [2: 4(d)]	\$29.99	ONCE
Kindle 6" reactive cover [2: 4(d)]	\$49.95	ONCE
CONSUMABLES - needed every plan on repeat		

Compounded Electrolytes – quarterly [2: 3(a)]	\$200.00	REPEAT
Meal Prep Freezer Containers & lids x 50 (500ml) [2: 3(a)]	\$17.00	REPEAT
Labels for Meal Prep [2: 3(a)]	\$31.90	REPEAT
Chemical Exfoliation Glycolic Gel - every 6 months - Rare Beauty by Selena Gomez Find Comfort Gentle Exfoliating Body Wash [2: 5(d)]	\$48.00	REPEAT
Non Chemical Sanitary Wipes - GAIA Biodegradable Water Wipes 560 Count 8 x 70pk [2: 5(c)] Covid/Flu Test kits for SW (pack of 5) - required weekly [2: 12(e)]	\$44.72	REPEAT
Covid Proof Disposable Masks (NK95 x 100)- (one per shift) to keep me and my support workers safe from covid, cold, rsv and other flus [2: 12(e)]	\$29.94	REPEAT
Disposable Gloves - for SWs [2: 12(e)]	\$64.00	REPEAT
Replacement filters for Plasma Air Filter x 1 - every 2 years - to reduce chances of infection [2: 1(g)]	\$14.80	REPEAT
Google Workspace - annual - allows me to do spreadsheets and word documents with voice to text (2: 4(e))	\$168.00	REPEAT
Audible - annual - cannot hold a book open or turn pages without dislocation risk, allows me to listen to books [2: 4(f)]	\$144.00	REPEAT
CAMSCAN - annual - allow me to easily manage folders and folios of paperwork visually, [2: 4(f)]	\$60.00	REPEAT
WHEN I GET THE WHEELCHAIR		
Boot Bumper Protector for my car/wheelchair (The Bootflap) - to protect my car from wheelchair damage as it is taken in and out over the lip [2: 6(b)]	\$76.18	ONCE
internal boot protector - to protect interior of boot from wheelchair [2: 6(b)]	\$145.64	ONCE

Wheelchair Accessories (cushion etc) - please see OT report and quote from wheelchair provider [2: 6(b)]		AS REQUIRED
collapsible buggy for outdoor activities (can be used with wheelchair?) - long handle? [2: 6(b)]	\$169.90	ONCE
TOTAL	\$10,138.83	

136. The first question is whether the disputed support is not an NDIS support pursuant to Schedule 2. The Applicant contends that the disputed supports are not covered by Schedule 2. The Agency contends that there is no power to approve supports on an 'ongoing basis', and the disputed items are principally of an income supplementation nature which is not an NDIS pursuant to item 24 of Schedule 2.^[128]

137. I find, after I have considered each of the requested supports, that the disputed supports are not NDIS supports or, even if they are, that they are not reasonable and necessary. I do not dispute that the Applicant may find it useful for these supports to be included in her SOPS,^[129] but I must apply the statutory criteria to determine if the supports are reasonable and necessary as intended in s 34(1).

138. Due to the large number of requested items, I have indicated in each column, in bold, the relevant statutory provision that either excludes the support as an NDIS support, or is the other criteria that I am not satisfied is met to enable the support to be funded. It is for the Applicant to satisfy me that the disputed support item falls within s 34(1). I do not agree with the Agency that the supports it has identified as income replacement under item 24(c) of Schedule 2, are properly categorised as such. Given the level of specificity by which the non-NDIS items are identified in Schedule 2, I am not satisfied that item 24(c) of Schedule 2 can be relied on in a generalised way for me to find that a support is not an NDIS support. It is, however, for the Applicant to satisfy me that each of the supports sought is a support that satisfies s 34(1). I am not satisfied any of the disputed supports are necessary or value for money in light of the s 24 disabilities of the Applicant. The reasons for this finding are:

(a) The disputed supports lack clarity and specificity in respect of how the respective items are NDIS supports for purposes of the s 24 disabilities of the Applicant. I can understand that the Applicant may find the respective items useful, but the evidence does not sustain a positively satisfied finding that the supports sought are necessary in light of the s 24 disabilities of the Applicant and value for money under s 34(1)(aa) and 34(1)(c).

(b) Some of the disputed supports were mentioned in evidence, for example, window tinting for the vehicle, smart switches, smart watch, custom wrist splints, hot/cold pack, Kindle page turner, electric automated kitty litter receptacle, and incontinence underwear, appear like a general list of useful things to have rather than evidence-based supports that satisfy the s 34(1)(d) requirement. The requested disputed supports are not supported by adequate evidence in respect of how those supports are necessary, value for money, or current good practice under ss 34(1)(aa), (c) and (d) in light of the s 24 disabilities of the Applicant.

(c) Some disputed support items are not NDIS supports and, even if they were NDIS supports, the evidence is not adequate to conclude with positive satisfaction that these items are necessary supports or value for money supports in respect of the s 24 disabilities of the Applicant.

139. None of the item 9 supports are to be included in the SOPS of the Applicant.

Item 10: Capital funding

140. This disputed support entails that the Applicant seeks Capital Funding (According to Quotes Provided): including, but not limited to, Intense, Pulsed Light hair treatment (IPL),^[130] car window tinting, power assist manual wheelchair, sit-to-stand chair, and a compression pump.

141. The Applicant contends that all the capital funding items are NDIS supports under Schedule 1. The Agency contends that some of the capital funding supports are not NDIS supports under Schedule 2, those that are NDIS supports under Schedule 1 are not reasonable and necessary; and even if they are necessary, they do not offer value for money.

142. I will assess the respective capital funding disputed supports by item:

(a) I find that the disputed support for IPL is not an NDIS support and, therefore, s 34(1)(f) is not satisfied. I do not accept the submission of the Applicant that this is covered by item 9(b) of Schedule 1 to the exclusion of Schedule 2.

(i) Firstly, the support is covered by item 5(d) of Schedule 2 which excludes it;

(ii) Secondly, even if the support is covered by Schedule 1, the support is not necessary in light of the s 24 disabilities of the Applicant;

(iii) Thirdly, the support overlaps with other support worker assistance already included in the SOPS of the Applicant;^[131] and

(iv) Finally, the support is not value for money in light of the s 24 disabilities of the Applicant. I do not accept the opinion of Ms Connors who says that IPL is 'cost effective'^[132] since she has not provided a cost-assessment to explain how she had reached the conclusion. I also do not accept the opinion of Mr Cheek that shaving or waxing is not suitable or that the support worker may not turn up to assist the Applicant. Both experts seem to have repeated merely what they had been told by the Applicant of her needs, rather than conduct an independent assessment.

(b) I find that the disputed support for car window tinting is not excluded as an NDIS support by Schedule 2. The reference to vehicles in Item 6(b) of Schedule 2 is not specific enough to exclude window tinting of a vehicle. I accept the submission of the Applicant that this support may be covered by item 35 of Schedule 1. However, the support is not reasonable and necessary for the s 24 disabilities of the Applicant. The support is not necessary in light of the s 24 disabilities of the Applicant since it is not clear how often she drives, what her current capacity to drive is, how far she drives, what alternatives have been attempted, and how long she spends inside the car, what time of day she drives, for how long she is exposed to the sun, and how sensitive she is to the sun while she is exposed during driving. The requested support is also not value for money in light of the s 24 disabilities of the Applicant. Mr Cheek refers to the Applicant driving the car with untinted windows as 'an issue',^[133] but that falls short to satisfy me that it is value for money in light of the current condition of the Applicant. Given the observations I made earlier in respect to the car-driving ability of the Applicant considering the current impairments, there is inadequate evidence to include this support in her SOPS since it would not be value for money and the little time she spends driving does not render the support necessary. I find that s 34(1)(aa) and s 34(1)(c) are not satisfied.

(c) I find that the capital funding for a power assist wheelchair is covered by Schedule 1, but does not satisfy ss 34(1)(aa) or (c):

(i) Firstly, the evidence before me is ambiguous as to the needs of the Applicant, namely for a light-framed manual propelled wheelchair or for the powered wheelchair.

^[134] Mr Cheek is adamant in his opinion that a powered wheelchair is essential, while Ms Connors spoke of the utility of a light framed, manually propelled wheelchair. I note the NICE aids includes the possibility of a wheelchair as support for the s 24 disabilities

of the Applicant,^[135] but in this proceeding there is no agreement what type of wheelchair, whether the Applicant can utilise a wheelchair, or how necessary a wheelchair is in the circumstances of the Applicant;

(ii) Secondly, the evidence before me is that the Applicant moves in her house by walking and, if needed, supporting herself against furniture or a wall without any other mobility aids;

(iii) Thirdly, none of the wheelchairs have been tested in her house to see if it can be operated safely and adequately;

(iv) Fourthly, the evidence about the external use of the powered wheelchair does not satisfy me because it is, on the one hand, proposed that the Applicant could, by way of a lift, load the wheelchair on or into her car, while, on the other hand, it is said that the Applicant is so fatigued, in such constant pain, and at such a high risk of accidental injury, that the safe external use of either of the wheelchairs remains uncertain; and

(v) Fifthly, it is not clear how the Applicant would be able to utilise a wheelchair for activities such as going for picnics, going to the beach for fish and chips,^[136] and following her father on the farm, in light of evidence that she has difficulty standing up, she may even lose consciousness when standing up from a chair at home, and she is sun and heat sensitive.

In light of such a risk of injury, the necessity of either of the wheelchairs and the safe use thereof have not been established by the evidence. I am furthermore not satisfied that the powdered wheelchair of around \$34,000 is value for money in light of the s 24 disabilities of the Applicant, the confines of her house, the limitations of her moving outside, and the risks to her health should she lose consciousness when driving a car or using the wheelchair unassisted. I find that s 34(1)(aa) and s 34(1)(c) are not satisfied.

(d) I find that the sit-to-stand chair^[137] is covered by Schedule 1, but it is not reasonable and necessary in the circumstances of the Applicant. I accept that a sit-to-stand chair may fall within the support items of Schedule 1 item 7, but it does not satisfy s 34(1)(aa) or (c) to address the needs of the Applicant arising from the s 24 disabilities.

(i) Firstly, the evidence before me is contradictory where, on the one hand, it is said that the Applicant has difficulty standing up, and she may lose her consciousness when she stands, she cannot use walking aids due to a risk of injury, or she may injure herself when she stands up, while, on the other hand, it is said that the Applicant drives the car on her own, she parks unassisted, she attends appointments independently, and returns home where she parks her car.^[138] The level of independence of the Applicant driving her own car and attending appointments, while on the other hand not being able to stand up from a chair at home without the risk of injury, is contradictory.

(ii) Secondly, I am not satisfied that the sit-to-stand chair is necessary in light of the s 24 disabilities of the Applicant since the Applicant can perform many other functions without assistance, for example getting up from bed, getting into and out of the car,^[139] going to the toilet, and attending appointments where she sits, lays down, and stands up;

(iii) Thirdly, I am not satisfied that the sit-to-stand chair represents value for money since the evidence about the nature and extent of the s 24 disabilities is ambivalent, and alternatives to a designed chair have not been adequately explored; and

(iv) Fourthly, Mr Cheok sought to justify the sit-to-stand chair based on the tallness and the length of the limbs of the Applicant, but her physical frame is not a s 24 disability.

(v) I find that s 34(1)(aa) and s 34(1)(c) are not satisfied.

(e) I find that the compression pump is covered by Schedule 1, but it is not reasonable and necessary in the circumstances of the Applicant. The pump is described as intended for 'lymphatic drainage' and that it would allow the Applicant to have 'more autonomous' management of her 'lipedema and pain'.^[140] Although the use of the pump may have secondary benefits to the Applicant, the evidence is inadequate for me to be satisfied that the pump is necessary for the s 24 disabilities of the Applicant. I am also not satisfied that the support is value for money since the evidence is ambiguous as to why the additional support is required in light of the other supports already in the SOPS. The disputed support does not satisfy s 34(1)(aa) and (c).

143. None of the item 10 supports are to be included in the SOPS of the Applicant.

Item 11: Capital Funding for Home Modifications

144. This disputed support entails that the Applicant seeks Capital Funding for Home Modifications (supply and install); being an air conditioning unit and a dishwasher.

145. The Applicant says these home modifications are NDIS supports and are necessary to address her daily impairments giving rise to the s 24 disabilities.^[141] The Applicant explains why the respective supports are needed, how the support seeks to an impairment that gives rise to a s 24 disability, and why the support is value for money, necessary, and current good practice. The Agency says the supports are either not NDIS supports pursuant to Schedule 2, or, if they are covered by Schedule 1, then they are not reasonable and necessary in respect of the specific needs of the Applicant.

146. Below, I assess each of the supports sought on the basis of the evidence before me:

(a) Air-conditioning: The Applicant contends that Schedule 1, item 3(b), Item 9, item 14, item 22, item 23, and item 27 cover home air-conditioning. The Agency says the support is not an NDIS support pursuant to item 1(e) of Schedule 2 and, even if the support is covered by Schedule 1, it is not necessary for the Applicant within the meaning of s 34(1)(aa). I find that the support is covered by item 1(e) of Schedule 2 as a standard home improvement and is therefore not an NDIS support. I therefore find that s 34(1)(f) is not satisfied. Even if it was an NDIS support pursuant to Schedule 1, I am not satisfied that it is necessary to install air-conditioning in state-housing without a detailed assessment of why another form of plug-in air-conditioning or other options are not a suitable and value for money support. I also note that the Applicant is seeking a more suitable dwelling. I am not satisfied that s 34(1)(c) or s 34(1)(aa) is satisfied. Dr Derham says the Applicant suffers from poor thermoregulation and therefore she needs air-conditioning and window tinting of her car.^[142] Mr Cheok also says the Applicant is extremely sensitive to variations in temperature. Mr Cheok adds that the Applicant does not have blackout blinds or roller blinds and therefore lacks privacy.^[143] I note the reference by the Applicant to the case of *McKenzie and National Disability Insurance Agency* [2019] AATA 3275 in support of her seeking an air-conditioner.^[144] I must, however, assess the specific disability supports needed by the Applicant and conclude that those do not meet the s 34(1) thresholds of being necessary or value for money. The evidence is inadequate to give me comfortable satisfaction that the support is necessary, or value for money when compared to other options that may assist with air-temperature regulation. The disputed support does not satisfy s 34(1)(aa) and (c).

(b) Dishwasher: The Applicant contends that Schedule 1, item 3(b), item 8(b), 9, item 22, and item 23(c) cover a dishwasher. The Agency says the support is not an NDIS support pursuant to item 1(e) of Schedule 2. I agree with the Agency. The dishwasher is covered by item 1(e) of Schedule 2 as a standard home improvement and is therefore not an NDIS support and I therefore find that s 34(1)(f)

is not satisfied. I also note that the Applicant has included in her SOPS support worker assistance for home duties that may include washing.

147. None of the item 11 supports are to be included in the SOPS of the Applicant.

DECISION

148. The Tribunal affirms the decision under review, pursuant to subsection 105(a) of the *Administrative Review Tribunal Act 2025* (Cth).

149. *I certify that the preceding 148 (one hundred and forty-eight) paragraphs are a true copy of the reasons for the decision herein of Senior Member De Villiers.*

.....[SGD].....

Associate

29 August 2025

Date(s) of hearing:

4, 5, 6 August 2025

Applicant:

**Self-represented
Ms Glenda Bye, People with
Disabilities WA**

Solicitors for the Respondent:

**Dr Michael Taylor of counsel
Ms Diyanna Mimitas, Maddocks
Lawyers**

^[1] R.HB, pp 224-33.

^[2] Applicant email dated 31 July 2025 as amended by Applicant email dated 12 August 2025.

^[3] R.HB, pp 109-17.

^[4] Email 31 July 2025 marked exhibit 'SD'.

^[5] R.HB, p 55. Appl.Closing, p 1.

^[6] R.HB, pp 1268-71.

^[7] R.HB, p 786.

^[8] R.HB, pp 506, 518-20.

^[9] Although the Applicant says that she does not require any additional NDIS-supports for Covid-related impairments (Appl.Closing, p 2) or for any of the other conditions, several of the witnesses spoke about how the condition of the Applicant has worsened as a result of long COVID as well as the impairments caused by other health conditions. I am, therefore, required to take into account in my assessment only of what is a reasonable and necessary supports for the s 24 disabilities, and not supports for the possible impairments caused by long COVID, and other health conditions which are not s 24 disabilities. In this respect, I concur with the Agency that the other

impairments may contribute to the s 24 disabilities, but that I should not conflate all impairments into s 34(1) supports as being reasonable and necessary. See Agency.Closing, p 3.

[10] The Applicant says in oral evidence she was diagnosed with the condition at around eight years of age.

[11] R.HB, pp 1404-5. Ms McPhee sets out in her report the health team as provided to her by the Applicant: R.HB, pp 1128-9; A.HB, pp 5-149.

[12] R.HB, pp 99-108.

[13] R.HB, pp 1625-1626.

[14] R.HB, p 57.

[15] R.HB, p 196.

[16] R.HB, p 1168, 191-207. The Applicant provides in several documents an overview of the treatment she had had over the years. A comprehensive overview completed by the Applicant in 2022 for the NDIS is found in R.HB, pp 320-405.

[17] R.HB, p 19.

[18] R.HB, p 57.

[19] R.HB, p 54.

[20] R.HB, p 545.

[21] Confirmed by Applicant in email dated 31 July 2025. The parties at the conclusion of the hearing filed an amended statement of disputed supports after some of the disputed items in the list of 31 July 2025 had been removed or agreed. This list of disputed supports, dated 12 August 2025, reflects the disputed supports for determination. The Applicant says that these supports should not be seen as her being 'greedy', but that she attempted to identify holistically all her disability supports needs arising from the s 24 disabilities. Appl.Closing, p 6.

[22] LCATC.

[23] R.HB, p 30-31, 41-53. The Agency in closing submissions proposed an additional 2 hours of support worker.

[24] *McGarrigle v National Disability Insurance Agency* [2017] FCA 308 ('**McGarrigle**').

[25] *Ibid.*, [91].

[26] *National Disability Insurance Agency v WRMF* [2020] FCAFC 79 ('**WRMF**').

[27] *Minister for Home Affairs v G* [2019] FCAFC 79, [18].

[28] [1979] AATA 179 (1979); 2 ALD 634.

[29] [2018] FCA 1229.

[30] *Ibid.*, [171].

[31] *Re Drake and Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634, [635]. Under [Rule 7 of the Miscellaneous Transitional Rules](#), a decision-maker must also be satisfied the support is most appropriately funded or provided through the NDIS, and not more appropriately funded or provided through other general systems of service delivery or support services.

[32] As summarised by the Applicant in R.HB, pp 1212-14.

[33] R.HB, p 1149.

[34] R.HB, pp 786-819.

[35] R.HB, p 786.

[36] R.HB, p 789.

[37] R.HB, p 791.

[38] R.HB, p 792.

[39] R.HB, p 794.

[40] R.HB, p 796.

[41] R.HB, p 800.

[42] R.HB, p 804.

[43] R.HB, p 805.

[44] R.HB, p 807.

[45] R.HB, p 810.

[46] R.HB, p 811.

[47] R.HB, p 812.

[48] R.HB, p 815.

[49] R.HB, p 131.

[50] R.HB, p 181.

[51] R.HB, pp 1242-3.

[52] R.HB, p 1243.

[53] R.HB, p 1276.

[54] R.HB, p 513.

[55] R.HB, p 989.

[56] R.HB, pp 1150-1.

[57] R.HB, pp 1319-1320.

[58] Ms McPhee explained in a letter dated 24 June 2025 that she had written her reports based on a ‘single telehealth consultation’ and that she is not a treating physiotherapist of the applicant; R.HB, pp 1426-7.

[59] R.HB, p 1116.

[60] R.HB, p 1118.

[61] R.HB, pp 1110-1120.

[62] R.HB, p 1426.

[63] R.HB, p 1624.

[64] R.HB, pp 1621-1712.

[65] R.HB, p 786.

[66] Appl.Closing, p 6.

[67] R.HB, p 19.

[68] *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332, [143].

[69] See for example *Hill and National Disability Insurance Agency* [2023] AATA 3626, [85] – [86].

[70] WRMF, [201].

[71] *Ibid.*, [24]-[25].

[72] R.HB, pp 583-4.

[73] R.HB, p 57.

[74] A.HB, pp 646-651.

[75] R.HB, p 546.

[76] R.HB, p 583.

[77] R.HB, p 1634.

[78] R.HB, p 129.

[79] R.HB, p 147.

[80] R.HB, p 166.

[81] R.HB, p 194. This is confirmed by Mr Reilly who says the Applicant ‘rarely leaves her home...’ R.HB, p 132.

[82] R.HB, p 1660.

[83] R.HB, p 510.

[84] R.HB, p 1171.

[85] R.HB, p 1171.

[86] R.HB, p 1629.

[87] R.HB, p 132.

[88] R.HB, p 529.

[89] R.HB, p 531.

[90] R.HB, p 120.

[91] R.HB, p 59. NICE guideline Published: 29 October 2021, www.nice.org.uk/guidance/ng206.

[92] R.HB, p 407.

[93] Par 1.6.4 Nice Guidelines at R.HB, p 425.

[94] Ongoing ACT treatment is strongly recommended by Mr Reilly. R.HB, p 961.

[95] R.HB, p 72-3.

[96] Agency.Closing, p 8.

[97] R.HB, p 1158.

[98] R.HB, p 1446.

[99] R.HB, p 133.

[100] R.HB, p 1426.

[101] R.HB, p 114.

[102] R.HB, p 1149.

[103] Ms McPhee corrected and explained aspects of the report and reiterated that she was not the Applicant's treating physiotherapist and she never intended for her report to be used in evidence in this proceeding. R.HB, pp 1426-7.

[104] Appl.Closing, pp 4-5.

[105] I note the Agency has indicated that it takes issue with the 'conduct' of Mr Reilly, Dr Collins, Ms McPhee, and Ms. Farnden. Agency.Closing, p 1.

[106] I note that the Agency sought leave after the filing of closing submissions to make additional submissions in respect of what the Agency called the conduct of some of the witnesses. I did not give leave since the Agency had raised the issues of concern and there was not adequate merit to delay the matter. I reminded the Agency that they were at liberty to refer any concerns about the conduct of a health provider to the relevant professional body.

[107] R.HB, pp 1150-1153; Agency.Closing, pp 7-8.

[108] R.HB, p 513.

[109] R.HB, pp 1151-3.

[110] R.HB, p 85.

[111] Ms Allens opined in oral evidence that it may take as long as 2 years for the Applicant to return to her pre-Covid levels of capacity for exercise.

[112] Note for example the oral evidence of Mr Reilly and Ms Connors who agree that, since October 2024, there has been a marked deterioration in the physical and mental state of the Applicant.

[113] R.HB, p 146.

[114] Ms McPhee opines that although lipo-lymphoedema is not one of the s 24 disabilities of the Applicant, the condition arises as a result of those s 24 disabilities. R.HB, p 1140.

[115] R.HB, p 137.

[116] Ms Borman notes that, in addition to the EDS and CFS, 'ADHD and sexual trauma have contributed to the development of many pelvic health symptoms.' R.HB, p 134. Ms Borman then continues to list various benefits the Applicant may draw from 'ongoing pelvic health physiotherapy, but without clarifying which of those relate to the s 24 disabilities and whether the treatment is therapeutic or clinical.

[117] R.HB, p 663.

[118] R.HB, p 1206.

[119] R.HB, p 1206.

[120] R.HB, pp 1211-12.

[121] R.HB, p 1682.

[122] Several documents set out the support needs of the Applicant. The Funding Utilization Report of February 2025 is most current. R.HB, pp 765-783, 786-819.

[123] R.HB, p 82.

[124] I note the Applicant says in her written submission that the respective supports do not overlap or duplicate but rather offer special supports (R.HB, p 1038), but I must be satisfied that various supports are NDIS supports, reasonable and necessary, and satisfy the other requirements of s 34(1)(aa)-(f).

[125] R.HB, p 188.

[126] R.HB, p 1665.

[127] R.HB, p 192.

[128] R.HB, pp 41-53.

[129] R.HB, pp 1171-74.

[130] R.HB, pp 562-3. The Applicant explains in R.HB, pp 1029-30 the time spent by the average female with self-care and contends that due to her disabilities additional time and supports ought to be included in her SOPS.

[131] R.HB, p 563.

[132] R.HB, p 1680.

[133] R.HB, p 171.

[134] Ms Connors says the Applicant may be assisted by 'smart crutches', a 'seated walker', or a 'wheelchair or mobility scooter.' R.HB, p 1652. This contrasts to Mr Reilly who opines that the Applicant may be prone to injury if she used crutches or a seated walker and hence a powered wheelchair is essential. Ms Connors on the other hand opines that a 'lightweight manual wheelchair' is suitable for the needs of the Applicant. R.HB, p 1676.

[135] NICE, para 1.8.1 at R.HB, p 431.

[136] R.HB, p 1171.

[137] R.HB, p 591.

[138] R.HB, p 1644.

[139] R.HB, p 1654.

[140] R.HB, pp 137, 144, 1636, 1666.

[141] R.HB, p 150.

[142] R.HB, p 129.

[143] R.HB, p 152.

[144] A.HB, pp 261-292, 436-439.