

Justice system

Quick summary: If you're involved in the justice system, you have the same rights as anyone to become or remain an NDIS participant. But there might be some extra things we consider when we work with you to create and reassess your plan. The justice system is responsible for some of your supports while you're involved in the justice system. There may be NDIS supports we can fund to help meet your needs while you're involved in the justice system. The NDIS supports we fund, and the supports the justice system is responsible for, depend on whether you're in custody or not in custody.

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What do we mean by the justice system?

We're committed to helping all people with a disability who are eligible for the NDIS. We want to make sure you can get funding for [reasonable and necessary supports](#), to help you live as independently as possible in your community. This includes people with a disability who are involved in the justice system.

When we make decisions about what supports we fund, we consider the [principles we follow to create your plan](#). These principles explain how we make sure you get the reasonable and necessary supports you need. They also help us make sure the NDIS is financially sustainable. This means we manage our funding so we can meet your disability needs now, as well as your needs and the needs of other people with disability in the future.

We consider you're involved in the justice system if you are:

- in custody in a correctional facility, for example a prison, remand centre, youth detention centre or secure mental health facility
- on remand, awaiting or following sentencing
- required by a court order to regularly report to a correctional or community correctional agency, for example on bail, probation or parole
- serving a community based order, or are on a leave of absence order or therapeutic leave
- under forensic orders, which may include restrictions on your movements or other requirements, such as drug testing or attending prescribed treatment.

Can you apply to the NDIS if you're involved in the justice system?

Yes, you have the same rights as all Australians to:

- apply to become an NDIS participant
- stay an NDIS participant.

You can apply to the NDIS at any time. We'll assess your application in the same way we assess all applications.

If you're in custody, you should apply long before your possible release date. That way if you're eligible, we might be able to fund the NDIS supports you need to prepare for your release.

If you don't have much time before your possible release date from custody, we may be able to assess your application faster than our [usual timeframes](#). Learn more about [how we decide if you're eligible in urgent circumstances](#).

The supports you get through the justice system can help you with the information you need to prepare and submit your application.

If you're already a participant and go into the justice system, you will remain as a participant. Your current plan will stay in place until we reassess your plan. Learn more about [how we create and reassess your plan if you're involved in the justice system](#).

How do we create and reassess your plan if you're involved in the justice system?

If you're a participant involved in the justice system, we work with you to [create your plan](#), and do a [plan reassessment](#) in a similar way to how we work with everyone else. But there may be some differences depending on whether you're in custody or not in custody.

We may ask for information from the justice system in your state or territory to help us decide what NDIS supports you need.

For example, we might need:

- reports about the functional impact of your disability
- forensic assessments detailing your rehabilitation needs
- information about conditions imposed by court orders.

This will help us work out how your NDIS supports will work with other supports, such as those provided by the justice system.

What if you're in custody?

If you're in custody, we'll contact the facility where you are living. We'll arrange to either meet in person, or make contact with you by phone.

You're in custody¹ or subject to a custodial order if a court has ordered you to stay in a:

- prison
- remand centre
- youth detention and training facility
- secure training facility
- secure mental health facility.

It doesn't matter if you're in one of these custodial settings due to a custodial order, forensic order, or if you're on remand. We'll contact the facility where you're staying and arrange to meet or make contact with you.

Will you need a new plan once you're released from a custodial setting?

You may need a new plan before you're released from custody. We want to make sure you have the NDIS supports and other supports you need when you're back in the community.

We'll discuss supports that are available through the justice system and other community and mainstream supports, and also help you to connect to any NDIS supports we might fund.

If you're in custody, the justice system or other services will help you connect to other support services, such as other government mainstream services and supports in the community. If you're not in custody, we'll help you with these connections.

Learn more about [what happens when you're going to be released from custody](#).

We'll meet with you 12-14 weeks before your earliest known possible release date, if this is possible within your custodial facility. This release date includes if you have a planned short-term [leave of absence](#). We'll meet with you either over the phone, or in person.

If you have complex support needs or have been in custody for a long time, we may meet with you earlier.

If you're released earlier than expected, we'll work with everyone involved so you have the reasonable and necessary NDIS supports you need when you're released.

What if you're not in custody?

If you're involved in the justice system but not in custody, we'll contact you, or someone you [nominate](#), directly to check-in or have a planning conversation.

If you're involved in the justice system, but not in a [custodial setting](#),² we consider that you're not in custody. We consider you're not in custody if you're:

- on bail or a leave of absence order
- under a community-based order, that puts controls on what you can do to manage risks to you or the community
- on parole
- in community detention or in-home detention.

Your check-in or planning conversation might be face-to-face or by phone. Learn more about how we [create your plan](#).

Who can help you with your NDIS plan?

You may need or want some help to create or use your plan. We'll ask you who you would like, or who might be able to help you.

You can involve anyone you like in the planning process. You might want help from your:

- informal supports, such as family or friends
- treating team, such as your doctor, social worker, occupational therapist or psychologist
- legal guardian
- public trustee
- community corrections officer
- case manager
- disability liaison officer of the facility
- service providers.

You may want to give consent for us to contact other people. You may also want to give us consent for someone else to act on your behalf.

You can give us your consent over the phone, or we can give you a [consent form](#) to fill out.

Learn more about giving [consent](#).

If you need help with making decisions about the NDIS or someone else to make decisions for you, we can help. [Contact us](#) or learn more about [nominees](#).

Who funds the supports you need when you're in custody?

You may need a range of support services throughout your life to help you live as independently as you can and pursue your goals.

This can include supports we fund, and supports provided by [mainstream and community services](#) such as health, mental health, housing or education. You may also get some supports and services through community services such as church groups, charities, local councils or sporting clubs.

Under the law for the NDIS, all supports we include in your NDIS plan must meet the [NDIS funding criteria](#).

We can't fund supports that are more appropriately funded by other service systems, such as the justice system, and not the NDIS.³

We must consider the responsibilities of different service systems when we work out who is most appropriate to fund different supports.⁴ The law sets out the responsibilities of different service systems, including the justice system.⁵

Federal, state and territory governments across Australia have also agreed on responsibilities across service systems. They have agreed about:

- [what supports the justice system should provide](#)
- [what supports we may fund.](#)

The information in this section is a summary only. For more detailed information on responsibilities across the NDIS and other services, check out the [Applied Principles and Tables of Support](#).

What supports should the justice system provide?

If you're **in custody**, the justice system is responsible for your day-to-day care and support needs. This includes supervision, personal care and general supports.⁶ A custodial setting includes a secure mental health facility.⁷ When you're in custody, the justice system will need to provide things like:

- help with personal care, such as showering, eating and dressing
- [disability-related health supports](#)
- medical supports that are related to any other health conditions you may have, for example medications for asthma, heart disease or diabetes.

The justice system also needs to make adjustments or changes to their supports or services to make them accessible to you. These are called reasonable adjustments.⁸

The justice system is responsible for making sure general services in the correctional facility are accessible for your disability.⁹

This means when you're in custody, the justice system should provide things like:

- shower rails in bathrooms, or fixed aids such as hoists, that may be used by you and other inmates
- access to medical care and services
- help with communicating and engaging, including Auslan interpreting
- adapting the building so you can move around it

- legal assistance services
- programs in the justice system, for example, drug and alcohol programs and acute mental health interventions or treatments
- case coordination to help you transition out of a justice setting, including the management of orders, child protection and family support, health, mental health, housing or homelessness services
- secure mental health facilities that are mainly clinical in nature¹⁰
- transport, for example to and from court hearings.

What NDIS supports can you get while you're in custody?

We may fund reasonable and necessary supports in custody when:¹¹

- the supports you need aren't the justice system's responsibility to provide
- it's appropriate in the circumstances for the NDIS to provide the supports.

The supports will need to meet all the [NDIS funding criteria](#).

We may fund things like:

- some assistive technology, such as a replacement prosthetic limb
- training for staff in custody, where it's specifically for your disability support needs
- capacity building supports that will help you when you're released, such as [support coordination](#), a [recovery coach](#), occupational therapy or behaviour support related to your disability.

The justice system is responsible for managing any risks and safety of supports you get when you're in custody. They're also responsible for deciding what supports can be delivered in a custodial setting. For example, the justice system may not allow certain types of assistive technology in a custodial setting if it could be a risk to you or others.

The justice system may provide all the support you need while you're in custody. If so, we'll still need to create a plan with you but your plan won't have any funded supports. We'll talk to you about your situation, and we can do a plan reassessment if your disability support needs change.

Learn more about [changing your plan](#).

Example

Lee is in a correctional facility. He now needs more support to move around. His occupational therapist recommends he gets a power wheelchair. The correctional facility will need to approve the wheelchair before Lee can use it.

Lee's occupational therapist recommends a wheelchair with a wi-fi connection, which isn't allowed in the correctional facility. But there's another power wheelchair that doesn't need this connection, and it's also suitable for Lee.

We fund the power wheelchair that doesn't need wi-fi connection.

The justice system is responsible for any reasonable adjustments Lee needs, so he can physically access the parts of the correctional facility he needs to.

What if you have a leave of absence order?

You may be given a leave of absence order as part of your custodial order. A leave of absence order is where you're allowed into the community for specific reasons during your custody. This will depend on the state or territory you live in. This is sometimes also called therapeutic leave.

We may fund the supports you need for your disability when you're on a leave of absence. Remember, we can only fund supports that meet all the [NDIS funding criteria](#). This could include:

- capacity building supports to help you prepare to live in the community after you're released
- assistance with personal care
- assistance to access social and recreational activities.

We can't fund supports that the justice system is responsible for. This means we won't fund:

- supports if the main reason is to make sure you keep to your leave of absence order's conditions
- supports to reduce your risk of offending while you're in the community
- housing while you're on a leave of absence order.

What happens when you're going to be released from custody?

The justice system should provide general supports and some skills development training to help you with your transition into the community. They also help you link to supports such as Centrelink, health, mental health, employment and housing services.

We can fund supports you need because of your disability to help you transition to the community, if they meet all the [NDIS funding criteria](#). For example, we may fund supports to help you build your independence, or manage your day-to-day life, when you're released.

This could include NDIS supports before your release to help you transition back into the community,¹² such as:

- allied health and other therapy directly related to your disability, like occupational therapy or behaviour support
- support related to your disability to help you build your skills and manage your life after you're released from custody
- support coordination or a recovery coach to work with the justice system's case management services.

These supports will give us information that helps us understand what disability supports you may need after you're released.

Who funds the supports you need when you're not in custody?

You may need a range of supports and services throughout your life, to help you live as independently as you can and pursue your goals. This may include supports funded by the NDIS, and supports provided by [mainstream and community services](#) like health, mental health, housing and education.

You may also get some supports through community services such as church groups, charities, local councils or sporting clubs.

Sometimes informal supports, like your family, friends and other people you know in your community, can also support you. They know you, and can help you in ways other supports might not be able to.

Under the law for the NDIS, all supports we include in your plan must meet the [NDIS funding criteria](#). We can't replace supports and services that are more appropriately provided or funded by another service system. This includes if you're subject to a community order requiring you to access certain supports and services.

We must consider the responsibilities of different service systems when we work out who is most appropriate to fund different supports.¹³ The law sets out the responsibilities of different service systems, including the justice system.¹⁴

Federal, state and territory governments across Australia have also agreed on responsibilities across service systems. They have agreed about:

- [what supports the justice system or other services should provide](#)
- [what supports we may fund.](#)

The information in this section is a summary only. For more detailed information on responsibilities across the NDIS and other services, check out the [Applied Principles and Tables of Support](#).

What supports should the justice system or other services provide?

The justice system and other services provide educational and other programs to the wider population. They must adapt these programs to make them accessible to people with disability.

For example, other services must provide written material in large print or Easy English, or use an Auslan interpreter for face-to-face programs.

The programs may be to:¹⁵

- prevent offending
- lower the risks of people reoffending
- divert young people and adults from the criminal justice system.

The justice system is responsible for managing community corrections, such as supervising you as part of a community based order.¹⁶

The justice system and other services provide supports that are related to health, justice and community safety.

For example, the justice system and other services should provide:

- cultural, linguistic and religious support while you are in custody including Aboriginal and other cultural liaison officers
- intensive case coordination where a significant part relates to your transition from the justice system into the community
- supports intended to make sure you keep to community or parole orders, such as drug testing, medication or supervision
- home modifications not related to your disability, such as locks for secure doors or screens on windows – this may be for other reasons such as to restrict your movement if you're on a community or parole order
- clinical services aimed at reducing offending behaviour, such as anger management courses or psychology sessions for sexual or violent offending

- clinical treatment for a mental health condition including acute mental health interventions
- drug and alcohol clinical treatment.

What NDIS supports can you get if you're not in custody?

If you're involved in the justice system but not in custody, we'll fund supports that meet the [NDIS funding criteria](#) and are related to your disability. We'll do this in the same way as we do for any participants who are not involved with the justice system.¹⁷

Learn more about the different types of [supports you can access](#).

Remember, NDIS supports are just some of the supports you can get if you're not in custody. You can also get [mainstream and community supports](#) from government funded services, and other services in your local community.

Can we fund home and living supports if you're involved in the justice system?

When you're not in custody, we can only fund [home and living supports](#) if they are related to your disability and meet all the [NDIS funding criteria](#). This may be supports like [Individualised Living Options](#) or [Supported Independent Living](#).

First, we'll work with you to understand your support needs. We will ask you to complete a [Home and living supports evidence form](#). There are also other supports such as personal care we may fund for you to live independently in your home.

We can't fund [Supported Independent Living](#) or other home and living supports if the main reason is to:

- make sure you comply with a community order
- reduce your risk of reoffending.

If you need home and living supports to help you comply with a community order, or reduce your risk of reoffending, then this is the responsibility of the justice system.

What happens after we approve your plan?

Once we approve your plan, we'll talk with you about how you can [use your plan](#). You may have a support coordinator, a specialist support coordinator or a recovery coach funded in your plan. If so, they'll help you use the funding in your plan to get the NDIS supports you need.

While you're in custody, in most cases, you'll be supported through the justice system. You may not need to use the funding in your NDIS plan.

If you have questions about your plan, you can [contact us](#), or ask your My NDIS Contact, support coordinator, specialist support coordinator or recovery coach.

When will we do a plan reassessment?

We'll check-in with you during your plan and make sure that we do a reassessment of your plan before the reassessment date. If you're in custody, we'll think about the length of your minimum custodial sentence when we set how long your plan will go for.

If you've been released from custody, we'll check-in with you regularly. We'll also check-in with you if your custodial sentence changes.

We can do a plan reassessment if your support needs change. Sometimes we can change your plan by varying your current plan instead of creating a new plan.

You can also ask us for a plan reassessment if your support needs change.

Learn more about [check-ins](#) and [changing your plan](#).

Example

Ian is currently in a custodial facility. He's serving a 5-year sentence with a 3-year non-parole period. The justice system currently meets all his disability support needs, so we don't fund any supports in his plan.

At the start of his 5-year sentence, we gave Ian a 3-year plan – his minimum custodial sentence. As he comes to the end of his non-parole period, we'll meet with him to help him prepare to go back into the community.

We'll help Ian understand how to use his NDIS plan to meet his disability support needs, and help him connect with mainstream or community services to help meet his goals.

We'll discuss if there are any supports we can fund. For example, we may fund support coordination or occupational therapy to help Ian build on the independent living skills he's been learning as part of a program in a custodial facility.

Within the justice system, Ian gets case management and coordination support while his release is being organised, for example to help him with the parole board.

Ian might also be supported by a parole officer or another correctional services officer when he goes back into the community. They'll help Ian with any justice obligations or needs, such as programs or meetings he has to attend when he's in the community. Ian's support coordinator might talk to these officers to work out who is the right service to help Ian.

We'll check-in with Ian during his plan to find out if there are any changes with his custodial order or disability support needs.

What if you don't agree with a decision we make?

If we decide a support is more appropriately funded by the justice system, we can't include the support in your plan.

There are lots of ways we might be able to help though, so talk to us if you're in this situation. We can help you at any time.

For example, before we approve your plan, we can consider if a different support is more appropriate. If another government service should provide the support, we can help you connect with that service.

We'll give you the reasons for our decision to approve your plan. You can [contact us](#) if you'd like more detail about the reasons for our decision.

If you don't agree with our decision to approve your plan the way it is, you can ask for an internal review of our decision.¹⁸ You'll need to ask for an internal review within 3 months of getting your plan.¹⁹ Learn more about [reviewing our decisions](#).

Reference list

- ¹ NDIS (Supports for Participants) Rules r 7.23.
- ² NDIS (Supports for Participants) Rules r 7.23.
- ³ NDIS Act s 34(1)(f).
- ⁴ NDIS (Supports for Participants) Rules rr 3.5-3.7, Sch 1.
- ⁵ NDIS (Supports for Participants) Rules rr 3.5-3.7, 7.23-7.25.
- ⁶ NDIS (Supports for Participants) Rules r 7.25(a).
- ⁷ NDIS (Supports for Participants) Rules r 7.23.
- ⁸ Disability Discrimination Act s 5(2).
- ⁹ NDIS (Supports for Participants) Rules r 7.25(b).
- ¹⁰ NDIS (Supports for Participants) Rules r 7.25(e).
- ¹¹ NDIS (Supports for Participants) Rules r 7.24(b)(i).
- ¹² NDIS (Supports for Participants) Rules r 7.24(b)(ii).
- ¹³ NDIS (Supports for Participants) Rules rr 3.5-3.7, Sch 1.
- ¹⁴ NDIS (Supports for Participants) Rules rr 3.5-3.7, 7.23-7.25.
- ¹⁵ NDIS (Supports for Participants) Rules r 7.25(c).
- ¹⁶ NDIS (Supports for Participants) Rules r 7.25(d).
- ¹⁷ NDIS (Supports for Participants) Rules r 7.24(a).
- ¹⁸ NDIS Act s 100.
- ¹⁹ NDIS Act s 100(2).