



**Australian Federation of
Disability Organisations**

Foundational supports: General supports

Submission to the Department of Social Services in
response to the General Supports Consultation Paper
(issued September 2024)

12 December 2024

AFDO Author & Contact:

Matthew Hall
National Manager - Systemic Advocacy & Policy
matthew.hall@afdo.org.au

Reviewed & Approved:

Ross Joyce
Chief Executive Officer

ABN : 25 105 510 898
Email: office@afdo.org.au
Website: www.afdo.org.au
Phone: 1800 219 969

Contents

<i>Acknowledgements</i>	4
<i>Language used in this document</i>	4
<i>About AFDO</i>	5
<hr/>	
1. Acronyms and abbreviations	6
2. Executive summary	7
3. Introduction – context of this submission	9
4. Need to clearly understand key concepts	10
4.1 Designing supports before the strategy is agreed.....	11
4.2 Eligible activities under the DSI Act.....	11
4.3 “Foundational Supports”.....	14
4.4 “General Supports”	14
4.5 Family capacity building supports	15
4.6 General Supports are not Mainstream services nor Community Services	16
5. What are information, advice and capacity building supports?	17
5.1 What was wrong with the ILC program.....	17
5.2 What in particular is needed?	19
5.3 “Supported decision making”	20
6. Other actions that must be taken	21
<hr/>	
<i>Disability Support and Inclusion Act 2023</i>	24
<i>Endnotes</i>	28

Australian Federation of Disability Organisations (AFDO) Ltd is registered as a charity with the Australian Charities and Not for profit Commission. It is also a Public Benevolent Institution, endorsed by the Australian Taxation Office as a Deductible Gift Recipient. A donation of \$2.00 or more is tax deductible.



Consent to Publication


Australian Federation of Disability Organisations (AFDO) consents to the publication of this submission, including the names and contact details of AFDO staff. The relevant AFDO staff also give that consent.

© 2024, Australian Federation of Disability Organisations (AFDO) Ltd A.B.N. 25 105 510 898




- **CC BY-NC-SA (version 4.0):** AFDO publishes, distributes, and otherwise makes available its advocacy and policy materials, including this submission, under a Creative Commons licence.
- This licence allows any person to distribute, remix, adapt, and build upon the material in any medium or format for non-commercial purposes only, and only if AFDO is credited as the creator of the material. If you remix, adapt, or build upon the material, you must also license your modified material under identical terms.

The CC BY-NC-SA (version 4.0) licence includes the following elements:

BY  You must give **appropriate credit**, provide a link to the licence, and **indicate if changes were made**. You may do so in any reasonable manner, but not in any way that suggests AFDO endorses you or your use.

NC  You must not use the material for commercial purposes.

SA  If you remix, transform, or build upon the material, you must distribute your contributions under this licence.

No additional restrictions — You must not apply legal terms or technological measures that legally restrict others from doing anything this licence permits.

Acknowledgements

Australian Federation of Disability Organisations (AFDO) acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land on which we stand. We recognise their continuing connection to land, waters, and community. From our offices in Melbourne, Canberra, Sydney, and Newcastle, we pay our respects to the peoples of the lands on which we operate and to their Elders past, present, and emerging. 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, or exploitation. We also acknowledge their families, supporters, and representative organisations and express our thanks for the continuing work we all do in their support.

Language used in this document

AFDO uses person-first language, like "people with disability," not identity-first language. This is a deliberate choice made by AFDO. This aligns with the UN Convention on the Rights of Persons with Disabilities. It also matches the language used by all levels of government in Australia. Most other peak bodies in the Australian disability sector also use person-first language.

AFDO chooses to use this language because it puts the person before the disability. It values the individual by seeing them as a person, not a condition.

Consistent with this position, AFDO uses person-first language in this document.

We know many people with disability prefer identity-first language. Disability is a part of their identity. This language shows a connection to the disability community and pride in their disability. It also says society is what disables them.

Views on language use reflect people's identities, experiences of disability, and community attitudes. It is a matter of individual choice and agency. AFDO respects everyone's right to choose how to describe their identity and experiences.

"People with disability," means anyone who is d/Deaf (including people who identify as culturally Deaf), or who has a learning disability, or a sensory, physical, hidden, or mental health condition.

About AFDO

Since 2003, the Australian Federation of Disability Organisations (AFDO) has been the peak body in the disability sector. We are a Disabled Peoples Organisation (DPO) and a funded Disability Representative Organisation (DRO). With our disability specific and cross-disability member organisations, we represent and champion the rights of people with disability in Australia. We support them to take part fully in Australian life.

Our member organisations represent disability-specific and cross-disability communities. They reach over 4.5 million Australians.

AFDO is a strong, trusted voice for the disability sector. We advocate on national policy, inquiries, and initiatives with the Federal and State/Territory governments.

We work to build a community where people with disability can take part in all aspects of social, economic, political, and cultural life. This means:

- real participation in community life
- building respectful, valued relationships
- social and economic participation, and
- contributing as valued citizens.

Our vision

All people with disability can take part equally in all aspects of social, economic, political and cultural life.

Our mission

Using the strength of our member organisations to harness the collective power of uniting people with disability to change society into a community where everyone is equal.

Our strategic objectives

- To represent the interests and united voice of our members and people with disability at a national and international level in all relevant forums.
- To build the capacity, profile, reputation, and sustainability of AFDO through the strength of our member organisations.
- To enhance the connection and influence in international disability initiatives by policy, advocacy, and engagement, focused on the Asia Pacific region.

Our members

AFDO's member organisations contribute to the national policy agenda and address issues that impact the lives of people with disability in Australia. We understand that disability specific organisations play a key role in the provision of information and peer support to people with disability and their families. This role keeps them closely connected to their grass roots communities. Each community has its peak organisation that uses its voice to advocate on issues.

Information about AFDO's members can be found on [AFDO's website](#).

1. Acronyms and abbreviations

Except where indicated, terms listed in Appendix A to the Consultation Paper that are used in this document have the same meaning. In addition, the following list of terms may assist readers in understanding the terms used in this document.

AFDO	Australian Federation of Disability Organisations
AHRC	Australian Human Rights Commission
ALRC	Australian Law Reform Commission
Consultation Paper	General Supports Consultation Paper issued by the Department in September 2024
CRPD	United Nations Convention on the Rights of Persons with Disabilities
DDA	<u>Disability Discrimination Act 1992</u> (Cth)
Department or DSS	Department of Social Services
Disability Royal Commission or DRC	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
DSI Act	<u>Disability Services and Inclusion Act 2023</u> (Cth)
ICESCR	International Covenant on Economic, Social and Cultural Rights
NDIS	National Disability Insurance Scheme
NDIS Review or Review	Independent Review into the National Disability Insurance Scheme
UN	United Nations

2. Executive summary

In summary:

1. Before finalising the design and commencing any implementation of General Supports:
 - (a) the Department, with state and territory governments, must finalise, and make public, the Foundational Supports Strategy
 - (b) the Commonwealth, with the State and territory governments must agree and make public the proposed new Federal Funding Agreements that will fund Foundational Supports, and
 - (c) the Department must confirm that the DSI Act is the legislative basis for Foundational Supports.
2. The definitions of the various categories or types of General Supports must align with the relevant definitions of supports in the DSI Act.
3. The definition of Foundational Supports must require Foundational Supports:
 - (a) to improve inclusion, increase social, and economic participation, and ensure all people with disability get support that meets their needs
 - (b) to allow or assist people with disability to exercise and enjoy the full benefit of their rights under the CPDR, and
 - (c) to be evidence-based, disability-affirming, rights-based, and person-centred.
4. General Supports are defined as:
 - (a) are a category of Foundational Supports
 - (b) are supports and services only for the benefit of people with disability, their families and carers
 - (c) are administered under the DSI Act and so are subject to quality and safety measures under that Act
 - (d) provide necessary supports that cannot or are not provided by Community Services or Mainstream Services
 - (e) advance the inclusion and social and economic participation of people with disability
 - (f) support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs; and
 - (g) promote respect for the inherent dignity, difference and individual autonomy of people with disability
 - (h) raise community understanding of barriers to the inclusion and participation of people with disability on an equal basis

- (i) include:
 - (i) self-advocacy supports or services
 - (ii) capacity building supports or services (individual, family and community capacity building)
 - (iii) carer supports or services
 - (iv) community inclusion supports or services, and
 - (v) information supports or services, including navigation supports.
5. The Minister must make a determination under section 13(2) of the DSI Act that Family capacity building supports are an eligible activity, so that these new Family capacity building supports can be provided under the DSI Act.
6. “Mainstream services” are defined in the same way as in the DSI Act as “generally available to other members of Australian society”.
7. The concept that General Supports “go beyond the **reasonable adjustments expected** from **inclusive and accessible** mainstream and community supports” is removed from any description or definition of “General Supports”.
8. In designing, funding, and implementing General Supports the DSS, and state and territory governments must adopt the recommendations of the Swinburne Review. In particular, the focus and intent of General Supports must be aligned with the original (or an improved) “Tier 2” supports.
9. In particular, General Supports must include or address each of the matters identified in **section 5.2** of this submission.
10. Any General Supports directed to supported decision making must have regard to:
 - (a) the model framework recommended by AHRC, and
 - (b) the best practice principles and best practice elements identified in La Trobe University’s Living with Disability Research Centre report Diversity, dignity, equity and best practice: a framework for supported decision-making.
11. The government must take action, as recommended by the NDIS Review, to require the Department of Social Services, the new National Disability Supports Quality and Safeguards Commission and National Disability Insurance Agency to ensure decision-supporters have access to information, training and resources to assist them in providing best-practice support for decision-making.
12. AFDO urges the government to implement each of the recommended actions to support the recommendations of the NDIS Review identified in **section 6** of this submission.

3. Introduction – context of this submission

This submission responds to the Department’s Consultation Paper on the design of information, advice and capacity building supports, delivered outside the NDIS and not part of Mainstream Services, that help build the capacity of people with disability under 65 years of age and, where appropriate, their families, carers and kin.¹ This consultation process will inform the reform of the Information, Linkages and Capacity Building (ILC) program, and other existing and development of additional information, advice and capacity building supports.

These information, advice and capacity building supports are part of a broader “General Supports” service mix. General Supports are a form of “Foundational Supports”, which the Consultation Paper identifies as

specific supports ... available to people (who) are not accessing or not eligible for supports that are delivered through the NDIS, to help people with disability and their families and carers. These are supports that offer more help than what is offered through mainstream (sic) or community (sic) services.²

AFDO notes the Consultation Paper does not cover advocacy (other than self-advocacy), navigation supports (and, to the extent to which this is not included in navigation supports, support to find information³) or ‘targeted’ supports for particular groups⁴. This error must be corrected to include all advocacy on behalf of people with disability as a key component in codesign, development and ongoing review of foundational supports with all levels of government.

The NDIS Review recommended that Foundational Supports are part of a connected system of support for all people with disability and should improve and expand current programs and activities funded through the Information Linkages and Capacity Building (ILC) grants program.⁵ The Review also recommended that Foundational Supports need to be general – that is, for **all people with disability** (our emphasis); and targeted – that is, for people with lower level support needs who are not eligible for the NDIS. Foundational supports must improve inclusion, increase social and economic participation and ensure all people with disability get support that meets their needs.

It was also a key recommendation by the Review that:

- (c) National Cabinet should agree to jointly design, fund and commission an expanded and coherent set of foundational disability supports outside individualised NDIS budgets⁶
- (d) the Department, with state and territory governments, should develop and implement a Foundational Supports Strategy⁷
- (e) National Cabinet should agree to jointly invest in and redesign information and advice and capacity building supports⁸, and
- (f) National Cabinet should agree to jointly invest in achieving nationally consistent access to individual disability advocacy services⁹.

On 30 January 2024, the Minister for Social Services and the Minister for the NDIS

announced¹⁰

- (a) work will begin on the Foundational Supports Strategy, led by the Minister for Social Services in consultation with the Minister for the NDIS and Government Services, and
- (b) the Strategy will be considered by National Cabinet in the second half of 2024.

As at the date of this submission Foundational Supports Strategy has not been considered by National Cabinet¹¹ and, consequently, has not been published.

The Ministers also confirmed that that Foundational Supports comprise of both 'general' supports - **for all people with disability** (our emphasis), and 'targeted' supports - for people who are not eligible for the NDIS and are most in need of additional support.

This announcement followed a decision of National Cabinet in December 2023 about the funding arrangements for Foundational Supports. The Prime Minister announced that:

- (a) funding on Foundational Supports would be agreed through new Federal Funding Agreements, "with additional costs split 50/50", and final details to be settled through the Council of Federal Financial Relation, and
- (b) the Commonwealth agreed to cap additional expenditure for states and territories on new foundational supports to ensure the disability reforms (and national health reforms detailed in the same announcement) will see all states and territories better off.¹²

It is not clear from that announcement whether the 50/50 is the split of the total costs of Foundational Supports, or whether a state and territory contributes 50% of the additional costs attributed to delivery of Foundational Supports in that state or territory.

As far as we can determine, as at the date of this submission, no new Federal Funding Agreements have been completed or published.

This submission has been developed in collaboration with AFDO's members, and in particular we would acknowledge the contributions of Autism Aspergers Advocacy Australia (A4) and Deafness Forum Australia (DFA). They have provided to AFDO issues of concern to the various disability-specific cohorts they represent, information about the experiences of their members, and feedback on the matters raised in this submission.

4. Need to clearly understand key concepts

We note that the terms in the Glossary of Terms in Appendix A are provided by the Department "to assist readers to understand some of the ideas and options presented in this paper"¹³. Those definitions have "no formal status". We are being asked to comment, and provide feedback, on a vaguely described, and (formally) undefined concept of "General Supports". Understanding exactly what is proposed, and the kinds of supports that will fall within, and outside, "Foundational Supports" (and within those supports, what are, and are not, "General Support") is critical, both in terms of providing meaningful comment on the proposals, and in the effective and efficient operation of the system.

There is significant uncertainty within the disability community as to what supports will be available, and the rules that will be applied to determine whether any support is a “General Support”, another type of “Foundational Support”, a “Community service or activity” or a “Mainstream Service”.

4.1 Designing supports before the strategy is agreed

This uncertainty is magnified because we are also operating in a “strategy vacuum”. The disability community is being asked to provide feedback on a proposed program of services and activities that will comprise Foundational Supports without the Foundational Support Strategy having been agreed and published by Australian governments. We are unable to make any assessment of the extent to which the General Supports will deliver the goals of the Strategy.

Further, a strategy is more likely to be executed well, and successfully, when there is close alignment of that strategy to the plans and approaches the organisation takes to achieve strategic goals. Effective strategies align with other model elements, reinforce vision/mission/values, and response to market changes.¹⁴ This ensures that all subsequent programs are purposefully designed, resource-efficient, and aligned with long-term goals.

AFDO is very concerned that designing Foundational Supports without a clear strategy will risk the following:

1. programs that are not aligned with the vision and objectives, with those efforts not contributing effectively to the desired outcomes;
2. misallocation of resources, causing inefficiencies and increased costs ;
3. missed opportunities as programs may fail to adapt to new developments or market changes, potentially missing out on significant advantages;
4. poor communication and stakeholder engagement and “buy-in” (including disability communities); and
5. the Foundational Supports that are developed without reference to the strategy may lack clear direction and measurable goals, making it difficult to track progress and achieve the desired results.¹⁵

4.2 Eligible activities under the DSI Act

Before we provide feedback on the ways in which the various supports are defined in the Consultation Paper, it is appropriate to consider what are “eligible activities” under the Disability Services and Inclusion Act 2023 (Cth). This Act establishes a:

complementary, modern and streamlined legislative framework that effectively facilitates funding for supports and services that can benefit all people with disability regardless of whether or not they are an NDIS participant.¹⁶

The DSI Act empowers the Minister to make, vary or administer arrangements for the making of payments, or the grant of financial assistance, to a person, in relation to “eligible activities”.¹⁷

This has the result of requiring:

- (a) any actions under the DSI Act to be done, so far as practicable, in accordance with the general principles in section 4; and
- (b) the recipient to comply the statutory funding conditions in section 15.

Whilst the Consultation Paper makes no reference to the legislative basis for Foundational Supports, AFDO is proceeding on the basis that the DSI Act will provide that legislative basis. **If that is not the case, the Department must clarify the position immediately.**

If the DSI Act will provide the legislative basis, this means that the General Supports that are to be offered must each be an “eligible activity” under the DSI Act. This requires each support to fall within at least one of the definitions of eligible activities under the Act. Relevantly, eligible activities include the provision of each of the following:

1. advocacy supports or services¹⁸
2. capacity building supports or services¹⁹
3. carer supports or services²⁰
4. community inclusion supports or services²¹
5. independent living supports or services²², and
6. information supports or services²³.

In addition, an activity relating to furthering the objects of the Act,²⁴ determined by the Minister under subsection (2)²⁵; or that is incidental or ancillary to any of the services listed in section 13(1)²⁶ are eligible activities.

Accordingly, it is necessary to consider the definitions of each of those relevant support or services and assess the extent to which the proposed General Supports fit within those definitions. If a proposed General Support does not fit any of the relevant definitions, the Department must promptly engage with the disability community, and advise if the Minister intends to make any determination in respect of that General Support under section 13(2), or introduce a Bill to amend the DSI Act to include the relevant support as an eligible activity. If the Minister does not intend to make such a determination or amend the Act, the Department must advise the legislative framework relied on to deliver that General Support, and the mechanisms that will be in place to require service providers to:

- (a) comply with the code of conduct
- (b) hold a certificate of compliance for regulated activities (or be covered by a determination made by the Secretary)
- (c) implement and maintain an appropriate:
 - (i) complaints management and resolution system, and
 - (ii) an appropriate incident management system
- (d) comply with requirements in relation to banning orders under the NDIS Act, and

- (e) support people with disability to access supports or services that are safe, provided in a way that does not expose people with disability to violence, abuse, neglect or exploitation, are locally available (including in rural and remote communities) and provided in a manner that is timely, effective and innovative.

The DSI Act defines those relevant supports or services as follows:²⁷

<p>advocacy supports or services</p> <p>(noting that the proposed General Supports include only self-advocacy supports or services)</p>	<p>supports or services:</p> <ul style="list-style-type: none"> (a) to assist a person with disability to exercise choice or control in matters that affect the person, including the provision of legal services (b) to assist a person with disability to understand and advocate for their rights and to uphold and enforce their rights, including the provision of legal services, or (c) to influence community attitudes, government policy or laws in relation to the rights and freedoms of people with disability
<p>capacity building supports or services</p>	<ul style="list-style-type: none"> (a) supports or services to improve the capability of a person with disability to participate in Australian society, including through peer support, mentoring and skills development, and (b) supports or services to improve the capability of persons to deliver inclusive and accessible infrastructure, supports or services to people with disability
<p>carer supports or services</p>	<p>supports or services that assist carers of people with disability in their caring role</p>
<p>community inclusion supports or services</p>	<p>supports or services to assist a person with disability to engage with their chosen community and culture, including by removing barriers to their inclusion in community and cultural activities</p>
<p>information supports or services</p>	<p>supports or services (including translation and interpretation services) to assist a person with disability to access and understand information available generally to members of Australian society</p>

It is also important to note that, for the Act to be constitutionally valid, and an exercise of the Commonwealth’s legislative power, an eligible activity must be with respect to one or more of the matters listed in section 16 – most relevantly, implementing any of Australia’s international obligations under the Convention on the Rights of Persons with Disabilities.

The objects of the Act, the general principles guiding actions under the Act and the statutory funding conditions are set out, for ease of reference, in [Appendix “A”](#).

4.3 “Foundational Supports”

The definition of “Foundational Supports”²⁸ (that they are only available to people who are not accessing or not eligible for supports that are delivered through the NDIS) is not consistent with the Review’s recommendation that Foundational Supports need to be general – that is, **for all people with disability** - and targeted.

The definition must require Foundational Supports:

- (a) to improve inclusion, increase social, and economic participation, and ensure all people with disability get support that meets their needs
- (b) to allow or assist people with disability to exercise and enjoy the full benefit of their rights under the CPDR, and
- (c) to be evidence-based, disability-affirming, rights-based, and person-centred.

4.4 “General Supports”

“General Supports” are defined as **including**:

trusted information and advice, supports (sic) that build the capacity of all people with disability aged under 65, including support to make decisions and advocate on issues that impact them and to connect with others and the community. This also includes information, advice and supports for families, carers and community organisations where appropriate. It also includes support to find information, although this is not included in this paper.²⁹

This definition does not say what General Supports are, only what they “include”, without any guidance as to what else may be included, or the rules or characteristics that will determine whether a particular support or service is “included” as a General Support.

The limitation in this definition that excludes people with disability aged 65 or older is not consistent with the Review’s recommendation that Foundational Supports need to be general – that is, for all people with disability. This limitation also will mean that there will still be a significant gap between those inside and outside the NDIS. The NDIS Review considered such a gap to be unfair³⁰. **AFDO considers this restriction to be out of line with the recommendation of the review and discriminatory in nature against people with disability aged 65 or older.**

Further, it is hard to see how, in any practical sense, government can exclude people with disability who are 65 or older from accessing any of the proposed General Supports. The Consultation Paper recognises that the General Supports program “would not exclude those over 65 from accessing or benefiting from general information”.³¹

When it is time to formally define the concepts and services for General Supports and, in particular the definition of “General Supports”, AFDO urges the Department to adopt a definition that aligns closely with the DSI Act. As an example, the Department may wish to instruct the Parliamentary drafter to use the following characteristics of “General Supports” in defining them.

General Supports:

- are a category of Foundational Supports
- are supports and services only for the benefit of people with disability, their families and carers
- are administered under the DSI Act and so are subject to quality and safety measures under that Act
- provide necessary supports that cannot or are not provided by Community Services or Mainstream Services
- advance the inclusion and social and economic participation of people with disability
- support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs; and
- promote respect for the inherent dignity, difference and individual autonomy of people with disability
- raise community understanding of barriers to the inclusion and participation of people with disability on an equal basis
- include:
 - self-advocacy supports or services
 - capacity building supports or services (individual, family and community capacity building)
 - carer supports or services
 - community inclusion supports or services, and
 - information supports or services, including navigation supports

4.5 Family capacity building supports

AFDO welcomes the expansion of capacity building supports to include supports and services that help family members and kin of a person with disability build their own knowledge and skills so they can better support the person with disability to exercise choice, control and independence and to participate in their community. However, these capacity building supports are not (as stated in the Consultation Paper, to build the capacity of families, carers and kin to fully participate in the community, and to make decisions and advocate on issues that affect them.

The Consultation Paper includes carers within the possible recipients of Family capacity building supports. We note “carer supports and services” is an existing category of “eligible activity” under the DSI Act. We do not see any value in conflating, and likely confusing, carer supports and Family capacity building supports.

Individual capacity building, Community capacity building, and carer supports are existing “eligible activities” under the DSI Act. However, none of the current eligible activities include the provision of support to family or kin of a person with disability who is not a carer. It is necessary, therefore, for the Minister to make a determination under section 13(2) of the DSI Act that Family capacity building supports are an eligible activity, so that these new Family capacity building supports can be provided under the DSI Act.

4.6 General Supports are not Mainstream services nor Community Services

It is an object of the DSI Act to support people with disability to access supports or services that, to the extent possible, are integrated with services generally available to other members of Australian society (what the Consultation Paper calls “Mainstream services”. These services (also known as universal or essential services) are defined in the Consultation Paper as;

government services delivered outside the NDIS that all Australians can access and benefit from, regardless of whether or not they have a disability. They include things like health care, education, transport, employment services, community housing, and family and domestic violence services.³²

We think the way in which the DSI Act describes these services as “generally available to other members of Australian society” is a better, and more accurate, way to describe these services. Mainstream services are provided by all levels of government. It is not true that services provided by a local government authority, such as domestic refuse collection, or a public hospital provided by a state or territory government, is a service that “all Australians can access and benefit from”.

The Consultation Paper excludes these “Mainstream services” and also “Community services” from Foundational Supports (and therefore, from General Supports).

“Community services or activities” are defined in the Consultation Paper as:

services delivered by community organisations for the community which deliver a range of benefits. They generally provide support and assistance to individuals, families, and groups, or run activities, to maximise their potential and enhance community wellbeing.³³

The exclusion of Mainstream services and Community services are dealt with in two different ways, that are not necessarily consistent, and may create unnecessary further confusion.

As noted above,³⁴ Foundational Supports “offer more help than what is offered through mainstream (sic) or community (sic) services”. As General Supports are a form of Foundational Supports, and Mainstream and Community Services are not Foundational Supports, General Supports must also “offer more help than what is offered” through Mainstream or Community services.

However, in discussing what are information, advice and capacity building supports, in the context of General Supports, the Consultation Paper introduces a new concept – that General Supports “go beyond the **reasonable adjustments expected** from **inclusive and accessible** mainstream and community supports”.³⁵ (our emphasis)

We make two comments in response to this point:

1. “Reasonable adjustments” are not only expected from inclusive and accessible Mainstream and Community supports. The Disability Discrimination Act 1992 imposes an obligation on every person and business to make, reasonable adjustments for a person with disability³⁶, and

2. This introduces a new concept into Australian disability discrimination law, and will add significant uncertainty, and create unnecessary and unhelpful opportunities to argue that any proposed General Support is something that is “expected” from an inclusive and accessible Mainstream service (even if there is no legal obligation to make that reasonable adjustment (for example, because to do so would cause the business “unjustifiable hardship”).

5. What are information, advice and capacity building supports?

5.1 What was wrong with the ILC program

When the Productivity Commission recommended the introduction of the NDIS, it saw it working within a tiered ecosystem of support for people with disability. Only people meeting specific criteria would receive individual funding. “Tier 2” of the original structure of the NDIS was designed to connect all people with disability to the same opportunities and services as everyone else in the community. Over time, Tier 2 has been rebadged as ‘Information, Linkages and Capacity Building’ (ILC), which includes a grants program administered by the Department of Social Services and referral and community capacity building performed by NDIS Local Area Coordinators.

Tier 2 services were intended to act as a key lever of systemic change (of mainstream services and communities), providing linkages to supports for those not eligible for the NDIS, and supporting individual capacity building and peer support. However, research in 2022 found³⁷:

- a clear gap between the promoted availability and accessibility of support and services to people with disability who are not NDIS participants, and people’s experiences of attempting to find and use them
- complex, disconnected and incomplete markets of services and supports being navigated by people with disability and their families and carers
- a service ecosystem riddled with inconsistent costs, eligibility criteria, information, priorities, accessibility and availability of services
- unmet demand for accessible and affordable services and support, leading to heavy reliance on informal support networks and personal resources for many people who are not NDIS participants.

The DSS’s own commissioned research in 2021 found the context into which the ILC grants program was implemented is described³⁸ as markedly different from what was anticipated:

- Local Area Coordinators have not delivered community capacity building and linkages as intended
- there is increased client ‘capture’ by service providers
- community inclusion is now reliant on individualised funding
- for non-NDIS participants, who lack funds to purchase services, the expansion of the market model has been accompanied by a contraction of services available to them as jurisdictions have withdrawn funding and mainstream services have retreated, expecting NDIS-funded specialised services to fill the void.

In this context, the ‘demand sector’ (typically, DROs, DPOs, grassroots community organisations, non-service providers) has been identified as the necessary counterbalance to the market and a key ‘infrastructure’ of properly implemented Tier 2 services. However, this sector exists within a context of extremely precarious funding with significant gaps in coverage.

If adequately resourced, the ‘demand sector’ can direct the reform of services, support and resource individuals and their families, provide independent information, and inform and lead strategies for change at systems levels. By utilising non-NDIS funding, the sector can connect, collectivise and ‘aggregate individuals’ (EP7) into shared activity, in ways individualised funding, as delivered via service providers, drives against.³⁹

In 2018, concern was expressed that, because of the lack of a properly funded “Tier 2” supports

the way things currently stand, people with disability who do not meet the NDIS eligibility criteria might end up far worse off than they were before the rollout of the Scheme. A well-publicised and unfortunate byproduct of the NDIS has been funding cuts from other disability programs.⁴⁰

This lack of emphasis on Tier 2, together with budget cuts and current grants approach that works to silo activity and disrupt the necessary connections to address intersecting and interdependent issues, significantly impacted the program’s performance. Further, the ILC’s funding structure, suggesting the program’s focus on delivering short-term grants is counter-productive to the grant’s original intent of providing services to address entrenched issues in the sector. The Swinburne review concluded that, for ILC to work, the ILC needs⁴¹:

- a clearer strategy and targets
- with funded activity that is coordinated and curated over the long term,
- with a mechanism to maximise knowledge sharing so as to scale and connect effective change activities
- to encompass both localised responses and programs of activity addressing key issues, including at the level of systems and societal change with funded projects/activities tied together via recognition of the purpose and place of each strategic piece in order to have maximum effect
- investment must necessarily include change strategies at the national, state/territory and regional/ local (place-based) levels as parts of an interconnected strategy
- significantly more attention and investment in mainstream and community change which is essential to inclusion
- to retain individual capacity building as a high priority, and
- investment in provision of and access to independent information, with particular focus on:
 - diagnostic specific information (for newly diagnosed people with disability)
 - information suitable to those with communication, language and cognitive barriers (including CALD, First Nations, Deaf, deafblind), and
 - information support to people without digital access.

The same mistakes that were made with the design, funding and implementation of ILC cannot reoccur with General Supports. General Supports must adopt the recommendations of the Swinburne Review. In particular, the focus and intent of General Supports must be aligned with the original (or an improved) “Tier 2” supports.

5.2 What in particular is needed?

- Funding for supports must be on a long-term, and sustainable, basis.
- Design and implementation of the supports must be disability-led.
- Supports must:
 - not be developed as a “one size fits all” model
 - be fit for purpose for the specific disability cohort to whom the supports are directed, and
 - be fit for purpose for intersectional populations, including those who identify as Aboriginal or Torres Strait Islander, culturally and linguistically diverse, those from rural and remote communities, and people living in institutionalised settings.
- Organisations that are already well established, valued, and connected to disability specific communities are supported to continue to provide services across the transition.
- There is clear information for disability specific communities to allow them to know what foundational supports are, what supports are available to them in their local areas, and how they can access these supports.
- A thorough audit of existing supports and services in community.
- Equal investment in supports between the states and territories, so there is consistency (in terms of supports that are available, quality of services delivered, and the nature and extent of safeguards) between states and territories, and between different areas or regions within a state or territory for supports for disability specific cohorts. Different people who has the same disability must be guaranteed a core range of supports irrespective of what state or territory they live in.
- Assurance of continuity of supports across different contexts, e.g. in the community, at school, in healthcare – this will require a whole of government approach at the state levels to ensure that there are not service gaps or situations where responsibilities are not clear between the different levels of government or different departments.
- An ongoing commitment to real and effective codesign by all jurisdictions across the development of the Foundational Supports Strategy.
- The codesign process must:
 - allow for sufficient and reasonable time for DROs, DRCOs and DPOs to engage with and obtain the views of their members and other stakeholders, before any action is required or any decisions are taken
 - include participation by, and appropriate weight to DRO expertise, linkages and their member experiences. If the codesign process involves individuals and grass

roots organisations, it must not do so at the expense of DRO participation and input

- A focus on providing increased funding to address service gaps, particularly in regional and remote areas.
- Foundational supports to be evidence-based, disability-affirming, rights-based and person-centered.

5.3 “Supported decision making”

In 2014, the Australian Law Reform Commission undertook a comprehensive review of equality, capacity and disability in Commonwealth laws. The ALRC’s final report⁴² made 55 recommendations for reform that will better provide people with disability equal recognition before the law - in particular, in relation to the right to make decisions that affect their lives and to have those decisions respected.

National Decision-Making Principles⁴³, developed by the ALRC to guide reform at a national level, are at the heart of the recommended reforms that shift the focus away from ‘best interests’ decision-making to a focus on ‘wills, preferences and rights’.

A key recommendation was to establish a new Commonwealth decision-making model that will encourage the adoption of supported decision-making at a national level. The recommended model would introduce mechanisms for the appointment of ‘supporters’ for adults who may require decision-making support, and provisions relating to ‘representatives’ to address circumstances in which a person may desire, or require, someone else to make decisions for them. This would help fulfill Australia’s human rights obligations under article 5, article 9 and article 12 (equal recognition before the law) of the CRPD.

In 2023, La Trobe University’s Living with Disability Research Centre published a report for the Disability Royal Commission Diversity, dignity, equity and best practice: a framework for supported decision-making. This report includes nine best practice principles and eight best practice elements that should underpin a national supported decision-making framework for Australia.

Any form of support to help make sure the will and preferences of a person with disability is respected and upheld in a decision-making process must:

- provide a supported decision-making framework that is an effective and accessible means for all people with disability to make their own decisions on matters that affect their lives and to have those decisions
- require all persons subject to the Act to implement or follow the processes of the framework, and impose penalties for non-compliance, and
- acknowledge that the framework is a key component of the recognition and implementation of the rights under articles 5, 9 and 11 of the CRPD.

Any General Supports directed to supported decision making must have regard to:

- the model framework recommended by AHRC, and

- the best practice principles and best practice elements identified in La Trobe University's Living with Disability Research Centre report Diversity, dignity, equity and best practice: a framework for supported decision-making.

In addition, the government must take action, as recommended by the NDIS Review, to require the Department of Social Services, the new National Disability Supports Quality and Safeguards Commission (to be established in accordance with another recommendation of the NDIS Review) and National Disability Insurance Agency to ensure decision-supporters have access to information, training and resources to assist them in providing best-practice support for decision-making.⁴⁴

6. Other actions that must be taken

In addition to each of the matters identified above, AFDO urges the government to implement each of the following recommended actions to support the recommendations of the NDIS Review:

- 2.6 National Cabinet should agree to a multilateral schedule to a new Disability Intergovernmental Agreement that replaces the principles for determining the responsibilities of the NDIS and other service systems, including the Applied Principles and Tables of Supports to better clarify respective responsibilities.
- 2.7 The Department of Social Services, working with other Commonwealth agencies, state and territory disability agencies and the National Disability Insurance Agency, should implement a priority work program to improve coordination between complex mainstream settings and the NDIS.
- 4.1 The National Disability Insurance Agency, through the joint commissioning process described in Action 4.3, should be the lead commissioner of a local navigation function to help people with disability find supports in their community and make the best use of their funding.
- 4.2 The National Disability Insurance Agency, through the joint commissioning process described in Action 4.3, should be the lead commissioner of a Specialist Navigation function for participants who have more complex or specific needs that cannot be reasonably met by general navigation support.
- 4.3 The National Disability Insurance Agency should ideally adopt a joint commissioning approach to deliver local navigation support within a nationally consistent framework developed in partnership with other relevant Australian government and state and territory government agencies.
- 5.2 The Department of Social Services and National Disability Insurance Agency should both ensure those with cognitive disability or complex communication support needs are connected with capacity building support and other lifelong opportunities to build decision-making skills and experience.
- 5.3 The National Disability Insurance Agency should include an assessment of participants' need for independent decision-making support as part of budget setting and ensure participants can use their NDIS budgets to access independent decision-making supports.

- 10.1 The Australian Government should develop and fund an easy-to-use centralised online platform that provides information on all locally available supports and services for participants and Navigators.
- 12.1 The Australian Government should establish and appropriately resource a quality function within the new National Disability Supports Quality and Safeguards Commission led by a dedicated Deputy Commissioner for Quality.
- 12.2 The new National Disability Supports Quality and Safeguards Commission should make quality improvement a priority in capacity-building initiatives and audit processes.
- 12.3 The new National Disability Supports Quality and Safeguards Commission, working with the Department of Social Services, should design, test and implement an approach to measure and publish metrics of registered provider performance
- 16.1 The Disability Reform Ministerial Council should agree a Disability Support Ecosystem Safeguarding Strategy to coordinate activities to support the safeguarding of people with disability.
- 16.2 The National Disability Insurance Agency should design, pilot and implement a new individual risk assessment and safeguard building process.
- 16.3 The Department of Social Services, working with the National Disability Insurance Agency, the new National Disability Supports Quality and Safeguards Commission and other agencies where relevant, should ensure participants can consider and access a wider range of safeguarding supports.
- 16.5 State and territory governments should establish or improve adult safeguarding agencies to deliver a universal service offering for the safeguarding of all people at risk of harm, including people with disability.
- 19.1 The Disability Reform Ministerial Council should agree a Disability Supports Quality and Safeguarding Framework.
- 19.2 All Australian governments should prioritise greater collaboration, consistency and timely exchange of data and information to ensure effective quality and safeguarding, including expanding the coverage of the NDIS Quality and Safeguards Commission to become the National Disability Supports Quality and Safeguards Commission.
- 19.3 The Australian Government should ensure the new National Disability Supports Quality and Safeguards Commission has the resources, powers and approach to proactively and effectively regulate the disability supports market.
- 20.1 National Cabinet should agree a new Disability Intergovernmental Agreement to underpin delivery of a comprehensive and unified disability support ecosystem.
- 20.2 National Cabinet should agree new funding arrangements to align incentives and share costs in the disability support ecosystem.
- 20.3 National Cabinet should establish a new permanent Disability Advisory Council reflective of the diversity of people with lived experience of disability to advise Disability Reform Ministers.

- 20.4 National Cabinet should develop a dedicated First Nations Schedule under the new Disability Intergovernmental Agreement to embed a First Nations Disability Forum and an independent sector-specific accountability mechanism.
- 20.5 National Cabinet should establish a Disability Outcomes Council to monitor and publicly report on the performance of all governments in meeting the outcomes, commitments and benchmarks outlined in the Disability Intergovernmental Agreement.
- 21.1 National Cabinet should be accountable for the sustainability of the unified disability ecosystem, including the NDIS.
- 21.4 The Australian Government should clarify roles of relevant agencies for administration market stewardship, pricing, policy, regulation, commissioning and legislation.

Annexure 'A'

Disability Support and Inclusion Act 2023

Section 3 Objects of the Act

The objects of this Act are to:

- (a) in conjunction with other laws, give effect to the Convention on the Rights of Persons with Disabilities; and
- (b) provide funding, outside of the National Disability Insurance Scheme, to persons that provide supports and services for the benefit of people with disability, their families and carers; and
- (c) advance the inclusion and social and economic participation of people with disability; and
- (d) support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs; and
- (e) promote respect for the inherent dignity, difference and individual autonomy of people with disability and raise community understanding of barriers to the inclusion and participation of people with disability on an equal basis; and
- (f) protect the rights of people with disability who receive supports or services from persons funded under this Act, including by:
 - (i) setting compliance standards that align with contemporary practice; and
 - (ii) requiring persons providing such supports or services to implement and maintain appropriate complaints management and resolution systems and incident management systems; and
- (g) promote national consistency, coordination and accessibility of supports and services for people with disability; and
- (h) support people with disability to access supports or services that:
 - (i) are safe and provided in a way that does not expose people with disability to violence, abuse, neglect or exploitation; and
 - (ii) are locally available (including in rural and remote communities) and provided in a manner that is timely, effective and innovative; and
 - (iii) to the extent possible, are integrated with services generally available to other members of Australian society; and
 - (iv) to the extent possible, provide continuity of support and services for people with disability; and
 - (v) assist people with disability to meet the daily and lifetime norms of other members of Australian society; and

- (vi) meet the needs of people with disability who experience compound disadvantage, including as a result of being an Indigenous person or as a result of a person's age, sex, gender identity, sexual orientation, intersex status, ethnicity, religious belief or cultural or linguistic background, socioeconomic status or experience of past trauma; and
 - (vii) respect the privacy of people with disability; and
 - (viii) provide accurate and sufficient information about the supports and services available and the quality of those supports and services; and
 - (ix) increase the independence and wellbeing of people with disability; and
 - (x) provide meaningful opportunities for employment, education and development for people with disability; and
 - (xi) support people with disability to participate in Australian society on an equal basis to other members of Australian society; and
- (i) in conjunction with other laws, give effect to certain obligations that Australia has as a party to:
- (i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), as amended and in force for Australia from time to time; and
 - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5), as amended and in force for Australia from time to time; and
 - (iii) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4), as amended and in force for Australia from time to time; and
 - (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9), as amended and in force for Australia from time to time; and
 - (v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40), as amended and in force for Australia from time to time.

Section 4 General principles guiding actions under this Act

- (1) If this Act requires or permits an act or thing to be done, the act or thing is to be done, so far as practicable, in accordance with the general principles in this section.
- (2) People with disability are individuals who have the inherent right to respect for their human worth and dignity, and live a life free from violence, neglect, abuse and exploitation.
- (3) People with disability, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society.

- (4) People with disability have the same right as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development.
- (5) People with disability have the same right as other members of Australian society to supports and services which will support their attaining a reasonable quality of life.
- (6) People with disability have the same right as other members of Australian society to exercise choice and control in relation to the decisions that affect their lives.
- (7) People with disability receiving supports or services have the same right as other members of Australian society to receive those supports or services in a manner which results in the least restriction of their rights and opportunities.
- (8) People with disability have the same right as other members of Australian society to pursue any grievance in relation to supports or services.

13 Arrangements and grants

Arrangements and grants

- (1) The Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth to a person, or make, vary or administer a grant of financial assistance to a person, in relation to one or more of the following activities (the **eligible activities**):
 - (a) the provision of accessibility supports or services;
 - (b) the provision of accommodation supports or services;
 - (c) the provision of advocacy supports or services;
 - (d) the provision of capacity building supports or services;
 - (e) the provision of carer supports or services;
 - (f) the provision of community inclusion supports or services;
 - (g) the provision of counselling supports or services;
 - (h) the provision of education supports or services;
 - (i) the provision of employment supports or services;
 - (j) the provision of independent living supports or services;
 - (k) the provision of information supports or services;
 - (l) the provision of recreation supports or services;
 - (m) the provision of respite care supports or services;
 - (n) the provision of a research and evaluation program;
 - (o) an activity relating to furthering the objects of this Act;
 - (p) an activity determined by the Minister under subsection (2);
 - (q) an activity that is incidental or ancillary to any of the above.

Note: Section 16 sets out the constitutional limits on arrangements and grants.

- (2) The Minister may, by legislative instrument, determine an activity for the purposes of paragraph (1)(p).
- (3) Subsection (1) does not limit the kinds of activities the Minister may determine under subsection (2).
- (4) The rules may set out matters to which the Minister must or may have regard in deciding whether to make or vary an arrangement or grant under subsection (1).

Exception

- (5) Despite subsection (1), the Minister must not make an arrangement for the making of payments, or make a grant of financial assistance, to a person unless the person is an eligible person for the arrangement or grant.

Other matters

- (6) An arrangement under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses (including costs or expenses incurred in obtaining a certificate of compliance for activities in relation to the arrangement).
- (7) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses (including costs or expenses incurred in obtaining a certificate of compliance for activities in relation to the grant).
- (8) Subsections (6) and (7) do not limit subsection (1).
- (9) Subsection (1) does not authorise the making of a loan.

Endnotes

- ¹ Department of Social Services, General Supports Consultation Paper, Commonwealth of Australia, (2024), p 3, retrieved from <https://engage.dss.gov.au/wp-content/uploads/2024/09/general-supports-consultation-paper-1.pdf>, accessed on 15 October 2024
- ² *ibid.* Definition of “Foundational Supports”, p 18
- ³ *ibid.* definition of “General Supports”
- ⁴ *ibid.* p 3
- ⁵ Department of the Prime Minister and Cabinet, Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report, Commonwealth of Australia (2023), retrieved from <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>, accessed on 15 October 2024, p 57
- ⁶ *ibid.*, action 1.1, in respect of Recommendation 1, p 11
- ⁷ *ibid.*, action 1.2
- ⁸ *ibid.*, action 1.3
- ⁹ *ibid.*, action 1.5
- ¹⁰ <https://ministers.dss.gov.au/media-releases/13711>
- ¹¹ Confirmed by an officer of the Department during the course of the Disability Representative Organisations/ the Disability Senior Officials Group Foundational Supports Roundtable held online on 4 December 2024
- ¹² The Hon Anthony Albanese MP, Meeting of National Cabinet – the Federation working for Australia media release, Commonwealth of Australia, 6 December 2023, retrieved from <https://www.pm.gov.au/media/meeting-national-cabinet-federation-working-australia>, accessed 29 November 2024
- ¹³ Note 1, Appendix A, p 18
- ¹⁴ The Strategy Institute, The McKinsey 7-S Model for Organizational Alignment and Success, 17 May 2024, retrieved from <https://www.thestrategyinstitute.org/insights/the-mckinsey-7-s-model-for-organizational-alignment-and-success>, accessed on 21 November 2024
- ¹⁵ Catherine Cote, 5 Keys to Successful Strategy Execution, Harvard Business School, 17 November 2020, retrieved from <https://online.hbs.edu/blog/post/strategy-execution>, accessed on 1 November 2024
- ¹⁶ Explanatory Memorandum, Disability Services and Inclusion Bill 2023 (Cth), pp 3-4 retrieved from https://classic.austlii.edu.au/au/legis/cth/bill_em/dsaib2023346/memo_0.html, accessed on 12 November 2024
- ¹⁷ S13(1) Disability Services and Inclusion Act 2023
- ¹⁸ Paragraph 13(1)(c)
- ¹⁹ Paragraph 13(1)(d)

²⁰ Paragraph 13(1)(e)

²¹ Paragraph 13(1)(f)

²² Paragraph 13(1)(j)

²³ Paragraph 13(1)(k)

²⁴ Paragraph 13(1)(o)

²⁵ Paragraph 13(1)(p)

²⁶ Paragraph 13(1)(q)

²⁷ Section 8

²⁸ Note 2

²⁹ Note 3

³⁰ Note 5, p 57

³¹ Note 1, p 5

³² *ibid.*, p 17

³³ *ibid.*

³⁴ See note 2

³⁵ Note 1, p 6

³⁶ Ss 5(2) and 6(2), Disability Discrimination Act 1992 (Cth), retrieved from <https://www.legislation.gov.au/C2004A04426/latest/text>, accessed on 2 December 2024

³⁷ Olney, S., Mills, A. and Fallon, L., Finding support outside the NDIS, 13 August 2022, retrieved from <https://www.powertopersuade.org.au/blog/theres-much-more-to-disability-support-than-the-ndis>, accessed 5 December 2024

³⁸ Wilson, E., Qian-Khoo, J., Campain, R., Brown, C., Kelly, J. & Kamstra, P. (2021). Overview of results: Informing investment design, ILC Research Activity, Hawthorn: Centre for Social Impact, Swinburne University of Technology p 8, retrieved from <https://www.dss.gov.au/funding-disability-projects/resource/informing-investment-design-information-linkages-and-capacity-building-ilc-overview-results>, accessed 5 December 2024

³⁹ *ibid.*

⁴⁰ Sara Gingold “Supporting People Ineligible for the NDIS”, 8 October 2018, Team DSC, retrieved from <https://teamdsc.com.au/resources/supporting-people-ineligible-ndis>, accessed 5 December 2024

⁴¹ Note 38, pp 8-9

⁴² Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws (ALRC Report 124), 2014, retrieved from <https://www.alrc.gov.au/news/equality-capacity-and-disability-in-commonwealth-laws-alrc-report/>, accessed 24 October 2024

⁴³ Australian Law Reform Commission, National Decision-Making Principles, 2014, retrieved from <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/3-national-decision-making-principles-2/national-decision-making-principles-2/>, accessed 24 October 2024

⁴⁴ Note 5, recommended action 5.4, in relation recommendation 5