



National Disability Services Submission:
Department of Social Services Consultation
on draft lists of NDIS supports

About National Disability Services

National Disability Services (NDS) is Australia's peak body for disability service organisations, representing more than 1000 service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. We have a diverse and vibrant membership, comprised of small, medium and larger service providers, employing 100,000 staff to provide support to half a million of people with disability. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families and carers, and contributes to building a more inclusive community.

1.0 Overview

The National Disability Insurance Scheme (NDIS) is undergoing significant reforms aimed at enhancing its effectiveness, clarity, and responsiveness to the needs of participants. To begin to enact recommendations made through the NDIS Review, the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (the Bill) was debated in parliament. An aspect of this legislation is to change the way in which NDIS supports are defined. To support this, government is consulting on two draft lists of NDIS supports.

National Disability Services (NDS), as the peak body representing non-government disability service providers across Australia, welcomes this opportunity to provide feedback on these proposed changes.

In this submission, we address key areas where the draft lists could benefit from further refinement. Our aim is to ensure that the final lists of supports are both practical and aligned with the evolving needs of the disability community.

As a provider peak body, we are not the experts on the supports that people with disability require to live 'good' lives. The experts on the nature and form of NDIS supports that promote inclusion, independence and uphold rights are NDIS participants. We support calls from people with disability and their representative bodies for government to listen and act on their views.

NDS appreciates the government's efforts to improve the NDIS and looks forward to contributing to the development of a robust and effective framework that continues to meet the needs of participants across Australia.

Draft lists of NDIS Supports

The government's decision to introduce these lists stems from a need to create a more transparent and consistent framework for determining what constitutes a NDIS support. Historically, there has been ambiguity and inconsistency in how supports are classified, leading to confusion among participants and providers alike. By clearly defining what is included as a NDIS support and what falls outside the Scheme's scope, the government aims to reduce these uncertainties, ensuring that participants receive the right supports tailored to their specific needs.

This move toward a more defined list of supports is also driven by a desire to streamline decision-making processes within the NDIS. The government recognises that the current approach, which often involves case-by-case determinations, can be inefficient and prone to variability. By establishing clear guidelines, it is hoped that the NDIS can operate more efficiently, reducing delays and ensuring that participants receive timely and appropriate support.

However, while the intent behind these lists is to improve the Scheme, it is crucial that they are developed in a way that remains flexible and responsive to the diverse and evolving needs of people with disability. NDS's submission reflects our commitment to advocating for a balanced approach that provides clarity and consistency without compromising the individualised support that is the hallmark of the NDIS.

Feedback and concerns with the draft NDIS support lists

Transitional Legislation

The draft lists of NDIS supports within the legislation serve as a temporary framework, established under a transitional rule, to provide provisional structure and guidance for supports available under the NDIS. This interim measure remains in place until a permanent rule is agreed upon by the Commonwealth, States, and Territories. The transitional lists aim to address gaps left by the removal of the Applied Principles and Tables of Support (APTOS) from the draft Bill, offering a foundation for implementing NDIS supports, although updates and changes may occur as a more comprehensive rule is developed.

Why is this problematic

The NDIS review recommended that the government provide clear guidance to participants on how they can use their funding and make operational procedures public to ensure NDIA accountability, including through legislation. Instead of creating a detailed list of fundable items, the review suggested implementing a support needs assessment to determine a reasonable and necessary budget that can be used flexibly, with only minimal exceptions.

The Department of Social Services (DSS) have released draft lists outlining which supports will be included or excluded if the NDIS Bill is passed. These lists are designed to implement Section 10 of the legislation, which grants the government the authority to limit the types of supports covered by NDIS funds.

This rigid, "shopping list" approach confines supports to predefined categories, which may not effectively address the diverse and evolving needs of participants. The complexity and length of these lists, coupled with the lack of accompanying explanatory documents, create significant difficulties for stakeholders in understanding and navigating the proposed changes. Furthermore, the lists appear to be influenced by the list of supports in the current Pricing Arrangements and Price Limits (PAPL), ad-hoc decisions from the Administrative Appeals Tribunal (AAT), and subjective 'pub test' decisions, adding to confusion and inconsistency.

The draft lists present a stark "what's in and what's out" approach, and the rigid carve-outs defining exclusions from NDIS funding have the potential to fall short in addressing the complexities of individual needs, leading to potential gaps in support and inconsistent application.

As the lists stand, there are some potential inconsistencies. For example, while 'no carve outs' are listed for Participation in Community, Social and Civic Activities, current pricing arrangements allow participants to use their budgets to pay for non-labour costs (such as petrol, parking fees) related to activity-based transport when this is provided as part of community and social participation. The exclusion of petrol costs (listed under day to day living costs) has the potential to create confusion. Similar inconsistencies arise where costs that could be assumed daily living expenses form a critical part of holistic support provision. This ambiguity could result in burdening participants with additional, unexpected expenses and undermine the effectiveness of supports provided, making it harder for participants to access the full benefits of the scheme.

NDS is conscious that the temporary nature of the draft lists could create uncertainty for participants, providers, and stakeholders, resulting in inconsistencies and confusion about available supports. A further change management strategy will be required when rules are developed, and it will be important to ensure that these lists do not become the default definitions of support at the cost of a more comprehensive consultation and design process with the disability community.

Proposed Solutions and Actions

- **Establish Clear Timelines and Processes:** Develop a detailed timeline for transitioning from the draft lists to a new rule, ensuring stakeholders are informed and can contribute feedback.
- **Enhance Flexibility and Establish a Review Framework:** Introduce mechanisms for regular review and updates of the transitional lists, coupled with a systematic schedule for evaluating and reporting on their effectiveness. This combined approach will ensure the lists remain relevant, effective, and responsive to emerging needs and feedback.
- **Ensure Temporary and Transitional Nature with Co-Design:** It is essential that these measures remain temporary and transitional, with a clear end date. The rules should be co-designed with people with disability to ensure they effectively meet their needs and do not become permanent fixtures without proper evaluation and input.
- **Broaden Support Categories:** Revise the draft lists to include essential supports that address the diverse needs of participants. This should encompass necessary disability-related supports, such as those for accessing mainstream services and essential day-to-day activities.
- **Principled Approach to Exclusions:** Establish clear and fair criteria for determining exclusions to prevent arbitrary decisions and avoid disadvantaging participants. Ensure transparency in the criteria and regularly review them to address any unintended consequences and maintain an effective and inclusive support system.
- **Encourage Innovation:** Regularly update the NDIS framework to incorporate new products and services, ensuring it remains adaptable to emerging needs.
- **Enhance Decision-Making:** Improve the training and expertise of planners to make informed decisions based on a comprehensive understanding of participants' needs.
- **Simplify and Clarify Documentation:** Streamline the draft lists, include page numbers, and organise them clearly to improve usability and accessibility.
- **Improve Communication and Support:** Maintain transparent communication with participants, providers, and stakeholders about interim measures and

progress toward the new rule. Provide guidance to help navigate the transitional phase effectively.

Current need for proposed Amendments

NDS supports amendments to the Bill introduce a 'substitution' process under new subsections 10(6) to 10(8). This process allows participants to request that a support, which has been excluded from being a NDIS support under subsection 10(4), be reconsidered and approved as a NDIS support for their individual circumstances.

The substitution process is designed to offer flexibility for participants who have unique or specific disability-related needs. The application must demonstrate that the excluded support would replace one or more other supports already included in the participant's plan, that it would be cost-effective, and that it would provide equal or better outcomes than the existing supports.

It will be crucial that this process is applied in an accessible and timely way, to ensure that NDIS remains both reliable and adaptable for people with disability across Australia.

Eco System of Supports and Services

The NDIS Review panel envisioned a restructured support system where the NDIS functions as one component within a broader, interconnected network that serves all people with disability. This broader ecosystem includes not only the NDIS, but also other essential services provided by various levels of government, community organisations, and mainstream services. The vision aims to create a more inclusive and equitable society by ensuring that the entire disability community, including those not eligible for the NDIS, has access to the supports they need.

One of the key issues identified by the NDIS Review panel is that the rollout of the NDIS was not accompanied by a parallel development of other necessary support programs. For example, many individuals who do not qualify for the NDIS struggle to access mainstream services like public transport, community sports, and education. This has led to an over-reliance on the NDIS, as people with disability turn to the scheme for assistance that should ideally be provided by other services.

As a result, the NDIS has become the default provider of disability supports, even in areas where other systems should play a significant role. This imbalance has created a fragmented support landscape, where the NDIS is overburdened, while other essential services have been withdrawn or defunded.

To address these challenges, the NDIS Review panel recommends a series of reforms designed to create a more integrated and balanced system of supports. Central to this vision is the commitment from all levels of government to deliver foundational supports that complement the NDIS. Foundational supports include services that are universally accessible to all people with disability, regardless of their NDIS eligibility. Moreover, the panel emphasises the importance of making mainstream services and community supports more accessible and inclusive. These supports should be seamlessly integrated with the NDIS, ensuring that people with disability can access a comprehensive range of services that meet their needs.

This integrated approach would not only reduce the pressure on the NDIS but also promote greater participation and inclusion in society for people with disability.

In the context of the current submission, this vision underscores the need for a holistic and integrated approach to NDIS supports. It highlights the importance of creating a connected support ecosystem that considers both the broad network of services available to people with disability and the specific needs that the NDIS is designed to address.

The draft NDIS support lists should aim to reflect this interconnected approach, yet there are significant challenges in achieving effective coordination and accessibility across different support systems. The reality is that foundational supports remain undefined, and mainstream services are often inaccessible or underdeveloped. This lack of clarity and accessibility raises serious concerns about the exclusions present in the draft lists, particularly those related to accessing mainstream services. These gaps risk further limiting the ability of people with disability to participate fully in community activities. There is a pressing need for a more inclusive and comprehensive approach to defining NDIS supports to address these issues.

Why This is Problematic

- **Foundational Supports and State/Territory Responsibility:** The draft NDIS support lists omit essential supports needed for accessing mainstream services, such as after-school care and community activities. This exclusion could limit participation and increase the burden on families, especially in under-resourced regional, rural, and remote areas. Additionally, there is a reliance on state and territory governments to uphold disability rights. This is often unmet, leading to inadequate support and diminished effectiveness of the overall system.
- **Health-Related Supports:** The narrow definition of disability related health supports excludes critical areas like complex medication management, creating gaps in support for conditions such as chronic pain and asthma. The broad reference to "health services" could unintentionally restrict access to essential services.
- **Employment Supports:** The draft lists present significant ambiguity regarding employment supports, creating overlap between NDIS-funded supports and their exclusions. For instance, while supports for "obtaining and/or retaining" employment and "individual employment support" are included, supports related to recruitment processes, work arrangements, or the working environment are excluded. This inconsistency complicates participants' understanding of available supports and may impede their ability to secure and sustain employment.

Proposed Solutions and Actions

- **Health-Related Supports:** Expand the list to include complex medication management and ensure that all necessary health services are covered.
- **Employment Supports:** Clarify the definitions and eligibility criteria for employment supports to eliminate confusion, recognise and fund customised employment supports, and improve planner training to address the complexities of employment needs more effectively.
- **Foundational Supports and State/Territory Responsibility:** In the short term revise the draft lists to include essential supports for accessing mainstream services. This could be added as a potential 'carve out' for some participants. More broadly targeted strategies are needed to address regional disparities that

directly impact participants ability to access mainstream support services, and the roles of the NDIS and state/territory services need to be clarified to ensure comprehensive support and accountability.

Positive Behaviour Supports in the Draft NDIS Support Lists

The draft lists of NDIS supports includes supports related to positive behaviour support, including restrictive practices and specialist interventions. While the intention is to set clear boundaries for support, components of the current draft may lead to unintended consequences related to restrictive practices and there is a missed opportunity to provide clarity on the suitability required for behaviour support practitioners.

Why This is Problematic

- **Lack of Clarity in relation to Unlawful Goods and Services:** The draft lists exclude supports deemed unlawful, including certain assistive technologies, illicit substances, firearms, and restrictive practices not authorised in the participant's jurisdiction. However, the phrase "restrictive practices not authorised" is ambiguous and could lead to unintended consequences. This definition poses significant risks for participants and providers faced with authorisation delays that may be beyond their control. Authorisation and compliance in these areas is for authorising bodies and the NDIS Commission and would not seem to have a place in support planning. However, NDS would query if unauthorised regulated restrictive practices are what is intended to be excluded? Rather, excluded practices need to include prohibited practices, unregistered providers using restrictive practices or the use of unregulated practices.
- **Inadequate Definition Specialist Positive Behaviour Support:** The draft lists define Specialist Positive Behaviour Support as services provided by professionals with expertise in managing behaviours of concern. However, the definition lacks specificity regarding the which professionals can undertake this work. It is crucial for the description to state that these professionals must be approved by the NDIS Quality and Safeguards Commission to ensure they are recognised as suitable practitioners.

Proposed Solutions and Actions

- **Refine the Description of Restrictive Practices:** Amend the draft lists to clearly define the exclusion as restrictive practices that are not regulated restrictive practices under the [National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2018](#). This will ensure clarity and consistency, reduce risks related to unregulated practices, and separate planning from delays in authorisation.
- **Enhance the Definition of Specialist Positive Behaviour Support:** Update the definition of Specialist Positive Behaviour Support to explicitly require that practitioners be recognised as suitable by the NDIS Quality and Safeguards Commission. This will provide clear guidance for participants, families, providers, and NDIA staff, improving the effectiveness and reliability of behaviour support services.

4.0 Collaboration for reform

From a provider's perspective, changing the nature of supports funded by the NDIS could impact the flexibility and creativity that are essential for meeting individual needs effectively. The new criteria may not fully accommodate diverse needs potentially limiting participants' choice and control over their supports. Furthermore, without alternative pathways for essential services, there is a risk of creating gaps that could affect the opportunities available to people with disability. Inevitably providers find themselves in the position of needing to provide unfunded supports to fill these gaps. Providers are also often seen as a trusted and available source of information. While willing to support participants understand the NDIS, this work comes at a cost and remains largely unfunded.

The lists currently under consultation are one element of a suite of changes proposed under the Bill. The proposed reforms to the NDIS offer a critical opportunity to reshape the support system for people with disability. However, the current approach reveals several areas needing urgent attention to ensure a fair and effective implementation process.

- **Implementation Roadmap:** To facilitate a smooth transition, National Cabinet should agree on and publish a detailed five-year implementation roadmap. This

roadmap must outline the strategic sequencing of reforms, address critical dependencies, and minimise disruptions. Effective communication and stakeholder engagement are crucial to avoid potential disruptions and ensure that all parties are prepared for the upcoming changes.

- **Collaboration for Reform:** The process of reforming the NDIS must be driven by genuine collaboration and robust consultation with all stakeholders, especially those directly affected. Given the complexity and scope of the proposed changes, the timeframes provided for submissions for this consultation, even with the short extension, are insufficient. Effective reform requires a well-considered, inclusive approach, rather than rushed decisions based on inadequate input.
- **Recommendation for Co-Design:** To truly enhance the NDIS, the Bill must emphasise the importance of co-design by including people with disability and providers as active partners in shaping the system. Strengthening this principle involves not only defining co-design more clearly but also integrating it into all aspects of the legislative and operational processes. This approach will ensure that the NDIS evolves in a way that genuinely meets the diverse needs and preferences of people with disability.
- **Foundational Supports:** The development and implementation of foundational supports are paramount. The Bill must reflect the recommendations from the NDIS Review by prioritising the establishment of a Foundational Supports Statement of Intent and strategy. These supports should be clearly defined and integrated into the NDIS framework to address gaps and ensure a comprehensive support network for all people with disability.
- **Timely and Effective Transition Support:** Ensuring a timely and well-supported transition to the revised support framework is essential. Measures must be in place to guide stakeholders through this process and strengthen foundational supports to guarantee that people with disability receive the assistance they need, regardless of their NDIS eligibility.
- **Training and Capability of Planners:** Enhancing the training and decision-making capabilities of planners is necessary to improve the consistency and appropriateness of support provided. A comprehensive needs assessment framework should be established to guide decision-making and ensure that the supports provided align with participants' needs.

In summary, while the wholesale proposed reforms offer significant potential for improvement, they highlight the need for a more inclusive, transparent, and well-coordinated approach. Addressing these concerns and prioritising meaningful stakeholder engagement will enable the NDIS to meet the needs of people more effectively with disability and foster a fairer and more efficient support system.

The current lack of a clear response to the NDIS Review Report and uncertainty about the future direction has created a sense of fear and disconnection among stakeholders. Nonetheless, with collaborative efforts and a commitment to thoughtful implementation, there is an opportunity to strengthen the NDIS and ensure it serves all people with disability effectively. NDS are dedicated to working government and all relevant stakeholders to navigate these challenges and support the development of a robust and responsive disability support system.

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Friday 23 August 2024