



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.

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Introduction

Women With Disabilities Australia (WWDA) welcomes the opportunity to respond to [*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*](#). This response follows a joint submission by WWDA, Women with Disabilities Victoria and Women with Disabilities ACT to the Community Affairs Legislation Committee on the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* (the Bill). It also follows separate submissions by WWDA, specifically related to the exclusion of menstrual products, and sexual supports and services, within the draft lists.

In our initial submission, we outlined serious concerns with the proposed Bill, including section 10, which outlines the proposed definition for 'NDIS support.' We outlined the issues interfacing this section with Australia's obligations under United Nations Convention on the Rights of Persons with Disabilities (CRPD): the NDIS support definition was not reflective of all rights covered under the CRPD. We also expressed concern about the Applied Principles and Tables of Support (APTOS) as a transitional measure.

During the consultation period, [amendments](#) were made to the Bill. Amended section 10 of the Bill states that the Minister can make Rules about the definition of NDIS Supports. Section 10(3) states that the rules may declare a support to be a NDIS support if the declaration implements Australia's obligations under the CRPD or another agreement with one or more countries.

WWDA initially supported this amendment as an improvement, since the definition of NDIS Supports would be co-designed, and referable to the full range of rights under the CRPD (as well as the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and other instruments). Like many in the disability community, we also welcomed the removal of the APTOS as a transitional measure because it was vague, regularly disputed, and would lead to people being unable to access the supports that they need.

However, WWDA is concerned by the new approach being taken to defining 'NDIS supports' in draft lists for the purposes of the transitional rule. While we recognise that transitional rules need to be in place upon commencement of the Bill, we believe they must be developed with people with disabilities and our representative organisations. This is particularly critical where the introduction of the transitional rule will have the effect of changing the supports that participants can access under the Scheme. While we have been advised that the transitional rule is intended to maintain the status quo, we strongly disagree that this will be the effect of the draft lists. We believe that the draft lists will effect significant changes to the kinds of supports and services participants can use.

There are serious risks associated with such significant changes, including the removal of essential supports that participants rely on in their daily lives. There is also

a serious risk that participants will seek to spend their existing funding on supports that they have used before (and which have been recognised as reasonable and necessary including by the AAT or Federal Court), only to find that they are now prohibited. In doing so, participants may inadvertently breach the prohibition in proposed subsection 46(1) of the Bill which could have serious and harmful consequences, including incurring debt or losing their preferred plan management arrangement.

In this submission we outline the following issues with the proposed NDIS supports list, while reiterating concerns raised in our initial joint submission:

1. The draft lists have not been co-designed, noting the limited consultation of three weeks, with a significant delay before Easy Read and Auslan materials were made available.
2. The draft lists do not align with or give effect to a rights-based approach to disability supports under the CRPD.
3. The draft lists have gendered dimensions and removal of some supports will disproportionately impact women and girls who already experience inequality in the NDIS.
4. The draft lists do not maintain the status quo, could cause harm by removing vital supports, and are likely to result in further segregation of people with disabilities through requiring use of specialised disability supports and services.
5. The draft lists will further disadvantage people with disabilities who are already facing significant barriers to accessing safe and appropriate services. This includes people living in regional and remote areas, First Nations people, people from diverse cultural backgrounds and members of the LGBTQIA+ community.

The limited engagement with the community in developing the draft lists has resulted in the proposed exclusion of certain supports that are vital for people with disabilities to live their lives. In many cases, the way that supports have been categorised reflects misconceptions about how they may be used, or what they may mean as a disability support. Determining what constitutes a beneficial, effective, reasonable and necessary disability support must involve centring a person's lived experience of disability. Cases like the recent AAT matter of *MKKX and the National Disability Insurance Agency* highlight the complexity and required nuance, yet the proposed approach promotes a one-size-fits-all solution that fails to trust participants' knowledge of their own needs.

Examination of proposed NDIS Supports

Co-design of NDIS Supports

The short consultation period to provide comment on the draft lists, particularly with the delayed provision of Easy Read and Auslan materials for people who require this for their access to information, fell short of community expectations of co-design or consultation and accessibility. This means that the draft lists do not accurately reflect the critical supports and services that NDIS participants need and are currently using. The consultation period is a prohibitively short period for organisations to consult their community and provide sufficient feedback on the draft NDIS Supports list. The consultation period has not allowed for analysis of the unintended consequences of ruling certain NDIS supports out.

In our view, the proposed NDIS Supports list does not maintain the status quo and could harm people with disabilities through the removal of vital supports, and/or additional barriers to accessing vital supports. WWDA urges consideration of the unintended consequences of changing NDIS support arrangements.

Recommendation: That the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme engage with people with disabilities and disability representative organisations in relation to the NDIS Supports definition to ensure genuine co-design:

- To enable Disability Representative Organisations (**DROs**) with sufficient time to consult their membership
- With the provision of all material relating to the consultation in methods that meet the communication needs of all people with disabilities.

Recommendation: That the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme adopt an approach to the transitional rules and NDIS Supports that:

- Does not impose new restrictions on the supports that NDIS Participants can access through the Scheme, with new determinations for the purposes of creating the Rules subject to a genuine process of co-design.
- Does not provide for blanket exclusions.
- Maintains the status quo, including by ensuring that Participants can continue to use NDIS funds to access supports that are found to be reasonable and necessary and are consistent with their NDIS plan.

Rights-based approach: NDIS Supports and the CRPD

WWDA has previously provided feedback about the lack of alignment between the NDIS Bill, notably Section 10, and the rights contained in the Convention on the Rights

of Persons with Disabilities. In our previous submission, we provided that Section 10 and the proposed definition of NDIS Supports should be amended:

- to include supports that facilitate the full and intended realisation of a person's rights under all articles of the CRPD; and
- to state that a support that promotes isolation or segregation, or has the potential to, cannot be an NDIS Support (this supports Article 19 of the CRPD).

We expressed concern about a selective or piecemeal approach to the rights contained in the CRPD in determining what will and will not be an NDIS support. Along with other Disability Representative Organisations, we also expressed concern about a move towards lists of prohibited and permitted supports. We emphasised that a scheme that is individualised must recognise that what is a disability support for one person will be different for another.

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

- are excessively narrow and deny people with disabilities essential supports;
- will be highly disruptive and confusing for participants, with unintended consequences;
- do not support the underlying principles of the Scheme, including in relation to choice and control, independence, and participation in the community;
- do not promote the realisation of a number of rights contained in the CRPD;
- risk violating a number of the rights of people with disabilities contained in the CRPD, including through increased risk of segregation.

WWDA is deeply concerned that a focus on specialised, disability-specific supports, and a removal of mainstream supports, will have the effect of increasing segregation. The Disability Royal Commission heard extensive evidence about the role of segregation as a driver of violence, abuse, neglect and exploitation of people with disability.

WWDA is also concerned that the removal of mainstream supports, including everyday items, will have the effect of eroding independence and autonomy. For example:

- A participant may require period underwear (an everyday item) to manage incontinence independently. If a participant is prevented from purchasing period underwear, they may require regular personal care support to assist with changing. This could have broader implications for their participation in the broader community, including in school or at work, and their safety.
- A participant may require a standard household item, like a dishwasher, to conduct household tasks independently. If a participant is prevented from purchasing household appliances, they may require regular support from a support worker to carry out household tasks.

Recommendation: That 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 that is consistent with the rights of people with

disabilities contained in the CRPD, and does not contribute to further segregation of people with disabilities.

Gendered impact of NDIS Supports list

Many of the exclusions (supports deemed 'not NDIS supports') will also have a disproportionate and adverse gendered impact. This is contrary to Article 6 of the CRPD, which requires States Parties to recognise that women and girls with disabilities are subject to multiple discrimination, and must take measures to ensure their full and equal enjoyment of all human rights and fundamental freedoms.

For example, we are concerned about:

- **The exclusion of household appliances and whitegoods**, which can be an important way to assist women with disabilities to care for their homes and families. Division of labour data indicates the household chore loads are disproportionately carried by women in the household. Although the NDIS Supports lists recognise assistive products for household tasks, a narrow definition of what is considered 'assistive' may preclude access to other essential household items that enable a woman with disabilities to complete household activities. While not every person with disability will need to use their funding for whitegoods, these items can be important, innovative, and cost-effective disability supports for some.
- **The exclusion of a range of parenting and family supports**, including those provided to families in contact with the child protection system. Like household products, this issue has a gendered dimension because women are most often the primary caregivers without a household or family. People with disabilities are already over-represented in the child protection system and experience discriminatory and harmful attitudes about our ability to be parents, as well as a lack of access to information, services and support. Service systems rarely understand or respond to the needs and experiences of people with disabilities who are parents.
- **The exclusion of menstrual products**, and their categorisation as lifestyle-related items rather than 'assistive products for personal care'. As set out in our separate submission, many people with disabilities need specific products and supports to manage their periods, like adaptive period underwear or tampon insertion aids, and many use period products for incontinence. Access to safe, adaptive, accessible and appropriate menstrual products is linked to health, hygiene, dignity, independence and participation in the community.
- **The exclusion of a range of supports described as 'not value for money/not effective or beneficial'**, when many of these supports have a strong evidence-based, and are profoundly beneficial for women, girls and gender-diverse people with disabilities in our community. This includes therapies like somatic therapy, which has demonstrated effectiveness for participants with psychosocial disabilities, and importantly, is used by many women, girls and gender-diverse people with disabilities in our community to support healing after experiences of violence and abuse. It also includes the

use of beauty services which may be effective, cost-effective and inclusive ways to meet personal care needs.

Further examples of specific concerns are set out in the table below.

While we recognise that the NDIS Supports draft lists provide a number of 'carve outs', where excluded items may be deemed to be NDIS supports, we are concerned that this creates unnecessary barriers which will deter and indeed prohibit access to reasonable and necessary disability supports. For example, while we recognise that supports classified as day-to-day living costs may be permitted for a participant in certain circumstances, such as where an additional cost is incurred 'solely and directly related to disability support needs' it is unclear how this will be assessed and what evidence a participant will need to provide in order to meet this test. It is also concerning that a test of 'solely **and** directly' creates an excessively 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 a similar conclusion could be applied to many of the exclusions within the lists.

Recommendation: That 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 Scheme more broadly) that is gender-responsive, consistent with Article 6 of the CRPD and the Working for Women: A Strategy for Gender Equality, and meets the needs of other marginalised cohorts.

People living in Regional and Remote Areas

The restrictive nature of the NDIS draft lists could lead to an increase in the financial costs of NDIS plans over the medium and long term, particularly for those living in regional and remote areas where support workers are already in short supply. By removing mainstream supports that are often more cost-effective than disability-specific alternatives, the lists may undermine the innovative ways in which people with disabilities have used their NDIS funds to stretch their budgets. In areas with thin markets for support workers, such solutions are especially crucial, as they help to alleviate the burden of finding and affording scarce services. This is particularly the case for marginalised cohorts of people with disabilities who may have genuine safety concerns about their limited options. However, under the proposed restrictions, innovative uses of funds may be curtailed, forcing participants to rely on more expensive, disability-only supports that may be difficult or impossible to access in remote regions. This could also impact communities that value specific cultural or healing practices, now explicitly excluded, further increasing the costs of NDIS plans as participants are left with fewer, more expensive options and face greater challenges in securing the necessary support.

Confusion, lack of trust, and use of language

We are also concerned about the language used in the lists and the impact of harmful narratives towards the disability community. We are concerned that aspects of the draft lists have been influenced by narratives within the media about what kinds of supports may or may not be disability-related, and about misuse of the Scheme.

The information in the draft lists has raised concerns for people with disabilities who are worried that these changes could make interacting with the Scheme more confusing, and result in unfair outcomes. While the NDIS Review highlighted the need for better support for people with disabilities to make informed decisions about their NDIS supports, there remains a significant gap in dedicated resources that enable participants to fully understand which supports and services they can use. This gap is critical, as it affects participants' ability to exercise choice and control, based on an accurate understanding of the supports available under their plans.

Some of the language used in the draft lists perpetuates this confusion and may contribute to problematic attitudes towards disability. For example, terms like 'everyday items' create a false division between disability and daily life, perpetuating the notion that living with a disability is somehow separate from everyday experiences. This kind of language reinforces ableist attitudes and has the effect of alienating people with disabilities. Additionally, 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 as well as the 'carve outs' for each category, in addition to the mechanism for exceptions. Clearer and more appropriate language and structure is necessary to ensure that all participants can navigate the system effectively.

We are also disappointed that the lists and Bill do not give effect to the recommendation made by the NDIS Review Panel for a trust-based approach in overseeing participants' spending - emphasising 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 that keeps people with disabilities at the centre of the Scheme. We are also concerned about an underlying paternalism, whereby people with disabilities are not recognised as the experts in their own lives, their own disabilities, and their own support needs.

Recommendation: That the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme commit to an authentic co-design process for the development of future draft lists and rules, communications products and education resources. The Australian Government must uphold its commitment to full and meaningful participation of people with disabilities in decisions that affect their lives.

Implementation

WWDA is deeply concerned about the potential negative impact of the implementation of the new definition of NDIS supports, particularly given the challenges that arise when frontline staff lack a clear understanding of policy intent. There is a well-documented history of poor outcomes for participants when planners make decisions based on their own biases, rather than the intended guidelines. The Royal Commission into the Violence, Abuse, Neglect and Exploitation of People with Disability, and the NDIS Review both received extensive evidence highlighting these issues, revealing how misunderstandings and misapplications of policy have led to inconsistent and sometimes harmful decisions for participants.

We are concerned that without adequate knowledge, information and training, frontline staff may fail to recognise when an excluded item might actually meet the criteria for funding in specific circumstances. We are also concerned that participants may not feel safe, comfortable or able to negotiate where an exception applies. This could result in participants being unfairly denied supports that are essential for their wellbeing and independence. The complexity of disability needs requires a nuanced approach to decision-making, which takes into account the diverse experiences and requirements of individuals. Without this, the restrictive nature of the lists risks exacerbating existing inequities within the system and further marginalising those who rely on NDIS funding to lead fulfilling lives.

Recommendation: That the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme commit to the development of a disability led training package to ensure frontline staff are supported to fully understand the diversity of the needs of people with disability, and the level of flexibility within the lists.

Recommendation: That the Department of Social Services (**DSS**), National Disability Insurance Agency (**NDIA**) and Minister for the National Disability Insurance Scheme develop effective oversight of the practical application of the rules to ensure accuracy and consistency to guard against the lists being misunderstood or interpreted or applied in ways that could unjustifiably exclude supports and narrow access to essential services.

Examples

Due to consultation timeframes, WWDA has not had the opportunity to engage with the community in relation to all items on the draft NDIS Supports lists or to analyse the potential consequences of the lists. However, WWDA sets out a number of examples below.

This list is limited and is not exhaustive. It is intended to provide a few examples to demonstrate how many of the excluded supports can be reasonable, necessary, effective and beneficial disability supports.

WWDA has made **separate submissions** regarding **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 unnecessarily broad and prohibitive. This type of on-the-job support can be vital to someone's long term success in retaining employment. 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 a 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), and decrease independence. The push towards specialist products risks increased costs. This has a gendered dimension due to gendered division of labour and may disadvantage those in remote, rural or regional locations where there is limited access to specialist products.
Specialist Driving Lessons	An Autistic participant requires a specialist OT report and additional support from a specialist driving instructor to obtain their licence.	The list now refers to 'Driver training using adapted equipment or vehicle modification', which may not be required by the participant. This rule will prevent some people from obtaining their licence, limiting their employment prospects and community inclusion opportunities.
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 because it is not a 'specialised item' despite being a necessary disability support. The participant may then require a support worker at a greater cost.
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 purchase takeaway food to replace what would have been prepared.
Day-to-Day Living Costs - Generators	A participant relying on a respirator is living	Preventing access to this type of support can place lives at risk (see here), and in some circumstances is directly related to

	in an area at risk of blackouts.	disability. People should not be forced to leave communities identified as at greater risk of disasters on the basis of their disabilities. Additionally, 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, and travel to their community. It is not a stretch to envisage planners declining this type of support, and 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, and this promotes inclusion in the community for that individual. For women and girls with disabilities, there is dignity and added safety in attending a public space such as this rather than having to be naked with a support worker (who may not be known to the participant).