

NDIS Insights 2024-25



**Justice and
Equity Centre**

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This report has been prepared by the Justice and Equity Centre (JEC), a leading, independent law and policy centre based in Sydney. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

This report contains general information. It is not intended as legal advice and is not a substitute for legal advice from a qualified professional.

The artworks in this report have been licensed from Studio A, a supported studio based in Sydney, Australia that tackles the barriers artists with intellectual disability face in accessing conventional education, professional development pathways and opportunities needed to be successful and renowned visual artists. Studio A paves professional pathways for such artists so that they can achieve their artistic and economic aspirations.

Cover artwork by Matthew Calandra, *Me in a Chair*, 2015. **studio A**

We acknowledge and pay our respects to the Gadigal as the Traditional Owners of the land on which our office stands. We recognise that sovereignty over Gadigal land was never ceded and stand with First Nations people in their struggle for justice.



Introduction

As many had expected, 2024 was a pivotal year for the National Disability Insurance Scheme ('NDIS').

The Australian Parliament passed the most substantial reforms to NDIS laws since the Scheme was introduced more than a decade ago. This brought notable changes to how participants will be funded for disability supports and which supports they can access. The reforms were the Government's first reaction to the recommendations of the [NDIS Review Final Report](#) – although we are yet to see its formal response.

Work also began on expanding the ecosystem of supports available to people with disability, with the Commonwealth, State and Territory Governments collaborating on the development of 'foundational supports' to complement individual supports available through the NDIS.

The Government has committed to co-designing key processes central to the reforms with the disability community. The newly established NDIS Reform Advisory Committee, led by people with disability, will guide the Government on how to achieve a meaningful co-design process.

In 2025, we expect to see further reform, including a series of rules giving further detail on access and planning changes, and additional new legislation to support increased regulation of providers and safeguarding of participants.

When the Government's response to the NDIS Review arrives, it should provide greater clarity about what further reforms the disability community can expect.

Changes to the NDIS Act and Rules

In 2024, the Government's initial response to the NDIS Review brought major changes to the *National Disability Insurance Scheme Act 2013* ('NDIS Act').

The [National Disability Insurance Scheme Amendment \(Getting the NDIS Back on Track No. 1\) Bill 2024](#) ('the Bill') amended the NDIS Act. The new [National Disability Insurance Scheme \(Getting the NDIS Back on Track No. 1\) \(NDIS Supports\) Transitional Rules 2024](#) ('Transitional Supports Rules') lists the supports the NDIS will now fund. Both the amendments and Transitional Supports Rules came into effect on 3 October 2024.

The major changes resulting from the Bill included:

- how decisions about access to the NDIS are made;
- how plans are developed and structured;
- flexible funding packages;
- changes to NDIS supports;
- requirements to consult with the disability community about new legislative instruments and rules;
- new powers granted to the National Disability Insurance Agency ('NDIA'); and
- a legislated claims and payments framework.

We discuss each of these changes below.

Changes to decision-making about NDIS access

Decision-making about access to the NDIS has changed in two key ways:

- **Early intervention and disability pathways:** the NDIS Review recommended the NDIS work differently for people accessing early intervention supports. The amendments to the NDIS Act lay the groundwork for creation of a separate early intervention pathway into the NDIS. The NDIA is now required to assess whether a person meets NDIS disability requirements, early intervention requirements, or both, and inform

the person of its decision. New NDIS Rules will specify the methods and criteria to be applied to the assessment and matters that must or must not be taken into account when making decisions in relation to the disability or early intervention pathways. Development of those Rules could start in 2025.

- **Impairment notices:** From 1 January 2025, all new participants will receive an 'impairment notice', informing them of the category or categories of impairment that qualified them for access to the NDIS. There are six impairment categories: intellectual; cognitive; sensory; neurological; physical; and psychosocial. Participants who disagree with the decision shown in their impairment notice can seek internal and external review of that decision. We expect existing participants will also receive impairment notices – although the process for this has not yet been announced, the rollout will likely be integrated with plan reassessments.

Changes to plans and planning

'New framework' plans are replacing existing plans (now known as 'old framework' plans). All participants will be transitioned to a new framework plan, which is expected to take up to five years. New framework plans will use a 'needs assessment' to determine the supports a participant needs, which will in turn be used to set a more flexible 'total budget amount' for the participant.

The needs assessment and budget are to take into account a participant's support needs 'arising from' an impairment that meets the disability or early intervention requirements, but which might also be affected by their other impairments or life circumstances. This is intended to allow for a 'whole of person' approach to the needs assessment, while still linking supports to eligibility for the Scheme.

The NDIA is required to give participants a copy of their needs assessment report. Participants will be able to request a replacement assessment, for example if they disagree with the original assessment, and will be reassessed if the NDIA (or a reviewer) thinks it is

appropriate. The NDIA has said the needs assessment process will be co-designed with the disability community. Work on this co-design process is expected to start in 2025.

Flexible funding packages

The NDIS Review recommended a participant's budget for supports be assessed and set at a whole-of-person level, rather than defining amounts for individual support items. When new framework plans are introduced, a participant's budget will include flexible funding, stated supports funding or both.

- **Flexible funding** can be spent flexibly by the participant on any items that meet the definition of NDIS supports (see below and at page 7). However, in some circumstances, the NDIA may be able to restrict a person's spending to specified supports.
- **Stated supports** are high-value supports for which a certain amount of money is set aside in a participant's budget. New NDIS Rules will list the types of supports that can be stated supports.

Funding will now be provided in staged 'funding periods' across the timeframe of the plan. Government has explained these periods are intended to prevent participants from overspending their budgets, and to constrain the overall spending growth of the NDIS.

NDIS supports list

The introduction of lists of NDIS supports represents a significant change in the Government's approach to which supports the Scheme will fund. While flexible funding packages are said to give participants more freedom in how they spend their budget, NDIS funds can now only be spent on supports included in a list of NDIS supports that Government considers are appropriate for the NDIS to fund. NDIS funds cannot be spent on anything Government has specifically listed as not an NDIS support.

Interim lists were released in October 2024 and will apply until they are replaced later this year by permanent lists negotiated between the Commonwealth, State and

Territory Governments. We've included more detail on what is and is not included in the interim supports lists below at page 7.

Other reforms

- **Co-design:** While the NDIS Act does not mandate co-design for developing future changes, it does now require the NDIS Minister to consult with the disability community on all new legislative instruments and provide a statement to the Parliament about who was consulted with a summary of the views expressed. These requirements are designed to encourage appropriate engagement by the Minister of the day with the disability community and its representatives.
- **New NDIA powers:** The NDIA has significant new powers, including to:
 - compel a participant to provide information or documents. For example, if the NDIA is considering revoking a participant's access to the NDIS, the NDIA can request any 'information that is reasonably necessary' to make the decision or ask a person to undergo a medical assessment. If the person refuses to comply without good reason, their access may be revoked;
 - change the plan management type for some or all of a participant's budget in certain circumstances (eg where NDIS funds have previously not been spent in line with a participant's plan).
- **Claims and payments:** Claims will now need to be made within two years of the participant receiving the support. Participants, nominees, plan managers and providers have 12 months from 3 October 2024 to submit claims for payments more than 2 years old.



The introduction of lists of NDIS supports represents a significant change in the Government's approach to which supports the Scheme will fund.

Co-design of reforms

The Government has said it will develop further reforms using a co-design process, such as:

- new NDIS Rules to provide clarity and detail about the meaning of key concepts in the NDIS Act, including in relation to how decisions about access to the NDIS are made;
- the needs assessment process, including the information required to be included in the needs assessment report, and a new budget setting process informed by the needs assessment; and
- the design of a new navigator function to help people navigate the disability ecosystem and new payment models.

The Government has indicated future reforms will also be co-designed, including reforms relating to:

- home and living supports;
- integrity and fraud prevention;
- workforce capability and culture; and
- participant safety.

Some in the disability community have **expressed increasing concern** with the Government's approach to co-design. In particular, the rapid pace at which reforms are being proposed and implemented seems too rushed for meaningful co-design with people with disability. Additionally, some are concerned the outcomes of these co-design processes are more reflective of Government policy priorities than disability community views. Full co-design must involve sufficient time for the community to participate, and genuine shared decision-making.

In an encouraging sign, on 15 January 2025 the Government established the **NDIS Reform Advisory Committee**, implementing a recommendation of the NDIS Review. The Committee will monitor and directly advise Disability Ministers on implementation of NDIS reforms, including on policy, process, timing and community views. El Gibbs and Dougie Herd, long-term advocates with lived experience of disability, have been appointed as co-Chairs. Additional committee members will be appointed by an expression of interest ('EOI') process run by the Department of Social Services ('DSS').



Artwork by Lauren Kerjan, Magical Birds, 2019. **studioA**

NDIS supports lists

What is included?

The current interim list of NDIS supports includes 36 individual categories. Each category includes a description of the supports covered by the category and the participants who can access those supports. Many categories mirror the categories in the [NDIS Pricing Arrangements and Price Limits](#). Some further items – such as adaptive clothing, assistance with maintaining employment, and menstrual products – were added to the lists following feedback from the disability community.

The Transitional Supports Rules also provide for ‘replacement support determinations’, which can allow participants to use NDIS funds to access standard commercially-available household items (eg a blender) or specified electronics (eg a smart watch) in certain circumstances. The requirements for claiming these kinds of items include that the item replaces one (or more) of the participant’s NDIS supports; it costs the same as or less than the NDIS support; and it would provide an outcome the same as or better than the NDIS support would provide.

What is excluded?

The Transitional Supports Rules contain a list of things that are not NDIS supports, and so cannot be purchased with NDIS funds. There are 24 categories in this ‘exclusion’ list. Eight of these categories are described as ‘day-to-day living costs’, meaning that most everyday costs cannot be claimed from the NDIS, such as rent, groceries, and standard clothing and footwear purchases. The Transitional Supports Rules also exclude therapies deemed to be ‘not evidence based’, wellness and coaching, and energy and healing practices, which include reflexology, life coaches, career coaches and several other alternative forms of rehabilitation and treatment.

While many of the items on this exclusion list would generally not have been funded by the NDIS previously, some significant items the NDIS did fund for at least some participants have now been excluded.

The disability community and its representatives have raised serious concerns these lists will unduly restrict the range of supports NDIS participants can access, leading to worse outcomes for people with disability and inefficient use of Scheme funds. The Transitional Supports Rules have also been criticised for being unclear, difficult to interpret, and for emphasising ‘specialised’ supports designed for people with disability rather than mainstream goods and services that might be used creatively by people with disability to meet their needs. The permanent rule will need to be developed through a comprehensive co-design process to avoid replicating these problems.

The NDIS Act now explicitly states that alcohol, illegal drugs and sexual services are not NDIS supports. In response to the initial proposal to exclude sexual services from being funded under the NDIS, a [joint statement](#) by 10 organisations in July 2024 called for sexual services to remain, stating:

‘The exclusion of sexuality and sex work services from the NDIS would undermine the fundamental human rights and the choice, control and access of people with disability to essential supports that enable full participation in all aspects of life...’

‘Sexual supports are critical to the well-being of people with disability...[and] are reasonable and necessary supports that contribute to our holistic health and quality of life.’



The disability community and its representatives have raised serious concerns these lists will unduly restrict the range of supports NDIS participants can access.

In August 2024, 38 disability and allied health organisations and services in Australia signed a **position statement** reiterating this position. It strongly opposed reform which would exclude services relating to sexuality supports and called on the Minister to co-design a comprehensive sexuality policy. The Government's position has not changed, and sexual services remain excluded.

What happens if NDIS funds are spent on a non-approved support?

Prior to the publication of the new NDIS supports lists, stakeholders raised concerns there was not enough time to understand what would be funded and that participants would incur debts as a result of accidentally purchasing non-NDIS supports. In response, the NDIA has said claiming a debt from a participant 'would be an absolute last resort and such a decision would never be automated, rather it would not proceed without thoughtful consideration at the most senior level of the Agency'.

Transitional measures have also been introduced to limit unfair consequences for participants. Participants who spend NDIS funds on items not on the NDIS supports list, without otherwise receiving approval to do so, will owe a debt to the NDIA. However, up until 3 October 2025, participants who mistakenly claim items which are not NDIS supports will not have a debt raised against them for their first two mistakes, where the supports are worth less than \$1,500. This transitional period functions in addition to existing provisions in the NDIS Act that allow the NDIA to waive debts.

Additionally, supports that are no longer NDIS supports but had previously been expressly listed in a participant's plan, or included in their plan following a decision of the Administrative Appeals Tribunal, can still be purchased for the duration of that plan.



Artwork by Lauren Kerjan, Dalton, 2019. **studioA**

Foundational supports

As covered in our [NDIS Insights 2023-24](#), the NDIS Review recommended the Commonwealth, State and Territory Governments work together to provide both general and targeted foundational supports for people with disability.

In December 2023, National Cabinet agreed foundational supports would be jointly funded and co-designed by the Commonwealth, States and Territories.

Foundational supports are intended to provide support outside of the NDIS for people with disability and be integrated into general state and territory government services, like education.

General supports will be available to all people with disabilities under 65 years of age and, in some circumstances, their family and carers. The three streams for general supports are for:

- individuals: to support autonomy and self-advocacy;
- families: to support them to empower the independence of family members with disability; and
- communities: to ensure accessibility.

Targeted supports will only be available to people with disability who are not on the NDIS.

Consultation process for foundational supports

In 2024, the Australian Government progressed the development of foundational supports programs, although at a slower pace than initially indicated. DSS led a nationwide consultation process, which concluded in December 2024; a summary report is expected in early 2025.

There is widespread confusion about the scope and definition of foundational supports, and how they will operate in practice. There are also concerns about the risk of inaction by State and Territory Governments.

Disability advocacy groups have argued the Australian Government has not been able to clearly articulate the roles and capacities of State and Territory Governments in the development, implementation and maintenance of foundational supports. As a result, some responses to the DSS consultation from the disability community focused specifically on the role of States and Territories in this process.

We understand the Commonwealth, State and Territory Governments intend to review responses to the consultation before working together, with people with disability and other stakeholders, to plan the implementation of foundational supports. Disability Representative Organisations have urged government to include people with disability in decisions made about this implementation process, to ensure it does not create gaps where people with disability are left without needed supports.

Although the Australian Government is aiming for a staged implementation of foundational supports starting in mid-2025, it appears unlikely that effective supports will be available by then.

Commencement of the Administrative Review Tribunal

On 28 May 2024, Parliament passed legislation to abolish the Administrative Appeals Tribunal ('AAT') and establish the Administrative Review Tribunal ('ART') in its place.

The ART began operating on 14 October 2024, with AAT cases transitioning to the ART. Like the AAT, the ART will review a range of Commonwealth administrative decisions, including decisions about NDIS access and funding.

The ART will operate differently to the AAT in some ways, with the aim of improving the Tribunal's function. For example, the ART:

- has more resources and avenues to manage reviews, with a view to dealing with matters more quickly and efficiently;
- has some new procedural powers, such as to remove a respondent from proceedings if they do not comply with the ART's orders;
- must consider 'accessibility' and user needs in how it approaches reviews, to assist it to promote its objective of being accessible; and
- has a new Guidance and Appeals Panel, which can consider cases that raise systemic issues, and can review some Tribunal decisions, for example, where there might have been a mistake.

The Government has also re-established the Administrative Review Council, which could be a helpful forum for inquiring into systemic administrative law issues relating to the NDIS.

As the new ART evolves, there may be further changes to how it manages NDIS cases, in order to achieve its overarching objective of providing an independent mechanism of external review that: is fair and just; ensures applications are resolved as quickly and with as little formality and expense as possible; is accessible and responsive to the diverse needs of parties; improves the transparency and quality of government decision-making; and promotes public trust and confidence.



the ART must consider accessibility and user needs in how it approaches reviews, to assist it to promote its objective of being accessible.

Early implementation issues for the ART

Practice directions

The ART President can make Practice Directions, which guide how the ART uses the range of powers and procedures available to it, and how cases will be managed in practice. As of January 2025, six Practice Directions have been issued, including in relation to the procedures of the ART and how the ART will deal with expert evidence.

Disability advocates have called for a dedicated Practice Direction to govern NDIS cases, as these often involve complex issues and unique dynamics. Many people with disability have described difficult experiences dealing with the NDIA during AAT reviews, and a new Practice Direction could help the ART address this. The disability community has also asked the ART to consider developing a separate Practice Direction to guide the ART's management of cases involving applicants or witnesses with disability needs. To date, the ART President has not agreed to make either of these Practice Directions.

Publication of decisions on NDIS cases

Advocates have raised concerns with the ART's approach to publication of decisions. While the AAT previously published all decisions on NDIS reviews (except where prevented by confidentiality orders), in a Senate Estimates hearing on 28 November 2024 the ART Registrar confirmed the ART would take a different approach to publishing decisions to focus on 'more qualitative than quantitative' measures. Subsequently, on 11 December 2024 the ART issued a '[Publication of Decisions](#)' policy which confirmed that only selected NDIS review decisions would be published, based on whether the decision met certain 'Public Interest Criteria'.

Concerningly, this more restricted approach to publishing decisions is likely to limit public oversight of ART decisions and lead to reduced accountability for NDIA practices. It may also make it more difficult for people with disability and their representatives to challenge NDIA decisions by preventing them from accessing relevant prior ART decisions, while the NDIA will have full knowledge of all prior decisions.

Update: After this report was written, the ART confirmed that all decisions on NDIS cases will continue to be published on AustLII for the foreseeable future.

Provider quality, accountability and compliance

Despite some existing safeguards, including the NDIS Code of Conduct, NDIS Practice Standards and the Australian Consumer Law ('ACL'), the Government has determined a need for additional quality control of NDIS services.

In early 2024, the Government established the NDIS Provider and Worker Registration Taskforce to provide expert advice on overhauling the NDIS registration system. The Taskforce provided detailed advice, including 21 recommendations, in August 2024. Recommendations focused on a risk-based registration model for NDIS providers, with different levels of registration based on the type of support provided. Key recommendations included transitioning to fully electronic payments, mandatory registration for high-risk providers, and a worker registration scheme designed to ensure quality and safety in disability support services.

The NDIS Quality and Safeguards Commission ('NDIS Commission') welcomed new leadership in October 2024, with Louise Glanville and Natalie Wade commencing in their roles as Commissioner and Associate Commissioner (respectively).

Also in October 2024, the NDIS Commission released a [Regulatory Reform Roadmap](#) setting out a timetable of reforms to the end of 2025.

The Roadmap outlines:

- how the NDIS Commission will implement a transition to mandatory registration of platform providers, supported independent living ('SIL') and support coordination (set to commence sometime from 1 July 2025); and
- the development of legislative reforms to be included in a proposed 'Getting the NDIS Back on Track No. 2 Bill' ('NDIS Bill No. 2') and associated rules and standards.

These processes have begun with public consultation and discussion papers, and further information is expected through 2025.

2024 also saw a focus on NDIS participant rights under the ACL. One of the [2024/25 Compliance and Enforcement Priorities](#) of the Australian Competition and Consumer Commission ('ACCC') is improving NDIS providers' compliance with their ACL obligations. In November 2024, the ACCC **announced** a focus on addressing problematic advertising practices targeting NDIS participants. On 13 December 2024, the ACCC filed a case against a registered NDIS provider in the Federal Court, for alleged false and misleading statements about the sale of aged care and disability products, including in relation to price and assertions certain products were 'NDIS approved'. We expect to see this enforcement focus continue in 2025.



In November 2024, the ACCC announced a focus on addressing problematic advertising practices targeting NDIS participants.

Response to the Disability Royal Commission

In July 2024, the Australian Government released its **response to the Disability Royal Commission Final Report.**

Of the 172 recommendations within the Australian Government's primary or shared responsibility, the Government accepted 130 recommendations outright or in principle, indicated it was considering a further 36 recommendations, and noted 6 recommendations. Many people with disability expressed disappointment at the limited adoption of the recommendations and lack of immediate action taken to address the problems identified by the Report.

The Government has committed funding towards a first phase of measures responding to recommendations. These include reforms relevant for NDIS participants, such as targets to reduce and eliminate restrictive practices by providers and enhancing independent oversight of disability services and complaint mechanisms.

Given the number of recommendations still being considered, the Government needs to take further action to adequately respond to the Report.



Artwork by Katrina Brennan, Flow Mosaic, 2020. **studioA**

Court and Tribunal decisions

NDIS caselaw continued to develop in 2024, through Federal Court and Tribunal decisions interpreting and applying the Scheme's legislation. While the new NDIS laws and planning processes will change how decisions are made in a range of circumstances, these cases contain key statements of enduring relevance to the NDIS' underlying philosophy and principles, as well as lessons for the new ART.

Federal Court decisions

In *Warwick v NDIA [2024] FCA 616*, the Federal Court considered an appeal from an AAT decision to refuse NDIS funding for the costs associated with an applicant moving house (including real estate agent costs, removalist fees, conveyancing fees and stamp duty). The Tribunal's refusal was based on its characterisation of moving costs as 'day-to-day living costs', which are excluded from NDIS funding by rule 5.1(d) of the *NDIS (Supports for Participants) Rules 2013* (Cth).

The Federal Court found the term 'day-to-day living costs' meant 'those everyday expenses which are incurred in the course of living for the purpose of living'. With this definition, it was obvious Mr Warwick's moving costs were not 'day-to-day living costs' (like rent, groceries and utility fees) because selling a house and buying a new one is not an everyday expense. Because of this, the Federal Court found the AAT had misinterpreted the law, and overturned the AAT's decision.

This finding is significant as many items now excluded from the NDIS supports list are described as 'day-to-day living costs'. The Federal Court's interpretation of what 'day-to-day living costs' means in the context of the NDIS may influence the interpretation and application of the NDIS supports lists. The NDIA has appealed the decision to the Full Federal Court, with a hearing to take place in March 2025.

In *Kelly v NDIA [2024] FCA 1462*, the Federal Court settled an issue about whether parts of the *NDIS (Becoming a Participant) Rules 2016* (Cth) were valid.

In the 2022 case of *NDIA v Davis*, a different judge questioned the validity of certain parts of the *Rules* that referred to the permanency of a person's impairments but was not required to make any determination on that issue to decide the case. In *Kelly*, the Court decided these parts of the *Rules* were validly made and not inconsistent with the NDIS Act, clarifying the uncertainty that arose in *Davis*.

Specialist Disability Accommodation and other housing supports

The distinct nature of decision-making about funding Specialist Disability Accommodation ('SDA') has not been altered by recent legislative changes, and the relevant *NDIS (Specialist Disability Accommodation) Rules 2020* (Cth) were applied by the AAT in several decisions in 2024. As in previous years, many SDA decisions concerned participants seeking SDA that suited their life stage and needs.

In *Lougher and NDIA [2024] AATA 1057*, the AAT set aside the NDIA's decision and agreed with the participant's request for funding to live alone in SDA. The applicant has multiple disabilities leading to her displaying challenging behaviours that would pose risks to any housemate. The AAT rejected the NDIA's arguments that a shared living arrangement could be made suitable if steps were taken to manage these risks, and found sole occupancy was the only suitable arrangement.

Two cases considered whether specific building types and specifications set out in the SDA Price Guide are the *only* building types that can be funded as SDA, or if other forms of SDA could be funded where participants' circumstances require it. In both *Caterson and NDIA [2024] AATA 3440* and *DQRG and NDIA [2024] AATA 3595*, participants requested a one-resident, two-bedroom house. The NDIA argued the AAT could not decide to fund this, as that building type is not listed in the Price Guide. The AAT arrived at conflicting decisions; in *Caterson*, it funded the requested SDA house, while in *DQRG* it found it did not have the power to do so. As a result, the proper application of the SDA Price Guide remains uncertain, particularly for people with novel or unusual housing needs. The NDIA has appealed the

decision in *Caterson* to the Federal Court, which may result in a judgment resolving the issue.

In *HTDD and NDIA [2024] AATA 725*, the participant requested a one-bedroom SDA home. However, many of the features the participant sought in SDA - such as in the layout of the home, materials used in construction and features to manage difficult sensory stimuli – are not specifically provided for in the SDA Design Standards. Large parts of the participant’s argument referred to the value of housing tailored to her specific disability needs. The AAT accepted the benefits of each of the features the participant sought. It found appropriate disability housing would assist the participant to access other disability supports and address issues that could not be tackled in the context of her long-term homelessness (caused by her inability to live in mainstream housing). This nuanced approach by the AAT recognised the foundational role appropriate disability housing plays as part of a network of supports.

In *KXHC and NDIA [2024] AATA 2277*, the AAT considered a different kind of bespoke home and living support. The participant’s parents had demolished and rebuilt the family home to give them adequate space to live with KXHC and her siblings. They asked for NDIS funding to cover the costs of installing a lift so KXHC could travel between floors. While the AAT accepted the family could have chosen to build a single storey home instead, it found it was reasonable for them to make choices that took account of the wider family’s needs as well as KXHC’s. It also found this case will not affect the financial sustainability of the NDIS, as these kinds of home modifications decisions will be made on a case-by-case basis.

Interfaces with other service delivery systems

Three cases considered the interface between the NDIS and other service delivery systems – an issue that will be an ongoing source of debate as governments negotiate on planned reforms to the Scheme.

In *Oczenaschek and NDIA [2024] AATA 2889*, the participant had been homeless and living in his car for 16 years, the instability of which had prevented him from receiving appropriate therapies or supports for his disabilities. His attempts to obtain suitable housing from NSW housing authorities or community housing providers had been unsuccessful. The AAT made clear that inadequate support from state-based providers did not create an obligation on the NDIS to fill this gap.

Similarly, in *Winn and NDIA [2024] AATA 3034*, the AAT stated the NDIS should not be responsible for funding housing solutions where this would otherwise be the responsibility of State authorities, or where the private housing market has created challenging conditions for people with disability. These comments were in the context of finding the participant did not meet the criteria for SDA; but also highlight the need for governments to work together to develop comprehensive and cohesive housing solutions for people with disability.

In *Deayton and NDIA [2024] AATA 3310*, the participant requested the NDIS cover physiotherapy and massage services, and the costs of his disability-related increased electricity usage. While the public health service and a state government subsidy program would, respectively, cover part of his costs for these supports, the participant said these were not adequate to fully cover his disability-related needs. The AAT agreed, and found the NDIS should cover the remainder of these disability-related costs. In relation to the electricity subsidy, the AAT had to reconcile principles from earlier cases prohibiting duplication of supports and pro rata funding of supports by the NDIS. While the AAT’s reasoning is controversial, and the decision is currently being appealed by the NDIA, it highlights the need for state and federal programs to work compatibly with the NDIS to meet participants’ practical needs.



The Federal Court’s interpretation of what ‘day-to-day living costs’ means in the context of the NDIS may influence the interpretation and application of the NDIS supports list.

Other types of supports

Over the year, the AAT considered cases where participants requested novel supports that reflected their own understanding of their disability and disability needs. These included gym memberships (funded in *Mante and NDIA [2024] AATA 3399*) and air conditioners (funded in *MKKX and NDIA [2024] AATA 805*). The Agency has previously opposed these types of supports, which are now generally excluded under the transitional NDIS supports lists. The AAT's reasoning in these cases, including considering and rejecting alternative types of supports for the participants, highlights the challenges that could flow from the NDIS supports lists unduly restricting the types of supports people with disability can access.

Tribunal powers and processes

Several cases saw the AAT considering its own processes and powers. Although the AAT has since been abolished, the principles in these decisions will continue to have application to the functions and powers of the new ART.

In *FBHL and NDIA [2024] AATA 304*, the AAT considered a recommendation made through the NDIA's Independent Expert Review program (which is no longer active) while deciding whether certain supports sought by the applicant were 'reasonable and necessary'. Although the independent expert recommended funding some of the participant's requested home modifications, the AAT rejected the recommendation and ultimately decided not to fund any of them. It is unfortunate the independent expert's view was not useful to the AAT in forming its ultimate decision. This process may hold lessons for any future attempts by the ART to use neutral expert evaluation.

In *Gabriela and Chief Executive Officer, NDIA [2024] AATA 741*, the AAT confirmed that a review of a statement of participant supports includes reviewing *all* matters specified in that statement, including the reassessment date of the plan and the plan management arrangements. The AAT's approach could lead to unexpected, and potentially undesirable, outcomes for participants who challenge specific aspects of their plan but then find the Tribunal reconsidering other aspects of their plan.

In *Joppich and NDIA [2024] AATA 3275*, the presiding member refused to make confidentiality orders requested by the applicant on the basis that the case concerned private and personal matters, even though the NDIA did not oppose the request. The member said the default position should be that hearings are subject to open justice, and there needed to be a reason to depart from that default position. He found there was no particular reason to do so in this case as, while it involved private and personal information, this would be common to most NDIS reviews.

Although the applicant was an adult at the time of this decision, the member also appeared to question the Tribunal's standard practice of assigning a pseudonym to children who apply for review of an NDIA decision. If this approach – and particularly the views expressed about confidentiality orders for child applicants – is adopted by the ART, it could raise significant privacy concerns for some NDIS participants and could potentially deter them from seeking a review by the Tribunal altogether.

In *Brown and NDIA [2024] AATA 3318* the participant challenged the NDIA's decision to reduce his funding for support hours relative to his previous plan. The AAT considered whether the participant or NDIA had an 'onus' of persuading the Tribunal of the level of support the participant required. The AAT considered commentary from previous Tribunal cases that took different approaches to this issue, and ultimately suggested a party seeking a particular finding on an issue should generally be expected to provide information supporting that finding. This meant, where a participant seeks additional new supports, they might be expected to provide evidence for those; but where the NDIA seeks to reduce funding for a support, the NDIA has a 'greater responsibility' to provide supporting information. Although this does not result in a formal 'onus of proof', it provides practical guidance for the Tribunal and parties in NDIS cases.

What does the future hold?

We expect 2025 to be another year of significant change for the NDIS. With a federal election due to be held on or before 17 May, the extent of that change is difficult to predict. However, some further reforms and other activities have already been foreshadowed.

Legislative reform and leadership change

The Government's NDIS Bill No. 1, released last year, was intended to be the start of a longer process of NDIS reform by the Commonwealth, state and territory governments. The NDIS Review made 26 recommendations, only a fraction of which were implemented in 2024. The NDIS Provider and Worker Registration Taskforce has since made its own 21 recommendations, some of which are expected to be implemented through the NDIS Commission's Regulatory Reform Roadmap.

The Government has announced it plans to release an exposure draft of its NDIS Bill No. 2 by March 2025, with the Bill expected to be introduced to Parliament later in the year. A series of Rules to implement the measures set out in NDIS Bill No. 1 should also be expected in the near-term.

However, the direction, scope and pace of further reforms will depend on the federal election outcome.

Following the retirement of Minister Bill Shorten in January 2025, responsibility for the NDIS portfolio was handed to Minister Amanda Rishworth, who is also Minister for Social Services. Disability community voices have called for the Government to take the opportunity to implement a recommendation from the Disability Royal Commission to establish a Minister for Disability Inclusion, uniting the responsibilities of the Minister for the NDIS and disability-related functions of the Minister for Social Services. So far, this recommendation has not been taken up.

Accountability and compliance measures

Both Labor and the Coalition continue to focus on the fiscal sustainability of the NDIS and initiatives to combat fraud. The NDIS Bill No. 2 is expected to focus on compliance and enforcement, with increased penalties for fraud and enhanced powers for the NDIS Quality and Safeguards Commission to initiate criminal investigations.

Significantly, Minister Shorten announced the NDIS Bill No. 2 will increase penalties for providers when a participant is harmed or injured under their care, with the current \$400,000 maximum penalty rising to more than \$15 million. This will align the maximum penalty for harming an NDIS participant with that for harming a worker in a breach of workplace health and safety laws.

Continued co-design processes

We expect to see continued engagement with the disability community through the co-design process on key NDIS Rules relating to access to the Scheme and the design of the needs assessment (see pages 5 and 6). Genuine co-design of these rules is critical to the operation of the Scheme and how well it works for participants.

Foundational supports

We expect some clarity on the scope of foundational supports through the Foundational Supports Strategy to be developed by DSS. This strategy was originally slated to be considered by National Cabinet in the second half of 2024 but is now expected in 2025. The Government says foundational supports are due to be rolled out from mid-2025.



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