

Touching Base Inc submission

To: Department of Social Services consultation on final Section 10 lists of NDIS Supports

The NDIS's approach to narrowly define 'sexual services' to include any *disability specific sexual supports* provided by sex workers is a **deeply problematic misrepresentation of the NDIS Act and inconsistent with its Objects.**

Submitted online via DSS survey portal

DATE: 27th July 2025

Touching Base Inc

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Who we are

Touching Base was established in 2000 to bridge connections between people with disability and sex workers, focusing on access, discrimination, human rights, legal issues and attitudinal barriers. Touching Base has brought the disability sector and the sex industry together in respectful and meaningful ways, through education, policy development, lobbying, resources development and training workshops for disability workers and sex workers.

Touching Base is pleased to present our submission to the Department of Social Services (DSS) consultation on final Section 10 lists of NDIS Supports. It is based on many years of being deeply immersed in the evolving field of sexual supports for people with disability, including in relation to the NDIS.

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The need for sexual supports

In 1992, Anne Finger, an American disabled author and activist, famously wrote, “Sexuality is often the source of our deepest oppression; it is also often the source of our deepest pain”.

The NDIS has produced internal research reports related to sexuality and sexual activities ¹ that have been released under FOI applications, that highlight why persons with disability are more likely to seek sexual supports, as follows:

Sexuality and disability

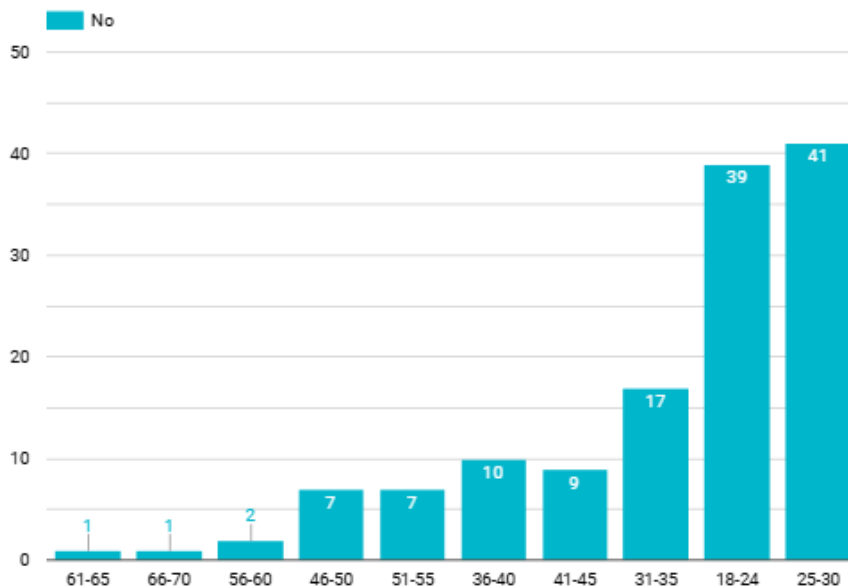
A review of the social and empirical evidence on disability and (a)sexuality, conducted in 2001 [77], highlighted that people with disabilities tend to face disproportionate levels of difficulty in leading fulfilling sexual lives compared to people without disabilities, despite possessing the same sexual needs and desires. The review identified that people with disabilities tend to encounter several barriers when expressing their sexuality and accessing sexual and reproductive healthcare, located at the individual (e.g. poor body image), societal (e.g. negative attitudes), and structural (e.g. inaccessible environments) levels.

Data from Touching Base referral services confirms this. Of the people with disability seeking disability friendly sex services via our referral service between 01/07/2024 and 30/06/2025, **for one in four of them (134/546) seeing a sex worker would be their first sexual encounter.**

The age range of these clients in the diagram below further shows **many clients wanting to access our referral list of sex workers are losing their virginity at a much later age than the average Australian.** Eighteen of these clients were over the age of 45 and had never had sex. We believe this is only the tip of the iceberg.

¹ NDIS Technical Advisory Branch (TAB) - [Research Request - Sexual Activity Supports 2020-07-10 FOI 23.24-1401.pdf](#), p.32

Potential Clients Who Have Not Had Sex



This evidence clearly indicates that having a disability can be a barrier that can significantly delay opportunities for some people to explore and express their sexuality with another person.

Navigating Sexual Supports for NDIS Participants: Case Studies and Challenges

Following the 2024 ban on *sexual services* in the NDIS Act, the then Minister for the NDIS, Hon. Bill Shorten, sought to develop clear policy guidance on what disability-related sexual supports the NDIS *can* fund. To inform the development of this policy guidance People With Disability Australia (PWDA) collated [seven anonymised case studies which illustrate the diverse sexual support needs of NDIS participants](#) and the varied experiences with NDIS funding, highlighting both successes and significant barriers.

"I had my first intimate experience with a male sex worker last year. I was 43. He changed my life! I'd never been kissed, used toys or received pleasure." - Ben

Why sexual supports are imperative for equity

The NDIS Technical Advisory team research report ² also quotes directly from the Northcott Sexuality and Relationship Policy to helpfully demarcate which disability specific sexuality support needs **require a sex worker** to assist the person with disability to meet those needs.

Support workers cannot help the person/s with a disability to:

- *Position them sexually (transfers must refer to standard Manual Handling procedures)*
- *Help with penetration of any opening (e.g. put a penis inside an anus)*
- *Physically assist with masturbation (e.g. physically guide someone's hand to masturbate)*
- *Be in the room during the sexual act*
- *Put on/insert contraception or sex toys that need to be inserted (e.g. put a condom on a person's penis or insert a dildo into a vagina) [pp. 14,15]*

Sex Aids need to remain on the In list

Northcott also identified that support workers are not permitted to assist with sex aids, as follows;

Support workers cannot be expected to provide physical assistance with masturbation and sexual positioning. Visual aids and resources are available from recognised organisations, and supporters may assist people to contact suppliers for advice if they want more information.

There are also many sex aids specifically designed to make them more accessible for disabled people³. These must continue to be permitted to be funded by the NDIS for participants who require them.

Support must also be funded for those who need assistance to use sex aids.

² NDIS Technical Advisory Branch (TAB) - [Research Request - Sexual Activity Supports 2020-07-10 FOI 23.24-1401.pdf](#), p.32

³ [Pleasure ABLE – Sexual Device Manual for Persons with Disabilities](#) and [“The MA+ Guide: A Guide to more Accessible Sexuality-Related Assistive Technology”](#)

Need to redefine “assistive technology”

Perverse and costly outcomes due to overly tight definitions are happening which also limit participants choice and control.

“Rigidity is threatening outcomes for people on the ground.”⁴

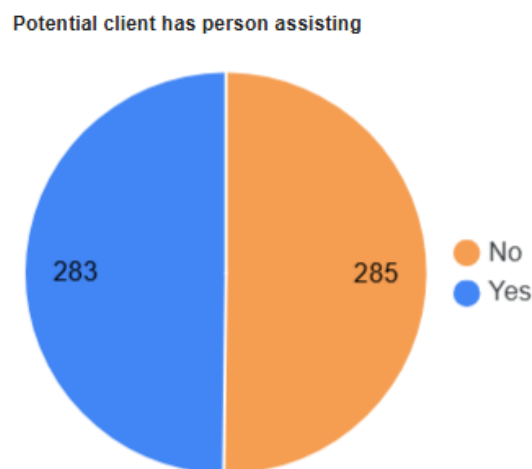
We agree with the sensible proposal by Dr Darren O’Donovan to redefine “assistive technology” as follows:

“Instead of ‘the item has been modified or adapted for use by people with disability’, you just say ‘The item has features or uses which deliver distinct functional benefits to people with disability comparable with modified or adapted products’, and that gets us there.”⁵

This will ensure that sex aids available for the general public can be funded for their distinct functional benefits, with costs benefits and increase of choice and control for participants

Many require assistance to access sexual supports

Collated data from the operation of Touching Base’s referral list of disability friendly sex workers and sex services premises, from 1st July 2024 - 30th June 2025, show that 50% of people with disability seeking referrals **will have someone assisting them to attend the sex worker’s workplace or be at their home when the sex worker arrives**. This figure is consistent with prior years.



⁴ Dr Darren O’Donovan - Interview by Geroage Taleporos, [Reasonable and Necessary podcast](#) 8th July 2025 (at 27:22)

⁵ *ibid*

This evidence suggests that many of these people seeking referrals from Touching Base have significant disabilities and on that basis may be eligible to have sexual supports funded if they have an NDIS plan. Overall, compared to the size of the scheme, and number of participants overall, these are not large numbers of people seeking sex services through Touching Base.

Why the Exclusion of Sex Work is So Wrong

The current narrow interpretation of "sexual services", based on a dictionary definition by the NDIS is of significant concern. When Senator Ayers introduced the amendment to the NDIS Act, he assured Federal Parliamentarians that sexual services would be **narrowly defined**, stating: *"It does not include, for example, provision of therapy or counselling or other kinds of assistance that a participant or a potential participant could have in their plan now."*

However, the reality is starkly different. Supports such as disability-related **sex counselling or therapy, individualised sexual education, assistance with positioning during sex, or the use of adaptive equipment** may necessitate the services of a sex worker. This is because support workers or other professionals may be **restricted under law or bound by professional codes of conduct** from providing necessary hands-on support or instruction.

This issue was raised during earlier DSS consultations on the original transitional NDIS In and Out lists, and it was acknowledged in the final report:

"Respondents said that the blanket exclusion of sex work does not take account of the many reasons people with disability may seek support from a sex worker. Following amendments to subsection 10(9)(a) of the Act, 'sexual services' are now excluded from being NDIS supports. The NDIA has committed to working with disability representative and carer organisations, advocacy organisations and the disability community to develop guidance to support participants to understand what is excluded."

Despite this acknowledgment and commitment, the NDIS website currently states:

Are sexual services an NDIS support?

Under the laws of the NDIS sexual services can't be funded.

Sexual services is not defined in the legislation but is given its ordinary meaning by the NDIA.

Sexual services are taken to include any sexual conduct undertaken with a participant for payment or reward, including direct physical activity between a participant and another person for the purpose of sexual gratification.

This includes all services that may be provided by a sex worker.

([Website extract dated 1st July 2025](#))

This narrow definition of “sexual services” that includes *all services that may be provided by a sex worker* **is a major issue**. It fails to differentiate between *sexual services* for gratification and other forms of *sexual supports* - **in which the primary focus is not sexual gratification for pleasure**.

Recent case law emphasises reference must be made to the objects and purpose of an Act when interpreting a term not defined in an Act.

An appeals decision handed down in the ACT Supreme Court in December 2024⁶ included the following illuminating extract:

That dictionaries tend to be unhelpful is accepted in modern Australian appellate courts. ... In *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1; [2002] HCA 14 at [103]-[111], Kirby J candidly acknowledged that he was “**now inclined to see more clearly than before the dangers in the use of dictionary definitions**”, principally because of the need to have regard to context and purpose. I respectfully agree with Weinberg J's observation in *Vanstone v Clark* (2005) 147 FCR 299; [2005] FCAFC 189 at [163], recently endorsed in *Cheryala v Minister for Immigration & Border Protection* [2018] FCAFC 43 at [31] and [44]:

⁶ *Benz v Baldock* [2024] ACTSC 399

“[163] ... Dictionary definitions are unhelpful, and say little, if anything, about how that term is to be understood in any particular situation.”

[Benz v Baldock, para 80 - our emphasis].

This is why it is important to have a broad operational definition of sexual services adopted by the NDIS that reflects the objects and purposes of the ACT

Our concerns about outcomes from the neglect of sexuality issues are widely shared

Last year Touching Base was a signatory to a Joint Position Statement - NDIS and Sexuality, co-signed by 38 disability and allied health organisations and services across Australia.

The Impact of Excluding Sexuality Supports

...
The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability reported that 55 in every 100 disabled people have experienced sexual and/or physical violence since the age of 15 ([Final Report - Volume 3, 2023, pg. 87](#)). Research and evidence from the community has shown that sexuality and relationship services delivered in safe and supportive settings can promote healing after sexual violence and trauma, and can lead to people with disabilities having improved confidence in negotiating healthy relationships, understanding consent and knowing their rights.

*These rights include being supported where required to facilitate their sexual expression, explore touch and pleasure in safe and supportive ways, that may enhance their self-esteem and confidence. **Getting rid of sexuality services would result in people with disability facing continued challenges, increased risks and neglect around this core aspect of their lives, especially for those who don't identify as heterosexual.***⁷

⁷ Extract from a [Joint Position Statement - NDIS and sexuality](#) (27 August 2024)

Unintended consequences are already happening

[Scarlet Alliance and Touching Base have compiled recent case studies](#), illustrating unintended consequences and significant challenges adults with disability face in accessing essential **sexual supports** through the National Disability Insurance Scheme (NDIS). These cases highlight the profound **emotional, physical, and developmental impacts** of explicit funding denials or a lack of clarity in policy, particularly following the recent ban on sexual services under the NDIS Act. While names and details have been altered to protect identities, these stories reveal the urgent need for comprehensive and consistent NDIS policy regarding disability-related sexual supports.

Here are a couple of quotes that convey the deep emotional and psychological harm inflicted by the denial of essential sexual supports, and a concrete, pre-NDIS example of a highly effective and innovative solution to a challenging behavioral issue directly tied to unmet sexual needs.

"I felt ashamed and humiliated. It was dehumanising. For a rape survivor like me, sex therapy is important." - Bill

"My son... began using it [a tailored video resource on how to use a sexual aid] very successfully for regular 'Private Time' and all the behavioural issues disappeared very quickly and have not returned. This important innovative solution... would under the current blanket ban on sexual services be denied." - Tom's mother

In a nutshell

A blanket ban on funding any types of sexual supports provided by sex workers within the NDIS directly undermines the Scheme's core objectives of promoting choice, control, and social participation, often leading to profound negative impacts on the well-being and fundamental human rights of adults with disability.

The NDIS's operational definition of "sexual services" to include "*all services provided by sex workers*" is **deeply problematic and inconsistent** with the Objects of the NDIS Act.

Narrowly defining sexual services is in denial of the many varied reasons people with disability may seek out sex workers, as a part of meeting their **disability-related sexual support needs**, including but not limited to:

- sex counselling or therapy,
- individualised sexual education,
- assistance with positioning during sex, or
- the use of adaptive equipment.

Recommendations

For these reasons we make the following recommendations:

Recommendation 1.

Any reference to “*Sex work*” and/or “*all services provided by a sex worker*” must be removed from the NDIS Supports “Out” list.

Recommendation 2.

“*Sex aids*” must remain on the NDIS Supports “In” list and support must also be funded for those who need assistance to use sex aids.

Recommendation 3.

“*Sexual supports*” should be listed in the NDIS Supports “In” list and be defined to reflect a narrow interpretation of “*sexual services*” banned under the NDIS Act.

Recommendation 4.

That guidelines be co-designed to provide clear instruction on the range of disability specific sexual supports the NDIS will fund.