

NDIS Supports Transitional Rule

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Thank you for the opportunity to make a submission regarding the National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024 (the Transitional Rule).

The Purpose of Disability Support Under the NDIS

The NDIS gives effect to Australia’s obligations under the *UN Convention on the Rights of Persons with Disabilities*.¹

The enacting legislation states that the object of the NDIS is to support the ‘independence and social and economic participation of people with disability,’ and ‘promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community.’²

The purpose of disability supports under the NDIS are provided to support the full inclusion of people with disabilities.

Approaches to the Provision of Disability Support

There are at least two approaches to the provision of disability supports.

The first approach is segregationist. This approach suggests that disabled people need *special*,

¹ *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(a)

² *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(c) and s 3(1)(g)

different things because their bodies and minds are abnormal. They need products and services designed specifically to remedy their problems. Disability supports are things that no ‘normal’ person would want or need as part of their ‘normal’ life. Disability supports are things that disabled people *need* to bring their functioning closer to a standard of normalcy that is determined by other people.

The second approach is based in inclusion. This approach suggests that disabled people have the same needs as everyone else, but experience barriers to meeting these needs in a society that is not set up for them. A disability is the gap between who we want to be, who we are able to be, and who society will let us be. A disability support is anything that helps us bridge that gap to ensure that we are included in society and able to live ordinary, meaningful lives.

Disability supports, ideally, should be services, items and supports that are used by other members of the community. This fosters disabled people’s full inclusion. Disability support will look very different depending on who is being supported. Each individual has different goals and aspirations. Inclusion has many benefits that accrue to the individual, their family, the community they live in and the Australian economy.

Let’s consider some concrete examples.

A disabled person might be unable to cook meals for themselves due to – for example - impairments that impact their hand function. They may have regular funding for a support worker to help them prepare a meal. An unexpected shift cancellation means they now have no assistance with this task. Needing a meal in a hurry is not a need that is specific to disabled people. Lots of people can’t cook on a given night for a lot of different reasons. Most people in this scenario would order take-away. An inclusion-focused approach would allow disabled people to claim part of the cost of take-away food when related to a genuine disability-related need, as this is the way that most people deal with a scenario in which they cannot prepare a meal for themselves in a hurry. A segregated alternative would insist that help with meals can only take the form of disability specific meal delivery services, or through the help of a disability support worker.

A disabled person may be unable to wash their own hair. Hairdressers in our community offer hair washing services to both disabled and non-disabled people. A segregated alternative is

requiring a disabled person to have their hair washed at home by a support worker, in the shower or sink. This means forcing a disabled person who otherwise might not have to experience this to forgo their privacy in the shower and undress in front of another person.

A disabled person may have difficulty with the very noisy environment in shopping centres or other community facilities. They may only be able to access these facilities when supported by noise-cancelling headphones. Other people might use this item as a 'nice-to-have' or for recreation. This is great, as it means that the disabled person using these headphones does not need to feel conspicuous or othered when wearing them. A segregated alternative is requiring a disabled person to purchase ear protectors from a store that specialises in disability equipment. These headphones look more conspicuous and are not as well designed.

A person may need someone to walk their dog because they are a wheelchair user. When most people need someone to walk their dog, they hire a dog walker who loves dogs and charges a reasonable price. A segregationist approach would instead require a disabled person to use a disability support worker to assist with walking their dog. Not all support workers want to or are capable of working with animals. Other segregationists would say that disabled people should not have dogs unless they can afford the additional expense of paying privately for a dog walker.

A person may need a short break away from their home environment to support their relationship with their long-term carer. When most people need a short break away from home, they book a hotel or a short-stay accommodation. Many hotels have excellent access features and provide a comfortable experience for disabled and non-disabled people. A segregated alternative is requiring disabled people to spend time in a congregate care 'group home' facility where disabled people are kept together and often subject to conditions that would not be accepted by non-disabled people.

What makes these products and services disability supports are not that they were designed to support disabled people specifically. What makes them disability supports are:

1. The purpose of the support is to meet a disability-related need;
2. The purpose of the support is to facilitate the inclusion of a person who might otherwise be excluded from full participation in their society

In determining whether something meets a disability-related need and facilitates inclusion disabled people and their supporters must be taken at their word and given the autonomy and dignity of making their own choices about how to meet their needs. It is not possible for another person, however well-meaning to tell someone how their inclusion in society will occur. This is by definition not full inclusion or independence.

Segregation as Default in the NDIS

The current Transitional Rule embodies a segregationist approach. The lists proceed from the premise that disability supports are easily distinguished from ‘everyday living costs’ and that ‘standard items’ are never appropriate disability supports. This requires the assumption on the part of policy-makers that disabled people do not lead, and should not expect to lead the same kinds of lives as non-disabled people. Disabled people should not expect to have their disability-related needs met with the dignity and convenience provided by mainstream solutions.

This segregationist approach promotes exclusion and dependency. It makes disabled people rely on paid workers, ultimately costing the Scheme more and limiting disabled people’s inclusion in society. It also reduces our autonomy and dignity, reducing our choice about how we have our needs met. Furthermore, distinguishing between ‘standard’ items, everyday expenses and disability supports using the lists still requires complex interpretation.

The Impact of Poverty on ‘Every Day Expenses’

The concept of what constitutes an everyday or standard item depends largely on economic and social circumstances.

The NDIS supports a specific cohort of disabled people who have significantly reduced functional capacity. Two thirds of NDIS participants between 15 and 65 rely on the Disability Support Pension as compared to one in five for disabled people who are not NDIS participants.³

³ Centre of Research Excellence in Disability and Health *A Comparison of the Characteristics of People with Disability in Australia According to Whether they Received National Disability Insurance Scheme (NDIS) Funding* May 2025, p. 16 – 17.

The DSP is paid at \$1149 per fortnight for a single person.⁴ This means most NDIS recipients live in poverty.

Amongst people who work in APS jobs in Canberra take-away food, Bose Active Noise Cancelling headphones, visits to the hairdresser to wash hair and indoor or outdoor play equipment might be considered standard. People who rely on pensions do not get to buy things that they like, benefit from or enjoy. They buy the things they need to survive the next fortnight.

While it is a national shame that any Australian lives in such circumstances in our wealthy nation, for disabled people, being unable to access the things they need means exclusion, dependency and often further disablement.

The NDIS was established to support the full inclusion of disabled people with significantly reduced functional capacity in our society. This means that any definition of NDIS supports must be oriented towards their inclusion. This demands that non-disabled people put aside their prejudice and accept that disabled people have a right to normal lives, supported by the same products and services used by all Australians wherever possible. A definition of disability support should never be based on the segregationist premise that disabled people only benefit from products and services specifically designed to remedy their impairments.

Consideration of Risk

There are risks associated with an inclusion-focused approach or segregationist approach.

A key risk of an inclusion-focused approach include that disabled people and their supporters may make mistakes in choosing appropriate products and services to meet their disability related needs. These mistakes might include misjudging the benefit of an item or purchasing something that is perceived by others to not be disability related.

There are many risks of a segregationist approach. This includes the risk of increased cost to the Scheme, the risk of furthering dependency among disabled people and the risk of abuse and neglect. Segregated settings are frequently administered in ways that deprive people of their

⁴ Services Australia <https://www.servicesaustralia.gov.au/how-much-you-can-get-disability-support-pension?context=22276> Accessed 27 July 2025.

human rights. Segregation in one area of life impacts inclusion across all other areas of life. For example, a disabled person who is reliant on support workers to have their hair washed is now dependent on these workers turning up to their shifts on time to get to work on time which is a loss of autonomy in comparison to the provision of this service through an appointment with a hairdresser.

The risk of making mistakes is a normal part of any process of innovation. Zero tolerance for mistakes is not a framing that can ever promote the innovation. Zero tolerance for mistakes is not the approach applied to corporate providers of disability services, who make frequent, at times fatal mistakes in their care of disabled people.

The realisation of the risk of spending on supports that are not disability related or effective is not as significant or harmful as the realisation of the risks of segregation.

Recommendations:

General

- A principles-based approach is better oriented towards supporting the purpose of the NDIS and the full inclusion and independent lifestyles of disabled people than an 'In and Out List.' A principles approach would focus on whether a product or service meets a disability-related need and facilitates inclusion.
- Please consider the submission of Dr George Taleporos, who has recommended the idea of 'disability-related benefit,' rather than modification or adaptation, as a more appropriate determinant of whether an item is assistive technology. This approach supports inclusion, independence and supports disabled people to make choices about how they want to be supported.
- The list should be reviewed with a focus on disability-related benefit, rather than the current segregationist lens. This means ensuring that participants continue to have access to supports that are not disability specific products or services. This must be extended to compliance, compliance on the basis that the ABN of a provider is not associated with a 'disability company' is segregationism.

Poverty

- Consideration must be given to the circumstances of poverty most disabled people live in. These circumstances are very different from the lives of policy makers, or the disabled people who are part of the professionalised representative organisations that purport to represent disabled people. The concept of an 'everyday expense' is not relevant to two thirds of disabled people, who are in poverty and cannot afford the things they want or need.
- Any restriction to the use of NDIS funds for 'everyday expenses' can only be justified where there are corresponding increases to the rate of income support payments. These should be raised to lift disabled people and their families out of poverty.

Specific Items and Services

- The Scheme should not be re-oriented towards provision of personal attendant care and support work services for people who would prefer assistive technology solutions that may include mainstream items. This does not make the Scheme cheaper. It makes it more expensive and it undermines independent lifestyles and full inclusion in society.
- Noise-cancelling headphones have specific benefits for some disabled people. They should not be considered a standard item as they are only affordable to wealthy people.
- Pets are part of the Australian way of life and disabled people should be able to access services like pet care and grooming if unable to undertake these tasks for their pets for disability related reasons.
- Respite should not be limited to segregated settings, nor should segregated settings be able to claim costs that self-managing individuals cannot. Disabled people should be encouraged to use respite for the economic and social benefit it provides them and their carers. The difference between respite and a holiday is not based on the setting or the activities, or how fun or miserable it is, but whether the time away from one's usual home functions *as respite* in the context of ongoing disability and caring. Any suggestion that respite can only occur in congregate care settings is a pure expression of segregationist attitudes.

Overlap with Mainstream Systems

- The principle that disabled people should have access to mainstream systems and services should not be pushed to the point of absurdity by making the assumption that mainstream government services are currently accessible to all disabled people. This is not the case.
- Insisting that the NDIS cannot provide support even where the support is not being provided elsewhere will never facilitate inclusion.
- Parents with children in out of home care should be able to access their regular disability supports to travel to and access visitation with their children.
- People with disability in the criminal legal system, in prison, or on parole should not need to rely on the corrections system to provide any form of disability support. This is

not trauma-informed. The power dynamics that exist between disabled people and the corrections system means that this is an inappropriate means of providing disability related support, supervision or any other support related to a disabled person's needs.