



**Australian Federation of
Disability Organisations**

Consultation on draft lists of NDIS supports

**Submission for the
Department of Social Services**

August 2024

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About AFDO

The Australian Federation of Disability Organisations (AFDO) is a Disabled People's Organisation (DPO) run by and for people with disability, reaching over 4 million Australians. We are a unique representative organisation covering both disability specific and population-based disability communities and the pre-eminent national voice representing people with disability across Australia and internationally.

Our Members are 39 national and state disability advocacy organisations run by and for people with disability and their families, representing Australians with disability.

Our vision is "That all people with disabilities must be involved equally in all aspects of social, economic, political and cultural life."

Our Members:

Advocacy for Inclusion Inc. – ACT	Arts Access Australia
Autism Aspergers Advocacy Australia	Blind Citizens Australia
Brain Injury Australia	Deaf Australia
Deafblind Australia	Deafness Forum Australia
Disability Advocacy Network Australia	Disability Justice Australia
Disability Resources Centre – Vic	Down Syndrome Australia
Enhanced Lifestyles – SA	Physical Disability Australia
People With Disabilities WA	Polio Australia
Post Polio Victoria	Women With Disabilities ACT
South West Autism Network – WA	National Mental Health Consumer & Carer Forum
Women with Disabilities Victoria	Advocacy WA
AED Legal Centre – Vic	All Means All
Arts Access Victoria	AMAZE – Vic
Bus Stop Films	Aspergers Victoria
Disability Advocacy & Complaints Service - SA	Explorability Inc – SA
Multiple Sclerosis Australia	Leadership Plus – Vic
National Union of Students - Disabilities Dept.	National Organisation for Fetal Alcohol Spectrum Disorder
TASC National Limited	Star Victoria Inc
Youth Disability Advocacy Service - Vic	Tourettes Syndrome of Australia

Acknowledgement

AFDO acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land on which we stand, recognising their continuing connection to land, waters, and community.

We pay our respects to the peoples of the lands on which these operate and to their respective Elders past and present. We also pay our respects to the traditional owners of all lands on which we operate or meet around the country.

AFDO acknowledges people with disability, particularly those individuals that have experienced or are continuing to experience violence, abuse, neglect, and exploitation. We also acknowledge their families, supporters, and representative organisations and express our thanks for the continuing work we all do in their support.

Opening comments

This submission is presented on behalf of the Australian Federation of Disability Organisations (AFDO) and its member organisations, representing a diverse cross-section of the Australian disability community. We are deeply concerned about the current consultation process on the draft lists of NDIS supports, particularly regarding the inadequate consultation timeframe, the potential impact on people with disabilities, and the specific challenges faced by AFDO's member organisations and their communities.

Our concerns echo those articulated in the joint Disability Representative Organisations (DRO) letter to the Minister (attached) which we endorsed, underscoring the critical need for a more inclusive, thorough, and transparent consultation process.

Specific Issues

1. Inadequate and Inappropriate Consultation Timeframe

The most immediate concern is the insufficient timeframe allocated for this consultation. The Department of Social Services (DSS) has provided a window that is far too short for meaningful engagement. Such an expedited process is particularly problematic for disability organisations, individuals with disabilities, their families, and carers, who require additional time and resources to participate fully in consultations of this magnitude.

The NDIS supports listed are of fundamental importance to the quality of life and well-being of people with disabilities across Australia. The short consultation period compromises the ability of these stakeholders to thoroughly review the proposed changes, gather comprehensive feedback, and engage in constructive dialogue with the DSS. This truncated process undermines the principles of co-design and meaningful engagement, which are foundational to the NDIS.

2. Need for a principles-based approach

We strongly argue that a principles-based approach must be undertaken which will allow people with disability and their families to continue using innovative and cost-effective solutions to live their lives within their communities.

This refers to embedding a method of decision-making guided by overarching principles rather than strict, detailed rules or lists. In this approach, general concepts and values are established to guide decisions, rather than prescribing specific actions for every possible scenario.

As an example of the inappropriateness that utilising lists, rather than a principles based approach are the exclusion of smart watches. These have become vital for people with disabilities such as those with Multiple Sclerosis (MS) and many other disabilities. These devices support fall prevention and help maintain independence, which demonstrates the importance of allowing for the continued evolution of assistive technology. It is crucial that future innovations, not just current technologies, be considered in the development of NDIS supports.

We recommend the following as part of a principles based approach:

1. **Focus on Broad Guidelines:** Instead of detailed, prescriptive rules that must be followed to the letter, provide broad guidelines or fundamental principles that set the overall direction for decision-making.
2. **Flexibility:** Do not tie this to rigid rules, allow flexibility in interpreting and applying principles to various situations where not every possible situation can be anticipated.

3. **Encourage Judgement:** Apply judgement in how to best adhere to the principles, fostering a sense of responsibility and accountability.
4. **Adaptability:** Allows adaptability to changing circumstances more easily than a rule-based system.
5. **Holistic Focus:** Encourages a broader view of issues, considering the overall aims, values, and needs, rather than focusing narrowly on compliance with specific rules.

3. Specific Concerns with Key Items on the Draft Lists of NDIS Supports

Beyond the consultation process itself, and the need for a principles-based approach, we have significant concerns regarding specific items on the draft lists of NDIS supports. These lists play a crucial role in defining the scope and quality of care and support available to people with disabilities. The current drafts, however, raise several red flags, particularly concerning the adequacy, clarity, and equity of the proposed supports.

Lists Issues

1. Ambiguity and Lack of Clarity in Support Categories

The draft lists are notably vague in defining support categories, eligibility criteria, and the scope of services available under each category. This lack of specificity creates significant uncertainty for NDIS participants, particularly those with complex or less common disabilities. For example, the categorisation of supports related to mental health and psychosocial disabilities remains unclear, leading to concerns that individuals with these needs may not receive appropriate or sufficient support.

Similarly, supports for individuals with intellectual disabilities or those requiring high-intensity daily personal activities are not sufficiently detailed. The absence of clear definitions and criteria risks leaving these individuals without the essential services they need to live independently and with dignity. AFDO member organisations have reported concerns that this ambiguity could lead to inconsistent interpretations by service providers and planners, along with NDIA staff, potentially resulting in unequal access to supports.

2. Insufficient Consideration of Specific Disability Needs

The draft lists do not adequately address the unique and specific needs of various disability communities.

- **People with Intellectual Disabilities:** The draft lists do not clearly define supports tailored for individuals with intellectual disabilities, particularly in areas such as decision-making support, communication aids, and tailored daily living assistance. These supports are vital for enabling individuals to exercise choice and control in their lives.
- **Individuals with Psychosocial Disabilities:** There is a growing concern that the supports listed for individuals with psychosocial disabilities are not comprehensive enough to address the complexities of mental health conditions. The lists appear to focus on generic mental health services, which may not be sufficient for those with severe or long-term psychosocial disabilities who require more specialised, ongoing support.
- **Support for Ageing NDIS Participants:** The draft lists also fail to address the intersection of disability and ageing. As the NDIS participant population ages, there is an increasing need for supports that accommodate both disability and age-related needs, such as tailored home modifications, age-appropriate assistive technologies, and specialised care services. The omission of these supports raises significant concerns about the future well-being of ageing participants.
- **High and Complex Needs:** Individuals with high and complex needs, including those with multiple disabilities, are particularly vulnerable to gaps in service provision. The draft lists do not adequately reflect the need for integrated, multi-disciplinary support services that can address the full spectrum of these participants' needs. AFDO members have highlighted the risk that without explicit inclusion of such supports, individuals with complex needs may face significant challenges in accessing appropriate and timely care.

3. Risk of Reduction in Supports

There is widespread concern within the disability community that the draft lists may lead to a reduction in the range and quality of supports available. The focus on standardisation and simplification of support categories could inadvertently result in the exclusion of critical, specialised

services that are essential for many NDIS participants. This is particularly troubling for individuals who rely on highly specialised therapies, assistive technologies, or tailored personal care services.

AFDO member organisations are particularly worried about the potential narrowing of eligibility for certain supports, which could lead to increased financial and emotional strain on individuals and families. Any reduction in available supports would not only diminish the quality of life for participants but also undermine the NDIS's goal of promoting independence and community inclusion for all people with disabilities.

4. Equity of Access and Geographic Disparities

The draft lists do not adequately address the significant disparities in access to supports across different geographic regions. Rural and remote communities already face considerable challenges in accessing disability services, including a lack of available service providers and longer wait times for essential supports. The current drafts fail to provide solutions to these inequities, potentially exacerbating existing barriers for people with disabilities living in these areas.

AFDO members have emphasised the need for the draft lists to include specific provisions that address geographic disparities, such as incentives for service providers to operate in remote areas, telehealth options, and travel allowances for participants who must travel long distances to access supports. Without such measures, the principle of equitable access enshrined in the NDIS Act will not be realised for many Australians with disabilities.

Recommendations

In light of the concerns outlined above, we strongly recommend the following actions to ensure that the final lists of NDIS supports are comprehensive, inclusive, and reflective of the diverse needs of all NDIS participants:

1. Extend the Consultation Period

- I. The consultation period should be extended significantly to allow for comprehensive feedback from all stakeholders, including individuals with disabilities, their families, carers, and representative organisations. A longer timeframe will enable a more inclusive and thoughtful consultation process, ensuring that the final lists are truly reflective of the needs of the disability community.
- II. DSS must undertake consultation on any issue with the disability sector and community for a minimum of eight weeks with the aim of allowing twelve weeks under normal circumstances.

2. Enhance Engagement with Disability Representative Organisations & People with Disability

DSS should engage more deeply with DROs, including AFDO and its member organisations, as well as people with disability and their families, throughout the revision process. This engagement should include targeted consultations with specific disability communities to address their unique needs and concerns. Such collaboration is essential to ensuring that the final lists of supports are both comprehensive and appropriate.

3. Adopt a principles-based approach

A principles-based approach must be undertaken as these proposed lists will have significant negative impacts on people with disability. This approach will allow people with disability and their families to continue using innovative and cost-effective solutions to live their lives within their communities.

4. Provide Greater Clarity and Detail in the Draft Lists

The draft lists must be revised to include greater detail and clarity, particularly regarding the scope of services, eligibility criteria, and the range of supports available under each category. This will help prevent inconsistent interpretations and ensure that all NDIS participants can access the supports they need.

5. Incorporate Specific Supports for Diverse Disability Needs

The final lists should explicitly include supports tailored to the unique needs of different disability communities, including those with intellectual disabilities, psychosocial disabilities, ageing participants, and individuals with high and complex needs. This should also involve recognising the intersectionality of disability and other factors such as ageing, rurality, and cultural background.

6. Conduct a Comprehensive Impact Assessment

A thorough impact assessment should be undertaken to evaluate the potential effects of the proposed changes on NDIS participants, particularly those with complex needs. This assessment should inform any revisions to the draft lists to ensure that they do not inadvertently disadvantage any groups within the disability community.

7. Address Geographic Disparities in Access to Supports

The final lists should include specific strategies to address geographic disparities in access to supports, ensuring that all NDIS participants, regardless of their location, have equitable access to the services they need. This might include provisions for telehealth services, travel allowances, and incentives for service providers to operate in rural and remote areas.

Conclusion

The current draft lists of NDIS supports and the consultation process surrounding them fall short of the standard required to ensure that all people with disabilities in Australia receive the support they need to live full and independent lives. Without significant revisions to both the consultation process and the content of the draft lists, there is a real risk that the needs of many NDIS participants will not be adequately met.

We urge the Department of Social Services to take these concerns seriously and to make the necessary changes to ensure that the final lists of NDIS supports are truly inclusive, comprehensive, and equitable. The future well-being of hundreds of thousands of Australians with disabilities depends on getting this right.

We appreciate the opportunity to provide this submission and look forward to a constructive and inclusive dialogue moving forward.

APPENDIX A – Joint DROs Letter to Minister for the NDIS

19 August 2024

The Honourable Bill Shorten MP

Minister for the National Disability Insurance Scheme, Minister for Government Services

Parliament House

CANBERRA ACT 2600

By email: Bill.Shorten.MP@aph.gov.au

Cc Ms Rebecca Falkingham, Ms Corrie McKenzie, Ms Sarah Hawke

Dear Minister Shorten,

Joint letter from national Disability Representative Organisations on the Consultation on draft lists of NDIS Supports for NDIS Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

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

- Lack of engagement and consultation
- 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:¹

- 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

¹ These principles are based on some of the existing rules: <https://www.ndis.gov.au/understanding/supports-funded-ndis/reasonable-and-necessary-supports>.

- 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.

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.

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 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 Carer Forum