



**National Mental Health**  
Consumer & Carer Forum



# **Submission on s10 Draft Transitional Rules of the *NDIS Act 2013* to the National Disability Insurance Agency and the Department of Social Services**

**23 August 2024**

23 August 2024

The National Mental Health Consumer and Carer Forum (NMHCCF) is pleased to provide the following submission to the National Disability Insurance Agency (NDIA) and the Department of Social Services (DSS) relating to the s10 draft transitional rule amendments of the *NDIS Act 2013*.

The NMHCCF is a combined national voice for mental health consumers and carers. We listen, learn, influence and advocate in matters of mental health reform.

The NMHCCF was established in 2002 by the Australian Health Ministers' Advisory Council. It has historically been funded through contributions from each state and territory government, which have now (FY23-24 onwards) been amalgamated and are afforded by the Australian Government Department of Health and Aged Care. It is currently auspiced by Mental Health Australia.

NMHCCF members represent mental health consumers and carers on many national bodies, such as government committees and advisory groups, professional bodies, and other consultative forums and events.

Members use their lived experience, understanding of the mental health system and communication skills to advocate and promote the issues and concerns of consumers and carers.

The NMHCCF has chosen to respond to this submission opportunity as Australia's national voice representing lived and living experience of mental ill-health, and a Disability Representative and Carer Organisation (DRCO) for psychosocial disability in Australia. The NMHCCF believes that the National Disability Insurance Scheme (NDIS) could better serve people with psychosocial disability and their family, supporters, kin, and carers by having a more flexible and expansive vision of the draft transitional rules. This involves taking an approach of supporting participant choice and control, rather than gatekeeping funding over particular supports.

We would be happy to provide any further information to support the issues raised in this submission. Please contact the NMHCCF via the Secretariat at [nmhccf@mhaustralia.org](mailto:nmhccf@mhaustralia.org) or 02 6285 3100.

Yours sincerely,



Peter Heggie  
Carer Co-Chair



Jordan Frith  
Consumer Co-Chair

## Introduction

The NMHCCF welcomes the opportunity to provide a submission to both the NDIA as a DRCO, and the DSS through their public consultation process in relation to the draft supports lists under proposed amendments to s10 of the *NDIS Act 2013*. As the national voice for those with a lived and living experience of mental-ill health, as well as their family, supporters, kin, and carers, the NMHCCF sees it as vital to provide input to how the NDIS draft supports lists could be improved and what recommendations it would consider to better support NDIS participants and their loved ones. It is paramount that the voice of those who are often unheard yet disproportionately negatively affected by NDIS policy, procedures, and services is considered. Through a consultation process with members of the NMHCCF, this submission uncovers several key issues relating the draft supports lists that the NDIA has proposed, including:

- Clarity and accessibility of the draft supports lists, consisting of confusion over some of the terminology used, as well as the use of contradictory statements.
- Mental health and psychosocial supports, including concerns about exclusions, mainstream mental health services, and a lack of understanding of the specific needs of people with psychosocial disability.
- Housing and transitional accommodation, where there is a lack of support for housing.
- Social and recreational supports, consisting of social inclusion and recreational activities, as well as school refusal programs.
- Support for daily living, including funding for daily living aids and reasonable adjustments in the workplace.
- General discontent and advocacy, where there is outrage over proposed cuts to certain supports, a need for serious and ongoing consultation, and the impact of affecting one section of NDIS planning by making changes to another.

With the NMHCCF being the national voice for and by people with lived and living experience of mental-ill health and their family, supporters, kin, and carers, it is in a unique position to provide the following recommendations:

1. The NDIA to use a principles-based approach that allows people with disability and their family, supporters, kin, and carers to maintain choice and control over their supports.
2. The NDIA and DSS to engage in meaningful and serious engagement, consultation, and, ideally, co-production of new draft supports lists with Scheme participants and their family, supporters, kin, and carers.
3. The NDIA to provide clarity on terminology, exclusions, and contradictions in the current draft supports lists if it is not prepared to consider developing a new one with the disability community.
4. The DSS to introduce either an end date and time to the transitional rules and instruments or a deadline for the delivery of the co-produced final rules for NDIS supports.

5. The NDIA to fund more family, supporter, kin, and carer respite supports under the NDIS to subsidise the severe lack of carer respite support under other Australian Government programs (e.g. the Carer Payment).

The NMHCCF offers its standing as the national voice for mental health lived experience and its lived experience expertise to both the NDIA and DSS to assist where it can in terms of providing evidence and consultation to inform its final draft supports lists. It also welcomes the opportunity to work in conjunction with the Australian Government in improving the NDIS to ensure that equity to services and supports, as well as choice and control for NDIS participants, is improved.

## Background

As part of the first tranche of legislative amendments that the Australian Government is proposing to improve the NDIS, the recently assented *NDIS Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* will implement transitional rules and instruments under s10 of the *NDIS Act 2013*. In particular, one transitional instrument is the lists of what the NDIS funding can and cannot be used for, as well as particular “*carve outs*”, or exceptions, under certain support categories.

The NDIA and DSS are seeking consultation with the disability community and stakeholders on these lists because the community has previously raised concerns about a lack of transparency in sharing the detail that will be in the rules and transitional instruments. The stated purpose of the lists in the consultation discussion paper is “*to provide clarity for participants, nominees, providers, and the disability community when selecting their supports, but it does not change the types of supports that have always been appropriate to purchase with NDIS funding*” (p. 4)<sup>1</sup>.

Along with providing important detail to the consultation process through this submission, the NMHCCF has become a signatory to a joint letter penned by the Disability Representative Organisation (DRO) Secretariat and signed by multiple DROs. This letter echoes many of the issues, concerns, and recommendations outlined in this document, namely in calling for better future engagement and consultation from the Australian Government, more comprehensive choice and control for Scheme participants, and improved clarity on the draft supports lists. It is important to be able to accurately estimate the impact that these lists will have on the disability community at large and specific cohorts and intersections of disability, however, as they currently stand, do not allow for any reasonable understanding of impact.

## Themes

The following themes and issues were identified through close consultation with NMHCCF members, where consultation participants expressed various concerns and opinions regarding the proposed draft supports lists:

### **Clarity and Accessibility of the Draft Supports List**

- **Confusion over terminology:** Consultation participants expressed confusion over the terminology used in the draft, particularly the terms “*carve out*” and “*certain participants*”. There was a general sentiment that the draft supports lists are difficult to understand, which will lead to misinterpretations about what supports will be funded under the NDIS rather than provide clarification.
- **Contradictory statements:** Members pointed out contradictions within the lists, particularly regarding the funding of recreational and therapeutic activities, leading to uncertainty about what is actually covered.

### **Mental Health and Psychosocial Supports**

- **Concerns about exclusions:** Consultation participants voiced significant concerns about the exclusion of ongoing psychosocial recovery supports. Some members highlighted the potential impact on individuals who rely on these supports for their mental health recovery, and that exclusion lists do not allow for choice and control. The Australian Government has recently suggested adding a substitution rule where the NDIS may implement a process to make exceptions for Scheme participants to claim and use supports on the exclusion lists. However, members argued that this will only lead to NDIS participants and their families having to fight for such exclusions, which can, in turn, worsen psychosocial disability due to the stress that this process causes.
- **Mainstream mental health services:** Consultation participants called for clarity on what are considered mainstream mental health services, with a strong emphasis on ensuring that essential psychosocial recovery supports are not excluded.
- **A lack of understanding as the specific needs of people with psychosocial disability:** People with psychosocial disability, because of the harms caused by mental health services, the stigma they face, and their resulting exclusion from society, do not often need supports aimed at changing their behaviour. Rather, they need supports and people in their lives who have the time to spend with them to build trust and assist them towards a better life. Greater trust and assistance, in turn, encourage people with psychosocial disability to more engagement in social and community activities. It is important to keep in mind, however, that supports will vary significantly from person to person, depending on their specific needs.

### **Housing and Transitional Accommodation**

- **Lack of support for transitional housing:** Concerns were raised about the lack of funding for people seeking transitional accommodation, particularly those at risk of homelessness. There was an emphasis on the need for financial support in securing safe accommodation during transitions, which the draft supports lists do not clearly address.

### ***Social, Recreational, and Educational Supports***

- **Social inclusion and recreational activities:** Members discussed the importance of funding social and recreational activities, particularly for individuals with disabilities who rely on these activities for social inclusion and mental health. The exclusion of funding for activities like attending theme parks or other recreational areas was a major concern.
- **School refusal programs:** The importance of considering funding for school refusal programs was highlighted, especially in rural and remote areas, where school attendance can be challenging for children with complex needs.
- **Removal of educational and family supports:** It was confusing to members as to why certain educational purchases were removed as NDIS supports when the new NDIS is supposed to be working in close alignment with the mainstream education system. In addition, members identified the absence of key family supports in the draft supports lists, such as respite, domestic services, family counselling, parenting supporters, and the unpaid care gap.

### ***Support for Daily Living***

- **Funding for daily living aids:** Consultation participants raised concerns about the exclusion of funding for essential daily living aids like industrial strength washers for families dealing with severe incontinence. Members emphasised the need for these aids to maintain a safe and healthy living environment for some NDIS participants with complex needs.
- **Reasonable adjustments in the workplace:** Members discussed the gap between what is legally required as reasonable adjustments in the workplace and what is supported by the NDIS, suggesting that more support is needed to help individuals succeed in their work environments.

### ***General Discontent and Advocacy***

- **Outrage over proposed cuts to certain supports:** There were strong expressions of discontent by consultation participants over proposed cuts to certain supports, feeling that they undermine the core principles of the NDIS, which were intended to provide choice and control to people with disabilities.
- **Need for serious and ongoing consultation:** It was suggested that the consultation process should be ongoing and inclusive of those with lived experience to ensure that the NDIS remains responsive to the needs of its participants.
- **Making changes to one section of NDIS planning affects another:** Using the following example, members claim that a lack of behaviour support practitioners who understand psychosocial disability results in Scheme participants not being able to use this particular 'bucket' of funding in their NDIS plans. This, in turn, leaves NDIS

participants and their families seeking other ways to meet this need through alternative avenues of their NDIS plans.

Overall, there is a deep concern among stakeholders regarding the clarity, comprehensiveness, and fairness of the proposed draft supports lists. Thematic issues include the need for clearer communication, the importance of continued support for mental health and psychosocial recovery, the necessity of adequate housing and daily living support, and the preservation of social inclusion and workplace support for individuals with disabilities. The NMHCCF advocates for a more flexible, inclusive approach to ensure that the NDIS fulfills its intended purpose of empowering people with disabilities.

## Recommendations

***Recommendation 1: The NDIA to use a principles-based approach that allows people with disability and their family, supporters, kin, and carers to maintain choice and control over their supports.***

Historically, NDIS plans for psychosocial disability have been underutilised, which should allow more flexibility for Scheme participants to use their funds. In addition, these lists create more barriers and obstacles to capacity-building and individual empowerment, lessening flexibility and further ensuring the underutilisation of funding. Furthermore, providing a haphazardly-concocted substitution rule in an attempt to placate the disability community where NDIS participants can claim for exceptions to “carve outs” will end up creating more stress for them.

***Recommendation 2: The NDIA and DSS to engage in meaningful and serious engagement, consultation, and, ideally, co-production of new draft supports lists with Scheme participants and their family, supporters, kin, and carers.***

As stated in the joint letter from DROs, “the 13 days of public consultation on the lists of NDIS Supports is profoundly inadequate for something that will affect the lives of over 650,000 Australians with disability and their families” (p. 3 – resource publicly at a later date). There needs to be at least some period of reasonable consultation, which is typically a minimum of four weeks, and there cannot be an expectation given the current timelines that DRCOs will be able to engage in far-reaching consultation with their lived experience communities.

***Recommendation 3: The NDIA to provide clarity on terminology, exclusions, and contradictions in the current draft supports lists if it is not prepared to consider developing a new one with the disability community.***

An example of a clear contradiction in the draft supports lists is where “Therapeutic supports” is a category included in the “Supports that are NDIS supports” list, yet a

whole gamut of different therapies that are important to people with psychosocial disability, and have an evidence base behind them, are categorised as “Goods and services that are not an NDIS support”. This includes yoga therapy and somatic therapy.

***Recommendation 4: The DSS to introduce either an end date and time to the transitional rules and instruments or a deadline for the delivery of the co-produced final rules for NDIS supports.***

There are significant concerns that the transitional rules and instruments will become the default after they are in place for a lengthy period of time, institutional thinking and practice are established around them, and there becomes less incentive for states, territories, and the Commonwealth to come to agreement on a new set of rules and instruments.

***Recommendation 5: The NDIA to reinstate family, supporter, kin, and carer respite supports under the NDIS to subsidise the lack of carer respite support under other Australian Government programs (e.g. the Carer Payment).***

Family support contributes significantly to an individual’s recovery journey in multiple ways<sup>2</sup>. It is vital that families are adequately supported to provide the care they perform and to receive respite from this.

## References

1. DSS. (2024). National disability insurance scheme amendment (getting the NDIS back on track no. 1) bill 2024: Consultation on draft lists of NDIS supports. *Australian Government Department of Social Services*. Retrieved from <https://engage.dss.gov.au/consultation-on-draft-lists-of-ndis-supports/>
2. Waller, S., Reupert, A., Ward, B., McCormick, F., & Kidd, S. (2019). Family-focused recovery: Perspectives from individuals with a mental illness. *International Journal of Mental Health Nursing*, 28(1): 247-255. Doi: <https://onlinelibrary.wiley.com/doi/full/10.1111/inm.12528>