

25OPA00204

11 July 2025

[By email: ndisconsultation@dss.gov.au](mailto:ndisconsultation@dss.gov.au)

To whom it may concern,

Thank you for the opportunity to provide feedback on the NDIS Support Rules. This consultation is timely as the Rules have operated for nearly nine months, and while consultation occurred before their commencement, participants and their supporters are now able to provide informed feedback on the Rules in operation.

I am appointed as the Public Advocate (PA) for South Australia under the *Guardianship and Administration Act 1993 (SA)*. This Act empowers me to advocate for people with impaired decision-making ability ('mental incapacity' in the words of the Act). I am also appointed under this Act as the guardian for adults with impaired decision-making ability when the South Australian Civil and Administrative Tribunal (SACAT) deems that there is no other suitable person to perform this role. I delegate functions of my role to staff of the Office of the Public Advocate (OPA).

I am currently the guardian for over 2,350 South Australian adults, approximately 1600 of whom are NDIS participants. Delegated staff make decisions about services and support for Public Advocate clients who are NDIS participants. My office processes approximately 150 NDIS service agreements a week and is in the unique position to have oversight of the types of supports Public Advocate clients receive.

I support the intentions of the NDIS review to ensure that trust and the sustainability of the scheme is maintained. Our office meets regularly with the NDIA and the NDIS Quality Safeguards Commission to raise, and report concerns about sharp practices and fraudulent behaviour by either service providers or participants.

Most recently I met with the Branch Manager Scalable Integrity Response, Fraud Fusion Taskforce to discuss challenges for delegated staff relating to "return to country" and STA holiday requests. I also convened a meeting between the NDIS and NDIS Quality and Safeguards Commission and Public Advocates/ Guardians from all Australian jurisdictions which allows for systemic issues to be raised and discussed.

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My response may not specifically answer all the questions from the discussion paper but raises areas for consideration in any reform.

### **Applied Principles Tables of Support (APTOS)**

In practice, defining what is and what is not a NDIS Support must involve revising the *Applied Principles Tables of Support* (APTOS) which has not been updated since their commencement nearly 10 years ago. The APTOS defines what services/supports are the responsibility of the Commonwealth (NDIS), or of the States/Territories. Both the NDIS Review (recommendation 2.6) and the Royal Commission into Abuse Neglect and Exploitation of People with Disabilities (recommendation 7.39 and 8.17) called for a review of the APTOS.

While the APTOS differentiates what is the responsibility of the Commonwealth and that of the State, the support lists define what the NDIS will and will not fund. The APTOS and the two support lists should be reviewed and considered together as there is duplication. This is particularly evident in the 'Supports that are not NDIS supports' where areas such as health, mental health, early childhood, child protection school and higher education, housing, transport, justice, and aged care are covered. These also feature in the APTOS.

This will become even more complex when foundational supports become part of the picture. These will involve jointly funded services that are not part of a package for a NDIS participant. This leads to a requirement for an agreement, similar to the former Commonwealth States and Territories Disability Agreement which would characterise:

- Services which the NDIS will fund as part of a participant's package,
- Services which the States and Territories will joint fund with the Commonwealth under the foundational support arrangements, and
- Services funded by the States and Territories as part of their mainstream service requirements which embrace people with disabilities.

It is not appropriate that the Commonwealth unilaterally decide what is and is not a permitted NDIS service without reference to the States and Territories. When restricting the definition of NDIS permissible services there are services outside the boundaries of what the NDIS will fund which are nevertheless necessary for client wellbeing and safety. If the NDIS will not fund them, then the client either goes without or the State will be required to pick up the cost. This scenario should be acknowledged and negotiated as part of a formal agreement.

**Recommendation 1: That the *Applied Principles Tables of Support (APTOS)* is reviewed, and the two NDIS Support lists be consolidated with the APTOS.**

**Recommendation 2: That the language of the NDIS Support lists be aligned to that used in the *NDIS Act 2013 (Cth)* and APTOS to reflect responsibility of ‘others’ and ‘NDIS reasonable and necessary supports.’**

**Recommendation 3: That the Commonwealth enter into a renewed Commonwealth States and Territories Disability agreement to formalise arrangements specifying Commonwealth (NDIA) funded services, joint funded services and the responsibilities of the States and Territories.**

### **Two support lists**

The two lists ‘Supports that are not NDIS supports’ with 15 categories and ‘Supports that are NDIS supports’ with 37 categories should be consolidated into one chart, like the APTOS. This will make it easier for participants and their supporters to find the information in one document/place.

Currently information is across two documents. An example of this challenge is ‘Transport and travel’.

‘Supports that are not NDIS supports’ lists:

- assistance with travel or transport arrangements (page 6)
- related to travel (page 14)

‘Supports that are NDIS supports’ lists:

- assistance with travel or transport arrangements (page 6)
- vehicle modification (page 17).

A consolidated list would make it easier for participants and their supporters to search for topics across one document as opposed to a 15- and 17-page document.

### **Return to Country**

The OPA recognises the importance of connection with community, culture, and clan, and supports “return to country” for Aboriginal clients when it is safe to do so.

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Approximately 11% (287) Public Advocate clients identify as Aboriginal. Of these, 257 have a current NDIS plan. Public Advocate staff endeavour to ascertain the wishes and preferences of all clients, including asking Aboriginal clients if they wish to return to country. Many Aboriginal clients have had to relocate to Adelaide to receive disability and mainstream services due to a lack of these services in regional and remote South Australia.

I welcome the NDIA's work to implement place-based, community driven alternative commissioning approach for improving service delivery for Aboriginal people and their communities in the hope that clients can receive services in their community.

However, "Return to country" is a significant oversight in the current support lists.

The closest to this is "Participation in community, social and civic activities" (page 14)

*Participation in community, social and civic activities*

*Supports that assist a participant to take part in community, social, cultural and civic activities.*

*This includes:*

- *supporting participants during relevant activities*
- *working with participants to develop their ability to partake in these activities.*

**Recommendation 4: "Return to Country" should be included in the NDIS support list.**

### **Use of Short-Term Accommodation (STA) for holidays**

Clarification about what is and is not a NDIS support in relation to assistance with travel and transport is welcome. Before the commencement of the support lists the OPA saw several requests to use Short Term Accommodation (STA) to fund what appeared to be holidays. The OPA raised these concerns with the service provider and appraised the NDIA and the NDIS Quality and Safeguards Commission of these concerns.

I understand that, following media attention late last year the NDIA Fraud Fusion Taskforce and the NDIS Quality Safeguards Commission undertook a targeted education campaign for providers and participants about the use of STA and holidays.

I am pleased to report that these types of requests to OPA have significantly reduced since this campaign and the introduction of the NDIS Support lists. However, it is an area that requires ongoing clarity, scrutiny, regulation and education.

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### Conclusion

Defining what is and what is not a NDIS support is challenging. A list cannot provide for every possible scenario. To do so would create an unwieldy document for NDIS participants and their supporters to navigate.

The S10 support lists should provide examples of the most common queries. This needs to be backed up with internal guidance to assist National Disability Insurance Agency (NDIA) staff to administer a consistent response on decisions. Participants and their supporters can also access the Administrative Review Tribunal of Australia database for previous rulings on NDIS decisions.

I look forward to reading the findings and recommendations from this consultation and look forward to providing input to future consultations to improve the NDIS.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anne Gale', written in a cursive style.

Anne Gale  
**Public Advocate**