

IDRS submission to DSS on the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* NDIS proposed supports list

About Intellectual Disability Rights Service (IDRS)

The Intellectual Disability Rights Service (IDRS) is a not-for-profit organisation that works with and for people throughout NSW living with intellectual disability. IDRS has two main service functions. Firstly, the Ability Rights Centre, (ARC), a community legal centre providing legal and related advocacy services, including legal advice, representation and community legal education. ARC hosts a NDIS Appeals Team who advocate for NDIS participants in relation to their NDIS plans and supports. Secondly, IDRS operates a non-legal Justice Advocacy Service for people with disability who encounter the criminal justice system. IDRS engages in policy and law reform to uphold the human rights of people with cognitive impairment.

The IDRS notes the Senate Community Affairs Legislation Committee's report arising from its inquiry into the NDIS Amendment Bill, and the amendments made to the Bill during its current passage through Parliament.

IDRS has expressed concern with several aspects of the NDIS Amendment Bill, including details of the rules and transitional arrangements into which fall the definitions of NDIS supports, and the definition of NDIS supports which should be in place when the Bill commences.

We note the subsequent and recent publication of the NDIS supports list and welcome the opportunity to comment on the list. We do, however, think that the timeframe for response has been extremely restrictive, meaning that extensive consultation within and across the sector has been extremely limited.

IDRS notes the DSS website claims that the drafted 'NDIS supports list' *comes from current operational guidance and work alongside the National Disability Insurance Scheme (Supports for Participants) Rule 2013 which already describe some of what the NDIS will and will not be responsible for funding.*

And further,
that [t]he intent is to broadly reflect current practice including some proposed exclusions in relation to items that are not evidence-based or are daily living costs that were never intended to be part of the Scheme.

IDRS believes that this would have been the ideal opportunity for extensive assessment and thoroughgoing analysis of the supports that NDIS participants absolutely rely upon, and not conducted as an exercise designed to contain and restrict future NDIS supports.

IDRS feedback addresses the three questions posed by DSS's paper *Consultation on draft lists of NDIS Supports*.

Question 1: Do you think the draft list of NDIS Supports covers the kinds of disability supports you think should be included?

IDRS is of the view that the NDIS support list appears to be hastily drafted. The presence of carve outs indicate that the NDIA anticipates that decisions made in respect of the overarching test, that being that a person needs a support because of their disability, will be increasingly scrutinised. Simply put, should the support be required to uphold a participant's human rights and their daily living, the support should be funded by the NDIS.

IDRS supports the exclusion of the former APTOS list from the NDIS Amendment Bill, however, we do not consider that this list is an appropriate replacement in its current form.

The language in the list is condescending in tone. NDIS participants do not seek to have inclusions in their plans because they are profligate, wasteful, or greedy. Participants seek to have inclusions in their plans as a direct consequence of their disability, and in doing so, believe the NDIS should cover such costs to enable them to live fulfilling and participatory lives, as the NDIS's establishment intended.

IDRS notes the overwhelming proportion of NDIS participants who have intellectual disability. The NDIS supports list skews heavily towards people with physical disability. The absence of articulated support for people with intellectual disability needs urgent rectification.

Question 2: Are there goods or services on the draft exclusion list that you think shouldn't be there? If yes, please list in order of importance.

The NDIS support list is drafted in the absence of the rules that will apply to their determination. Further, the so-called foundational supports to be provided by the States and Territories remain unknown and undefined and therefore undermines the lists' intention to provide clarity and certainty for the disability community.

IDRS highlights the following as just some of the problems with the NDIS support list:

1. The list contains supports that are not to be funded. This may 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.
2. The list narrows the supports available, despite the notional 'carve outs'. This could have the effect of lowering overall budgets within plans, and therefore limiting participants' choice and control over the supports they consider are best needed to

suit their daily living. This may also have the effect of reducing access to mainstream services and/or whatever is included as foundational supports.

3. Descriptions contained within the (unnumbered) supports will constrain the scope of interpretation and therefore decision making. For example, 'rental tenancy' referred to in the definition of 'accommodation' supports may have the unintended consequence of limiting housing choice for participants in the rental market. There is no reference in the list to 'Supported Independent Living'.
4. The use of the terms 'assistance' or 'assistive' means that physical support is required for the delivery of that support, and should refer to a support worker, coordinator, or the like.
5. Hearing Australia should not be a nominated provider in the carve outs, as certain services are provided by Hearing Australia that support participants' permanent impairment.
6. There are several elements within the 'not NDIS supports' list that should be included in the NDIS support lists. These include:
 - a. Standard home security costs. For parents and carers of people with intellectual disability, fencing, gates and the like might be necessary to support behavioural plans and for sensory support.
 - b. Standard household items might be time and financial saving devices and could add significantly to the quality of life, choice and control of a person with disability and therefore void the need for a support person in certain circumstances. Whitegoods fall into this category of care, choice and support.
 - c. Restaurant meal delivery might be required and support a person with disability under some circumstances and should be able to be considered on a case-by-case basis.
 - d. Smart phones and smart watches are ubiquitous pieces of technology that provide connection to communications, government services and underpin a range of other support, administrative and health related tasks that provide choice and control and could be lifesaving. These include engagement with Centrelink, housing applications, transport service, grocery and other service delivery, some of which are crucial, and provide independence for people with disability. People with disability should be trusted with applying these devices in innovative, unique and purposeful ways to meet their daily living needs.
 - e. Smart phones and smart watches are ubiquitous pieces of technology that provide connection to civil and criminal court mates, including access to ADVOs (through the AVOW app in NSW). Equally, QR codes are increasingly being used as part of support for behavioural support plans, language supports and related matters.
 - f. Recreational membership costs and forms of general play equipment (trampolines) enable people with disability to develop capability and capacity

building and support the maintenance and/or development of physical and intellectual wellbeing. These are also supports provided for people with intellectual disability as part of their sensory needs and/or behavioural support plans.

- g. Menstrual products should be included.
- h. Types of child protection and family support should be included in some circumstances including where such supports are essential for people with intellectual disability to receive support in behavioural plans.
- i. NDIS should be available to people who have plans prior to incarceration and at the point of exit.
- j. Participants in, and exiting from, closed settings including custodial and forensic mental health settings, should not be excluded from accessing the NDIS prior, within, and post release. People with criminal convictions should not be excluded from NDIS participation. 'Secure accommodation' should be defined.
- k. specialised driver training. The list acknowledges additional supports for people with physical disabilities, however, people with intellectual disability require additional support to obtain their driving licence, and often at significant cost. The flow-on effect undermines their ability to engage in other activities including education, employment and community engagement.
- l. Funeral costs should be part of the person's plan where these are necessary for cultural and related purposes (notably for Aboriginal and Torres Strait Islander people). NDIS support is required to facilitate their attendance where such attendance is essential to community participation.

Question 3: IDRS further feedback or concerns with the draft NDIS support lists

There are several NDIS supports that are on the 'not NDIS supports' list that should be included in the list of NDIS supports. The NDIS supports list does not adequately reflect the support needs of people with intellectual disability. These include:

- a. The intersection of mainstream services, foundational supports and NDIS supports is critical to the wellbeing of NDIS participants and their ability to actively engage in society and the economy. The Bill references all these, however, it is nonsensical to define NDIS supports in the absence of the National Partnership Agreement being struck between the Commonwealth and the States, and in the absence of the definition and funding of foundational supports
- b. This lack of definition increases the likelihood of matters requiring determination by the Administrative Appeals Tribunal (AAT). This adds to the overall cost of administering the Scheme and negatively impacts NDIS participants.

- c. The civil and criminal justice systems do not provide adequate or reasonable adjustments for people with intellectual disability, as highlighted in the Disability Royal Commission and the Commonwealth and states responses to its recommendations. People with intellectual disability who reside in custodial and other closed settings too often are subject to abuse, neglect and exploitation. NDIS support is severely limited and even denied to people in custodial and other closed settings.

IDRS considers the timeframe for the review of proposed NDIS supports should be extended and contemplated alongside the scope and definition of proposed foundational supports.

We welcome the opportunity to discuss our feedback with you further.

Yours sincerely

Joanne Yates

Joanne Yates
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