

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

Submission to Department of Social Services

Joint submission from national Disability Representative Organisations

19 August 2024

The national Disability Representative Organisations (DROs)¹ are writing to express our strong concerns about several aspects of the proposed NDIS Supports lists:

- Lack of engagement and consultation

¹ We note that this submission was coordinated by DANA through the National Coordination Function and endorsed by 14 organisations including the 12 coordinated [Disability Representative Organisations](#), Every Australian Counts, National Mental Health Consumer and Carer Forum, Deafness Forum Australia and Autism Aspergers Advocacy Australia.

- Impacts on people with disability
- Implementation and review

Primarily, we want to propose an alternative to these lists, which is to use a principles-based approach, that allows people with disability and their families to continue to utilise a range of innovative and cost-effective support solutions to live their lives in the community.

These principles can include those that already exist in the NDIS Legislation and have significant precedent within Administrative Appeal Tribunal and Federal Court decisions. These principles include individualised and whole-of-person decision making. These principles need to be codesigned by people with lived experience of disability.

We cannot support these proposed lists being in place, particularly without serious engagement with people with disability, families, supporters and kin. Our organisations believe these lists in their current form will cause significant harm to people with disability, and are completely out of step with the spirit and intent of the NDIS.

The key principles we believe must be included for NDIS supports are:²

- Reasonable and necessary
- Be related to a person's disability
- Take into account what is provided by other government supports
- Represent value for money

Additionally, any changes must:

- Do no harm
- Have clear exceptions process and reviews
- Promote inclusion in the community

When the NDIS Review final report was released, our organisations said that 'continued access to support for people with disability is necessary and non-negotiable. Any changes to how support is provided, either inside or outside the Scheme, must not lead to any gaps in the support we receive.' We restated this categorically when the NDIS Bill was first introduced.

² These principles are based on some of the existing rules: <https://www.ndis.gov.au/understanding/supports-funded-ndis/reasonable-and-necessary-supports>.

The primary purpose of the lists is purportedly to provide clarity for participants, nominees, providers and the disability community and enable people with disability to make informed choices when selecting their supports. The Discussion Paper goes so far as to state the transitional rule “does not change the types of supports that have always been appropriate to purchase with NDIS funding.” This is misleading as these lists patently change the nature of supports and create inherent uncertainty in the way they are drafted.

The proposed NDIS Supports lists and carve outs are highly problematic, ill thought through and rely on outdated registration groups for providers, rather than what people with disability require or currently utilise. The drafting contains many contradictions, is extremely confusing and limit many supports that have been funded previously. It is also clear in many instances that there has been no consideration of the intersectional issues that impact the disability community, for example the intersection of disability with poverty, criminal justice, and child protection.

In particular, the proposed lists will have an inevitable and disproportionate effect on the ability of First Nations people with disability to effectively utilise the NDIS. Even under the current arrangements, it is already evident that First Nations persons are not accessing the NDIS at comparable rates and are not receiving the types of supports that they need, especially in rural and remote areas. If these rigid lists are implemented, First Nations people will be burdened with the need to fight even harder, just to be approved for basic supports that are clearly reasonable and necessary.

While there is a need for transitional rules to be put in place should the NDIS Bill pass, this is the wrong way to go about it. Instead, we need an approach that preserves the definitions of supports as currently understood - principles of existing reasonable and necessary supports - while the work takes place on building a clearer system.

Our concerns with the proposed lists include:

- Timeline of engagement
- Lack of accessibility
- Limited community inclusion and consultation
- Increased costs
- Decreased access to the community
- Lack of clarity about exceptions or clear review process
- Implementation within NDIA (National Disability Insurance Agency)
- Lack of connection with other reforms
- Timeline for development of final NDIS Support rules

Lack of engagement and consultation

Timeline of engagement

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.³ These changes will upend lives, work, school and much more and need much more careful co-design and co-production.

DROs have a range of views about the length of further consultation that these lists require. The vast majority of DROs hold the view that more time is required for meaningful consultation. The time needed varied from 4 to 12 weeks, with only one organisation suggesting no extra time is needed. Most organisations believe that much longer is required to properly examine what is proposed and ensure wide engagement with diverse communities.

Lack of accessibility

It is unacceptable that the NDIS Supports lists were not available in Easy Read or Auslan formats until 5 days before the consultation closing. This excludes a wide range of people with disability from having access to the information about what is proposed. This is contrary to Australia's Disability Strategy, the NDIS Act itself and the Convention on the Rights of Persons with Disability. Presenting information in accessible formats is necessary for all government consultations. The lack of accessible communications is particularly concerning for this consultation that has major implications for communities who require not only accessible formats, but also support and time to understand the complexities of the proposed transitional rule.

Limited community inclusion and consultation

DROs have not been able to have meaningful consultation with our communities about these lists, and what they may mean for people with disability and their families due to the timeframe and lack of accessibility. For those who have had short consultations with members or their communities, feedback has been fiercely opposed to these lists, angry

³ We note that a one-week extension from 18 to 25 August was provided late on 15 August.

about not being able to properly engage, and concern about the implications.

Impacts on people with disability

Increased costs

Many of the supports listed will increase the costs of the NDIS. These include the removal of mainstream supports that people with disability and families use that are often much more cost effective than disability specific supports. People with disability have used NDIS funds in a variety of innovative ways to stretch their budgets further. These lists remove and undermine that innovation, and revert to expensive, disability only support types.

Decreased access to the community

In parallel with the increased costs, the rising use of support workers will decrease community access and inclusion. If only disability specific supports are allowed, people with disability may be forced further into segregated settings. Impacts around segregation and lack of inclusion in the community are likely to disproportionately impact communities already facing challenges to accessing supports, such as those living in regional, rural and remote communities.

Lack of clarity about exceptions or clear review process

We have grave concerns about the lack of detail or clarity about exceptions or clear review process for any NDIS Supports or carve outs that need to be changed. It is unacceptable not to have review and exceptions policy detail available for DROs and people with disability to provide feedback on.

We note that there is currently a Government amendment in the Senate that would allow people to apply for an exemption to the definition where another support would be cheaper. This is not enough; it will put a heavy onus on people with disability in an already complex scheme, and will not fix these fundamentally flawed lists.

Implementation and review

Implementation within NDIA (National Disability Insurance Agency)

DROs are very concerned about how these lists will be implemented by the NDIA, which currently is experiencing significant delays across the organisation. Access, plans and reviews are all taking months, which is causing heartache and harm for people with disability and families. We do not see how adding such harsh lists will be of any assistance to the current crisis in the Agency. The implementation of the transitional rule would need to be scaffolded by both significant training for staff about its application when resourcing is already a major challenge for the Agency.

Lack of connection with other reforms

The NDIS Review, the Disability Royal Commission, the review of Australia's Disability Strategy and the Registration Taskforce have all proposed a wide range of changes to policy and practice for people with disability and their families. Many of the proposals in these NDIS Support lists are contrary to the recommendations of other reforms. It is also problematic that the timelines for all these reforms, particularly Foundational Supports, are unclear and plans for consultation have not been communicated transparently to people with disability and their representative organisations.

Timeline for development of NDIS Supports final rules

We are strongly concerned that these NDIS Supports lists will be in place for an extended period of time, despite being not fit for purpose. DROs want to see a deadline for the delivery of the co-designed and co-produced final rules for NDIS Supports, such as six months from the passing of the legislation.

Our key asks

Based on the concerns noted above, we strongly urge the Government to:

1. Adopt a principles-based approach: The proposed lists will have a negative impact on people with disability. A principle-based approach will allow people with disability and their families to continue using innovative and cost-effective solutions to live their lives within their communities.

2. Provide an extension for consultation: People with disability and DROs need time to meaningfully engage with their members and communities, and to fully examine the extent of both benefits and risks of the lists. The list needs the expertise of people with disability at the forefront and centre of their development and implementation.
3. Provide clarity and assurances on exceptions and reviewable decisions: Policies pertaining to exceptions and reviewable decisions must both be firstly developed in consultation with people with disability, and secondly made available in accessible formats. While we oppose the lists, ensuring people with disability can contest decisions will be crucial if the lists are implemented.

Signed by:

- Australian Autism Alliance
- Australian Federation of Disability Organisations
- Children and Young People with Disability Australia
- Community Mental Health Australia
- Disability Advocacy Network Australia
- Down Syndrome Australia
- First Peoples Disability Network Australia
- Inclusion Australia
- National Ethnic Disability Alliance
- People with Disability Australia
- Physical Disability Australia
- Women With Disabilities Australia
- Every Australian Counts
- Deafness Forum Australia
- Autism Aspergers Advocacy Australia
- National Mental Health Consumer and Carer Forum