



23 August 2024

## Consultation on draft lists of NDIS supports for NDIS Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

Inclusion Australia is the national peak organisation representing the rights and interests of Australians with an intellectual disability and their families. Founded 70 years ago in 1954, our mission is to work to make sure people with an intellectual disability have the same opportunities as people without disability.

Our strength is in our national representation and our connection to our community. We have a member organisation in every state and territory across Australia:

- ACT Down Syndrome and Intellectual Disability (ACT DSID)
- Council for Intellectual Disability (NSW)
- Developmental Disability WA (DDWA)
- Inclusion Northern Territory (Inclusion NT)
- Parent to Parent (P2P, Queensland)
- South Australian Council on Intellectual Disability (SACID)
- Speak Out Advocacy (Tasmania)
- Victorian Advocacy League for Individuals with Disability (VALID).

We are pleased to provide the following submission in response to the draft lists of NDIS supports, which the extension to the original due date has allowed us to develop.

### About our submission

We also took part in [the joint submission from national Disability Representative Organisations](#) (DROs), in which DROs expressed strong concerns about several aspects of the proposed lists, including the inappropriate timeline of engagement; lack of accessibility; and lack of community inclusion and consultation.

While the timeline for engagement and late publication of Easy Read materials has not allowed us to undertake the desired level of consultation with our stakeholders, this submission has been developed alongside our team of Policy Officers with an intellectual disability and our [Services for One National Community of Practice](#).

## Our key concerns

As the DRO joint submission stated, we believe the proposed lists of NDIS supports are not fit for purpose and, if implemented, will have significant negative consequences for our community.

We are especially concerned that the proposed lists will:

### **Increase costs**

Mainstream supports can often be more cost-effective and convenient than disability-specific supports. NDIS participants should not be restricted to using their funding for disability-specific supports alone.

For example, a person may wish to use their NDIS funding on a one-time purchase of an all-in-one cooking appliance, rather than have a support worker assist them twice a week with meal preparation. This cost-effective option would allow the person to maintain independence while having more room in their NDIS budget to spend on other supports.

In many cases, a person's support needs require a level of creativity and innovation to ensure they are appropriately met. This is particularly important, as the NDIS Review heard,<sup>1</sup> in thin markets where services (and especially disability-specific services) are scarce. We are concerned the proposed lists would inhibit innovation and leave some participants worse off. Further, being restricted to using NDIS funds on disability-specific services will put increased pressure on those services, which may already be under-resourced.

The proposed lists will also increase the administrative cost of the Scheme overall, affecting its sustainability. For example, the lack of clarity and number of carve outs in the lists suggest that there would be an increase in cases requiring determination by the Administrative Appeals Tribunal / Administrative Review Tribunal. This process is time consuming, costly, and highly stressful for participants and families.

### **Restrict choice and undermine inclusion**

Preventing people from using their funding in many of the mainstream contexts listed will undermine the principle of choice and control at the heart of the NDIS. We are concerned this will impede community inclusion by preventing people with an intellectual disability from accessing support in mainstream contexts on an equal basis with others.

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<sup>1</sup> NDIS Review. 2023. "Market challenges limit the ability of the NDIS to deliver quality supports for participants". Retrieved from: <https://www.ndisreview.gov.au/resources/paper/improving-access-supports-remote-and-first-nations-communities/1-market-challenges>

This may also disincentivise mainstream services from becoming more accessible and inclusive of people with disability, which is counter-intuitive to the development of foundational supports.

In addition, the one-size-fits-all nature of the proposed lists does not adequately reflect the support needs of people with an intellectual disability. As families coordinating services-for-one<sup>2</sup> have told us, someone's support needs cannot be sufficiently determined through a cut-and-dry, rules-based approach: they are not only determined by a person's disability but are driven by (and can only be understood within) a number of intersecting contexts—personal, environmental and systemic. This includes the trauma that many people with an intellectual disability, especially those with complex support needs, have experienced in their use of mainstream and disability support services.

For example, people with an intellectual disability are overrepresented at all levels of the criminal justice system. These systems do not provide adequate support or adjustments for people with an intellectual disability,<sup>3</sup> which perpetuates this overrepresentation and can lead to severe human rights breaches, as evidenced by the Disability Royal Commission.<sup>4</sup> People in contact with the criminal justice system often face a range of interlinking systemic disadvantages and require specific supports to ensure their human rights and support needs are met. In their current form, the proposed lists would deny NDIS support to this cohort, and increase the risk of violence, abuse and neglect in these settings.

The Services for One National Community of Practice also told us they have heard from parents of people with disability who menstruate who are “devastated” menstrual products have been categorised as lifestyle-related items—alongside vapes, gambling and sports tickets—that would not be funded by the NDIS.

Recent research has shown that up to 78% of people with disability who menstruate cannot afford period products.<sup>5</sup> Access to menstrual products is inseparable from rights to health and hygiene, dignity and community participation

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<sup>2</sup> Inclusion Australia coordinates a monthly Community of Practice for families running services-for-one. These are innovative models of service delivery under NDIS self-management that are tailored to an individual's specific needs and are effective in providing support for people with complex support needs.

<sup>3</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. 2023. Final Report—Volume 8, Criminal justice and people with disability. Retrieved from: <https://disability.royalcommission.gov.au/publications/final-report-volume-8-criminal-justice-and-people-disability>

<sup>4</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. 2023. Final Report—Volume 8, Criminal justice and people with disability. Retrieved from: <https://disability.royalcommission.gov.au/publications/final-report-volume-8-criminal-justice-and-people-disability>

<sup>5</sup> Connory, Jane. 2024. Period Pride Report: Bloody Big Survey Findings—Australia's largest survey on attitudes and experiences of periods. Retrieved from: <https://www.sharethedignity.org.au/end-period-poverty/bloody-big-survey-2024>

on an equal basis with others. Further, other DROs including Women with Disabilities Australia have noted the significant risks associated with excluding menstrual products from the NDIS, including practices such as forced menstrual suppression.<sup>6</sup> We were pleased to endorse the joint submission from WWDA and the Australian Women's Health Alliance on this important issue.

### **Create unnecessary confusion and uncertainty**

We have heard from our Policy Officers with an intellectual disability, as well as our Services for One National Community of Practice, that the lists are confusing and seem hastily put-together. They have been drafted in the absence of the rules that will determine how they are applied in individual cases, and without consideration of the ways foundational supports, exemptions or carve outs will operate.

Along with the consultation timelines and lack of community engagement, the lists have created uncertainty and, in some cases, exacerbated the fears and lack of trust already present within much of the community in the wake of several recent significant systemic changes announced by the government.

### **Contravene several cases heard in the Administrative Appeals Tribunal (AAT)**

The list contains a number of supports that are not to be funded. If implemented, this would overturn:

- Burchell's case, (2019 AATA 1256), where the AAT held that the NDIA should fund a health-related service.
- Mazy's case, (2018 AATA 3099), where the AAT held that the NDIA had to fund a registered nurse to supply insulin injections.
- WRMF v NDIA, (2020 FCAFC 79), where the AAT held that a trained sex therapist was a reasonable and necessary support.<sup>7</sup>

## **Our recommendations**

### **Use a principles-based approach**

We understand the constitutional requirements for transitional rules and clarity around federal government funding for supports. However, we echo the points made in the joint DRO submission asking for co-designed principles to be the

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<sup>6</sup> Coventry, Stephanie. 2024. "Period products classified as 'lifestyle related'..." *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/article/2024/aug/16/period-products-to-be-classified-as-lifestyle-related-like-vapes-and-gaming-consoles-under-ndis-plan>

<sup>7</sup> Justice and Equity Centre. 2021. Submission to NDIS consultations: Access and Eligibility Policy. Retrieved from: <https://jec.org.au/resources/submission-to-ndis-consultations-access-and-eligibility-policy-planning-policy/>

foundation of changes to the NDIS. Such principles—like whole-of-person decision-making—already exist in NDIS legislation and have precedent within the AAT and Federal Courts. Principles should be co-designed through an extended consultation period with the community.

### **Undertake genuine community consultation and co-design the transitional rule**

The timeline for engagement for this consultation was insufficient, and the Easy Read documents took time to be released.

We acknowledge the impact that the current reform processes are having on the disability community and the distress and confusion many are feeling.

While we always argue for co-design as a means to developing more effective policy, we believe at this time it is especially warranted. The provision of clear, timely and effective information is also critical.

We strongly recommend undertaking further consultation with the community to fully examine the potential impacts and risks of implementing the proposed lists, and how an alternative principles-based approach might mitigate those risks. We believe this will also be important to strengthen trust between decision-makers and community, which we are concerned has been gradually eroded by a range of factors—including the real and perceived fears within the community about how the forthcoming legislation will impact them and their families.

We look forward to continuing to work with the Department on this and other developments of the NDIS Bill, and warmly invite further conversations on the issues raised in this submission.