



Women
With
Disabilities
Australia
(WWDA)

WWDA Submission

Consultation on draft list of NDIS Supports

25 August 2024



Acknowledgments

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About Women with Disabilities Australia (WWDA)

Women With Disabilities Australia (WWDA) is the national Disabled People's Organisation (DPO) and National Women's Alliance (NWA) for women, girls, feminine identifying and nonbinary people with disability in Australia. As a DPO and an NWA, WWDA is governed, run, and staffed by and for women, girls, feminine identifying and non-binary people with disability.

WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability.

WWDA uses the term 'women and girls with disability', on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.

Contents

About Women with Disabilities Australia (WWDA).....	1	
Introduction	5	Deleted: 2
Examination of proposed NDIS Supports	6	Deleted: 3
Co-design of NDIS Supports	7	Deleted: 3
Rights-based approach: NDIS Supports and the CRPD	8	Deleted: 4
Gendered impact of NDIS Supports list.....	9	Deleted: 5
People living in Regional and Remote Areas.....	11	Deleted: 7
Confusion, lack of trust, and use of language.....	11	Deleted: 7
Implementation	12	Deleted: 8

Introduction

Women With Disabilities Australia (**WWDA**) has written this response to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024: Consultation on draft lists of NDIS Supports, and the Draft List of NDIS Supports*. In the past, WWDA worked with Women with Disabilities Victoria and Women with Disabilities ACT to write a submission about the draft laws (called 'the Bill'). The submission was sent to the Community Affairs Legislation Committee. The Committee looked at the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024*. This is about changing the law about the NDIS. WWDA also wrote other submissions about NDIS changes. We were concerned about how period products, and sexual supports and services were removed from draft lists.

In our first submission, we talked about serious concerns with the draft laws. This included section 10, which talks about what an 'NDIS support' would mean. We talked about our concerns for how the changes might impact people. This includes how the changes work with rules the Government must follow under the United Nations Convention on the Rights of Persons with Disabilities (CRPD). We believe the NDIS support definition does not meet the rights covered under the CRPD. We were also worried about the Applied Principles and Tables of Support (APTOS) as a temporary tool to decide what supports could be NDIS supports.

During the consultation period, changes were made to the Bill. These are called amendments. Amended section 10 of the Bill says that the Minister can make Rules about the definition of NDIS Supports. Section 10(3) says that the rules can say that a support is an NDIS support. This can happen if the declaration fits Australia's obligations under the CRPD, or if it meets Australia's obligations in another agreement with other countries.

At first, WWDA supported this change as an improvement. This was because the definition of NDIS Supports would be co-designed (designed with the community). They would be in line with the full range of rights under the CRPD. They would also match Australia's obligations under other agreements, such the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). We also welcomed the removal of the APTOS as a temporary rule. This was because the APTOS was vague and would lead to people being unable to access the supports that they need.

WWDA is now worried about the new approach being taken to defining 'NDIS supports'. We are worried about how they will be used for the temporary rule. We understand that temporary rules need to be in place when the Bill becomes law. We believe they must be developed with people with disabilities and our representative organisations. This is especially important for the introduction of the temporary rule. The rule will change the supports that participants can access under the Scheme. We have been advised that the temporary rule is meant to make sure things stay as they are. We strongly disagree that this will be the effect of the draft lists and are worried

that the draft lists will make a big change to the kinds of supports and services people can use.

There are risks involved with such big changes. This includes the removal of supports that participants need in their daily lives. There is a big risk that people will want to spend their funding on supports that they have used before but won't be allowed to. Some of these supports have been recognised as reasonable and necessary in the past. The recognition has come from places such as the AAT or Federal Court. They may find that these supports are now not allowed. If people keep using these supports, they may break the rules that are talked about in subsection 46(1) of the Bill. This could harm. Some of the consequences could be creating a debt or losing their preferred way to manage their plans.

In this submission we talk about the things we are worried about with the proposed NDIS supports list. We are also repeating concerns we raised in our first joint submission:

1. The draft lists have not been co-designed. There was a very short time to respond and Easy Read and Auslan were not available until much later.
2. The draft lists do not align with the CRPD. They do not make sure there is a rights-based approach to disability supports under the CRPD.
3. The draft lists will impact women and girls differently. Removing some supports have a bigger impact on women and girls who already experience inequality in the NDIS.
4. The draft lists do not make sure things stay as they are. They could cause harm by removing vital supports. They are likely to result in more segregation of people with disabilities. This is because they require people to use specialised disability supports and services, instead of supports in the community like everyone else.
5. The draft lists will make it harder for some people to access safe and appropriate services. These groups have extra barriers that impact their lives. This includes First Nations people, people from diverse cultural backgrounds and members of the LGBTQIA+ community. It also includes people living in remote and regional areas.

There was a very short time for the community to tell the Government what they thought of the lists. This has meant that some supports people need to live their lives have been excluded.

In many cases, the way that supports have been talked about is incorrect. We believe this reflects incorrect ideas about how they may be used, or what they may mean as a disability support. Deciding what makes a good, reasonable and necessary disability support must involve the person. They must be able to share their own experience of disability.

There have been legal cases that show that each person's needs are unique. The current approach seems to favour a one-size-fits-all solution. This does not take into account a person's own knowledge of their needs.

Examination of proposed NDIS Supports

Co-design of NDIS Supports

The time for the community to have their say on the lists was very short. There were also delays in getting Easy Read and Auslan information. This is not how the community expects co-design and consultation to happen. It also makes the process inaccessible for many people. This means that the draft lists do not properly show the important supports and services that NDIS participants need and are using now. The short time made it hard for organisations like WWDA to do their work. It made it harder to talk to the people they represent. This means that the feedback they gave did not represent everyone properly. It also meant they were not able to think about other ways people could be affected by the new lists.

We believe the proposed NDIS Supports list does not keep things as they are. The list could harm people with disabilities through the removal of supports people really need. It could create more barriers for some people to access vital supports. WWDA would like the Government to think more about the things that could happen if there is a change to NDIS supports.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme.

Work with people with disabilities and disability representative organisations (DROs). They should make sure they co-design the new NDIS Supports definition.

- Give DROs enough time to talk to the people they represent in an accessible way.
- Make sure they give information in a way that all people can access.

Recommendation: For the Australian Government.

Create a different temporary rule and NDIS Supports list that:

- Do **not** make new limits about the supports that people can access through the Scheme.
- Do have a true co-design process for creating new Rules.
- Do **not** provide for blanket exclusions.
- Maintain the status quo.
- Make sure that people can continue to use NDIS funds to access supports the way they have been, if the supports are reasonable and necessary and are in line with their NDIS plan.

Rights-based approach: NDIS Supports and the CRPD

WWDA has given feedback about the NDIS Bill. We believe the lists do not match the rights of people with disabilities in the CRPD. We are especially worried about Section 10 and think that the definition of NDIS supports should be changed.

- to include supports that allow a person to enjoy their rights under all articles of the CRPD
- to say that a support that creates isolation or segregation cannot be a NDIS Support. This is in line with Article 19 of the CRPD.

We are worried that only some of the rights people have under the CRPD will be considered. We are worried about how this will affect decisions about what is and what isn't an NDIS support. Other Disability Representative Organisations have also said they are worried. WWDA has said we are very worried about the NDIA making lists of what can and can't be a support. We think it is very important that the NDIA understands that what is a disability support for one person will be different for another.

There are new concerns about the draft NDIS Supports list, including that they:

- don't let people access all the supports they need.
- will be confusing for people and change the way they support.
- could have unintended consequences.
- do not support what the NDIS is supposed to do, like make sure people can have choice and control and independence and be a part of the community.
- do not promote rights contained in the CRPD.
- risk violating the rights of people that are written in the CRPD.
- will increase risk of segregation.

WWDA is concerned about the focus on specialised, disability-specific supports. We are also concerned about the removal of mainstream supports. We think this will create more segregation. The Disability Royal Commission heard lots of evidence about how segregation led to more violence, abuse, neglect and exploitation of people with disability.

WWDA is also concerned that the removal of mainstream supports. We think removing everyday items will take away people's independence.

For example:

- A person may need period underwear (an everyday item) to manage incontinence by themselves. If a person is stopped from purchasing period underwear, they might need a support worker to help instead. This could make it harder for them to be part of their community, including in school or at work, and their safety.
- A participant might need a standard household item, like a dishwasher, to do household tasks by themselves. If they are stopped from purchasing household appliances, they might need a support worker to do household tasks.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme.

That they create an approach to NDIS supports that is in line with the CRPD. That the approach does not lead to more segregation of people with disabilities.

Impact of NDIS Supports list on Women and Girls

Many of the things listed as 'not NDIS supports' will have more of an impact on women and girls with disability. This is contrary to Article 6 of the CRPD. Article 6 says Governments must recognise that women and girls with disabilities face more discrimination. They must make sure women and girls with disability have full access to their human rights and freedoms.

For example, we are concerned about:

- **The removal of household appliances and white goods.**

These can be a good way to assist women with disabilities to care for their homes and families. Research shows that women in the household do more of the work. The NDIS Supports lists recognise assistive productive for household tasks, but the definition is narrow. This narrow definition may prevent access to other essential household items. These are items that enable a woman with disabilities to complete household activities. Not every person with disability will need to use their funding for white goods. For some, these items can be important, innovative, and cost-effective disability supports.

- **The removal of some parenting and family supports.**

This includes those for families in contact with the child protection system. Like household products, this issue impacts women more. That is because women are often the main caregivers in a household or family. People with disabilities are over-represented in the child protection system. They experience discrimination and harmful attitudes about their ability to be parents. There is a lack of access to information, services and support. Services rarely understand or respond to what people with disabilities who are parents need.

- **The exclusion of menstrual products.**

These were listed as lifestyle-related items rather than 'assistive products for personal care'. WWDA made a separate submission about this. We said many people with disabilities need specific products and supports to manage their periods. This could

be adaptive period underwear or tampon insertion aids. Many people use period products for incontinence. Access to safe, adaptive, accessible and appropriate menstrual products is important. It is linked to health, hygiene, dignity, independence and inclusion in the community.

- **The removal of a range of supports described as ‘not value for money/not effective or beneficial.**

Many of these supports have a strong evidence-base. They are beneficial for women, girls and gender-diverse people with disabilities. This includes therapies like somatic therapy. Somatic therapy has been shown to benefit people with psychosocial disabilities. Somatic therapy is used by many women, girls and gender-diverse people with disabilities. Some use it to support healing after experiences of violence and abuse.

It also includes the use of some beauty services. These services can be effective, cost-effective and inclusive ways to meet personal care needs.

More examples of specific concerns are in the table below. We recognise that the NDIS Supports draft lists provide some ‘carve outs’. This is where excluded items may be deemed to be NDIS supports. This may create extra barriers for people who need these supports. We recognise that supports listed as day-to-day living costs may be allowed for a person in some situations. This is where there is an extra cost in relation to disability support needs. It is not clear how this will be decided. It is also unclear what evidence a participant will need to provide to be approved. It is also concerning that a test of ‘solely and directly’ creates an unfairly high threshold.

The Australian Government has acknowledged that the ‘lifestyle related’ categorisation of menstrual products, and their exclusion, in the NDIS Support draft lists was incorrect. Given the diversity of support needs within the disability community, it is likely that equal consideration could be applied to many of the exclusions within the lists.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme.

Adopt an approach to NDIS supports (and the whole Scheme) that is responsive to the needs of women and girls. It should be consistent with Article 6 of the CRPD. It should also be aligned with the Working for Women: A Strategy for Gender Equality. It should meet the needs of other marginalised cohorts.

People living in Regional and Remote Areas

The draft lists are restrictive. They could lead to NDIS plans being more expensive over time. Especially for people living in regional and remote areas. In these areas it is already hard to find support workers. The lists in their current form may make it harder to buy things that are better value for money. This means people will struggle to find creative ways to make their money go further. In areas where it is hard to find support workers, these types of creative solutions are very important. They help people when there are no other options available. This is especially important for people who experience additional barriers. These barriers can mean that people have extra safety concerns. Under new restrictions, creative ways of using funds may be limited. This could force people to rely on more expensive, disability only supports, supports which they might not be able to access if they live in remote regions. This could also impact communities that value specific cultural or healing practices, as they are now excluded. If people have fewer options this could increase the size of NDIS plans. If there are only more expensive options available it will be harder for people to get the right support.

Confusion, lack of trust, and use of language

We are also concerned about the language used in the lists. We believe it tells a negative story about the disability community. We are worried that parts of the draft lists have been influenced by media stories. We are also worried that wrong information has been used in the media about people doing the wrong thing with NDIS funding.

The information in the draft lists has worried many people with disabilities. They are worried that these changes could make getting support from the Scheme harder. They are worried it could make the Scheme more confusing, and unfair. The NDIS Review said there should be better support for people with disabilities. They need more information to make decisions about their NDIS supports. There are not enough resources to help people understand the supports they can use. This gap affects participants' ability to exercise choice and control. It stops people having a good idea of what is available in their plans.

Some of the language used in the draft lists adds to this confusion. It might add to poor attitudes about disability. For example, terms like 'everyday items' make people think that there is a difference between disability and daily life. It continues the idea that living with a disability is different from everyday experiences. This kind of language builds on ableist attitudes. It has the effect of alienating people with disabilities. The term 'carve outs' is not widely understood. The structure of the list would require participants to understand both the 'NDIS Supports' list and the 'Not NDIS Supports' list. It also means they need to understand the 'carve outs' for each category. There should be better, clearer language in the lists. It should be accessible so all participants can use the scheme. We are also disappointed that the lists and Bill do not follow the recommendation made by the NDIS Review Panel for a trust-based approach in

overseeing participants' spending – one that gives guidance and support. The proposed changes suggest a lack of trust in participants' ability to manage their own supports and to identify what disability support looks like to them in the context of their life. This has led to concerns about a punitive, rather than supportive, approach. We are also concerned about an underlying paternalism, where people with disabilities are not recognised as the experts in their own lives, their own disabilities, and their own support needs.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme

Agree to an authentic co-design process for future work. This includes the development of future draft lists. It also includes rules, communications products and education resources. The Australian Government must honour its commitment to people with disabilities. It must make sure people with disabilities are involved in decisions that affect their lives.

Implementation

WWDA is very concerned about how the new NDIS supports lists will be implemented. We think there is a chance that it could impact people in a negative way. We are worried that NDIS staff might not have a good understanding of the changes. We are worried they might make the wrong decisions based on this. We know that there is a history of planners making poor decisions. This might be because of lack of knowledge or their thinking about people with disabilities. We know that sometimes well-meaning policy is not implemented well. The Royal Commission into the Violence, Abuse, Neglect and Exploitation of People with Disability and the NDIS Review heard evidence about this. This evidence showed misunderstandings and misapplications of policy have led to bad outcomes. Sometimes the decisions were inconsistent, and sometimes they were harmful.

We believe there needs to be proper knowledge, information and training. Without it, staff might not recognise when an excluded item should be allowed to be accessed. We are also concerned that participants may not feel safe, comfortable or able to say when they should have that support. They could be unfairly denied supports that they need. Every person with a disability has unique needs and experiences. This needs to be taken into account in decision-making. Without this, the restrictive nature of the lists risks making things more difficult for participants. This could create more barriers for people who rely on the NDIS to live good lives.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme.

Agree to develop a disability led training package. Make sure frontline staff are given what they need to understand the different needs of people with disability. Make sure they understand how the lists can be used flexibly.

Recommendation: For the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme.

Create strong oversight of how the rules are applied. Make sure this includes accuracy and consistency. Make sure that there are ways to stop the lists being misunderstood or interpreted. Make sure they are not applied in ways that can make it harder for people to access what they need.

Examples

The consultation timeframe was very short. Because of this WWDA was not able to talk to the community about all items on the draft NDIS Supports lists. We were not able to think in depth about potential consequences of the lists. WWDA has provided a number of examples below. This list is limited and is not exhaustive. It is meant to provide a few examples to show how many of the excluded supports would be the best choice for some participants.

WWDA has made separate submissions about menstrual products and sexual supports.

Item/category	Example	WWDA Comment
Assistance to Access and Maintain Employment or Higher Education	A participant receives support from a trained support worker in the day to day completion of job tasks or for online courses. This is a type of training.	The definition is too broad. This type of on-the-job support can be vital to someone's long term success in staying employed. One WWDA member told us that they had asked for support with employment and was told to contact a job provider, but they were not eligible to access this support.
Assistive Products for Personal Care And Safety	A participant with intellectual disability or an Autistic participant uses a smart watch and phone to live independently.	A push towards products that are 'specialist' in nature prevents people accessing low-cost solutions. These are often items that can make the difference between someone requiring a support worker and being able to manage with minimal supports.
Assistive products for household tasks	A Participant with limited hand function requires standard food chopper. Without access to this, the participant requires paid support to cook.	Removal of everyday household items may increase reliance on support (paid or unpaid). It could decrease independence. The push towards specialist products risks increased costs. This has a gendered dimension due to gendered division of labour. It may make it harder for people in remote, rural or regional locations where there is limited access to specialist products.
Specialist Driving Lessons	An Autistic participant requires a specialist OT	The list now refers to 'Driver training using adapted equipment or vehicle modification', which may not be required

	report. They also need support from a specialist driving instructor to get their licence.	by the participant. This rule will prevent some people from obtaining their licence. This limits their chance to get a job or be included in the community
Day-to Day Living Costs	A participant with chronic pain requires a spray mop because they cannot use a mop and bucket.	This support would be excluded as an everyday day-to-day living cost. It is not a 'specialised item' but it is a necessary disability support. It means the person can still do the task on their own, without a support worker doing it.
Day-to-Day Living Costs – Takeaway food	A participant with physical disability has support staff who prepare meals.	It is common for support staff to cancel shifts. In an emergency, a participant may need to buy takeaway food to replace what would have been prepared.
Day-to-Day Living Costs - Generators	A participant relying on a respirator is living in an area at risk of blackouts.	Preventing access to this type of support can place lives at risk (see link here). In some cases it is directly related to disability. People should not be forced to leave communities because they are at greater risk of disasters because of their disabilities. Power issues can occur anywhere and at any time.
Daily Living Costs - Travel	A First Nations participant living away from Country needs to travel home to participate in cultural activities. They may use their short term accommodation supports to do so.	The participant could be prevented from accessing their community if they were not able to stay in appropriate hotel accommodation. Travel to their community is very important. We are worried planners will say no to this type of support. Participants should not be forced to disclose personal cultural information just to be able to access this.
Not value for money/not effective or beneficial – hair salons	A Participant with a physical disability attends a hair salon for washing their hair.	It is cheaper for the participant to attend a salon to have their hair washed than having support staff attend the home. This promotes inclusion in the community for that person. For women and girls with disabilities, there is a protection of dignity. There is also added safety in attending a public space such as this rather than having to be naked with a support worker (who they may not know).