NDIS and the Justice System: A Guide for Providers and External Stakeholders

Quick summary: This guide is for providers and community stakeholders who support people with disability involved with the justice system*. It explains how the National Disability Insurance Scheme (NDIS), the National Disability Insurance Agency (NDIA), and state and territory justice systems hold distinct responsibilities, and how they can work collaboratively to support participant outcomes.

Applying for the NDIS and using NDIS funded supports is voluntary. NDIS eligibility and the disability related supports that may be funded under the *National Disability Insurance Act 2013*[1] (NDIS Act) are determined by the NDIA. Though NDIS-funded supports may operate alongside justice arrangements, justice systems remain responsible for custody, lawful orders, offender management, supervision, community protection, and managing risks to public safety. These responsibilities cannot be transferred to the NDIA.

* This guide should not be interpreted as legal advice.

What's in the document

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- Supporting NDIS participants with a justice interface
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- Quick Reference: Service System Roles and Responsibilities

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What do we mean by justice system involvement

The NDIS is committed to supporting all people with disability who are eligible for the NDIS, including those who have a justice interface. In this guide, a person has a justice interface if they are:

- In custody in a correctional facility, for example a prison or youth detention centre, including participants who have been sentenced and/or on remand.
- Detained involuntarily in a secure mental health facility, forensic hospital or unit, following a forensic order under the relevant state or territory legislation.
- Subject to a leave of absence order or therapeutic leave from a correctional or forensic facility.
- Subject to a community-based lawful order, for example required to regularly report to a correctional or community correctional agency, such as on bail, probation, or parole, or subject to a supervision order.

Important: The term ‘lawful order’ is used to describe formal orders or conditions imposed by a court or tribunal on a person who has come into contact with the justice system, generally to manage the risk of harm the person may pose to themselves and others. This includes justice and forensic orders.

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Supporting NDIS participants with a justice interface

When supporting NDIS participants or prospective participants who are involved in the justice system, stakeholders should work collaboratively and maintain a clear understanding of the respective roles and responsibilities of the NDIS, the NDIA, justice systems, and other service systems.

- The NDIS Act sets out the legal framework for determining whether a person meets the NDIS eligibility requirements, what is and is not a NDIS support, and what the NDIS will or will not fund.
- Section 10 of the NDIS Act sets out the definition of what is a NDIS support. Under the NDIS Act, only supports that are defined as NDIS supports can be funded by the NDIS. Only a delegate of the NDIA Chief Executive Officer can determine whether a support is a NDIS support and may be funded through a participant's plan[2].
- Applying for and participating in the NDIS is voluntary[3] and is not affected by a person's justice status, provided they meet the relevant NDIS eligibility requirements[4]. Engagement with NDIS supports is also voluntary and a person cannot be compelled to apply for the NDIS or use NDIS supports[5].
- NDIS funded supports may change over time as a participant's circumstances, goals, support needs, living arrangements, justice involvement, available evidence, or other relevant information changes[6].
- The NDIS Act (s44) prohibits participants and plan nominees from self-managing NDIS funding where they have been convicted of a relevant offence, including an offence punishable by imprisonment for two years or more, or an offence involving fraud or dishonesty[7].
- Timely, lawful, and proportionate information sharing is critical to safeguarding and participant outcomes. Stakeholders should share relevant information about key events, milestones and significant changes, including:

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- changes in a participant's circumstances or NDIS support needs, including when they enter or leave custody. Where appropriate, participants may be supported to notify the NDIA of these changes, in accordance with relevant consent, privacy and decision-making arrangements[8]
- confirmed release/discharge date
- sentencing outcomes and other court decisions
- parole applications, decisions and release considerations
- release planning and pre-release transition activities
- transition into the community
- NDIS access and eligibility processes
- plan reassessments.

- While each service system retains responsibility for its own statutory functions, justice release planning and NDIS transition planning should (where practical) be aligned and complementary. Planning should be participant-centred, culturally safe, collaborative, and focused on preparing for and enabling support for release.
- A participant may voluntarily leave the NDIS at any time, if they no longer want, or need, to be an NDIS participant. During the minimum 90 day cooling off period, the participant can still use their NDIS plan.

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Responsibilities when a person is in custody

The NDIS may fund disability-related supports for a participant in custody **only** where the support meets NDIS reasonable and necessary funding criteria under the NDIS Act. This means that the proposed support must be an NDIS support and directly related to the person's disability support needs and is not the responsibility of another service system[9].

NDIS supports in custody

- During significant life stage transitions such as leaving custodial settings, the NDIS may fund time-limited[10], transition-specific disability supports that help prepare for release into the community. The purpose of these supports is to help navigate systems, reduce risks related to functional decline during transition, and help stabilise a person during periods of change. This may include[11]:
    - planning and coordinating NDIS funded supports for the transition from custody
    - helping participants understand new roles, environments, or routines (e.g. rapport building with disability service providers whilst in custody prior to transition)
    - linking participants to appropriate ongoing supports, for example establishing connections with disability service providers, therapeutic and community-based supports, and relevant mainstream services
    - short-term practical assistance that enables the transition to occur, for example to establish disability-related routines in a new environment, trial and implement behaviour support strategies, use assistive technology or communication supports, and maintain daily living skills during the transition period.
- There are some other limited supports the NDIA may fund when a person is in custody:
    - disability-related assessments and therapy supports that assist the NDIA to understand a participant's disability support needs

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- certain assistive technology directly related to the participant's disability support needs
- specialist NDIS funded supports not ordinarily provided by correctional or forensic services and are above reasonable adjustment expected of mainstream services
- staff training specific to a participant's NDIS funded support needs.

- For participants who are sentenced to longer periods in custody or where a participant's disability support needs in custody are met entirely by the justice system, the participant may continue to have a NDIS plan that contains limited or no funded NDIS supports until their circumstances change or transition planning commences.

Justice system supports in custody

- When a person is in custody, the state or territory justice system is responsible for meeting the person's daily support needs and delivering custodial services[12].
  - day-to-day care and supervision in custody
  - accommodation, food, clothing, and personal care provided by correctional facilities
  - health, mental health, drug and alcohol treatment and rehabilitation services that are the responsibility of custodial services
  - offending behaviour programs or other interventions, such as anger management and specialist treatment for sexual or violent offending, aimed at community safety, rehabilitation, reducing offending, or supporting compliance with justice orders
  - cultural, linguistic, and religious supports, including Aboriginal and Torres Strait Islander liaison officers
  - security, custodial management, and risk management functions
  - pre-sentence psychological or psychiatric reports and other assessments required for justice decision-making

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- intensive case coordination where the purpose is transition from the justice system to the community.

- Justice systems remain responsible for determining whether a support can be delivered safely and appropriately within a custodial or forensic setting. A NDIS support may not be able to be delivered where it presents a safety, security, or operational risk within the custodial environment.

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Responsibilities when a person is not in custody

When a participant or prospective participant is involved in the justice system but is not in custody, the NDIA engages with the person, their authorised representative or nominee, and relevant stakeholders to understand NDIS funded support needs and circumstances. This may include people who are on bail, parole, probation, community-based orders, leave of absence arrangements, community detention, or in-home detention[13].

NDIS Supports in the community

- For participants living in the community, the NDIS generally considers supports for participants with a justice interface the same way as other participants. Stakeholders should not assume that a participant's community-based NDIS supports will continue unchanged while the participant is in custody.
- The NDIS may fund disability-related supports that are NDIS supports, are related directly to the participant's disability and support needs and meet reasonable and necessary criteria under the NDIS Act, and are not required to meet justice conditions, monitor compliance, reduce offending risk, or provide community safety supervision[14].
- NDIS supports may operate alongside court orders, parole conditions, lawful orders, and supervision arrangements. Whilst a lawful order binds the person, it does not create an authority for a NDIS provider or NDIS support to enforce that order. A NDIS support may incidentally assist a participant to comply with a lawful order; however, it cannot replace a justice system function.
- A support involving a regulated restrictive practice may only be considered an NDIS support where it meets the definition of a regulated restrictive practice under section 6 of the NDIS (Restrictive Practice and Behaviour Support Rules) Rules 2018 and is consistent with the applicable authorisation requirements and the participant's positive behaviour support plan, in accordance with the requirements of the NDIS Quality and Safeguards Commission.

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Justice system supports in the community

- The justice system remains responsible for community corrections and supports primarily related to justice, health, and community safety[15], including:
    - assessing and making decisions about public and community safety
    - supervision and compliance with community-based or parole orders
    - intensive case coordination where the purpose is transition from the justice system to the community
    - offending behaviour programs, such as anger management and specialist treatment for sexual or violent offending
    - drug testing, medication management, and other measures to support compliance with justice orders
    - cultural, linguistic, and religious supports, including Aboriginal and Torres Strait Islander liaison officers to enable participation in justice and supervisory processes
    - clinical mental health treatment, including acute interventions
    - drug and alcohol treatment and rehabilitation services.

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Information Sharing and Transition Planning

- Timely, lawful, and proportionate information sharing, including notification of significant events enables agencies and providers to work together to minimise service gaps, address emerging safeguarding concerns, and plan effectively for transition between custody and the community[16].
- Where disability support needs are identified, and a person is not already connected to the NDIS but wants to apply to access the NDIS, referral and access processes should commence as early as possible.
- To support effective transition planning, information sharing and preparation should be proportionate to the participant's circumstances, support needs and anticipated release.
- For young people in youth justice settings, planning should commence as early as possible where potential disability support needs are identified and communicated to the NDIA.
- Participants with complex support needs, specialist accommodation requirements, significant forensic histories, or limited-service availability may require earlier transition planning commencement.
- NDIS transition planning should involve the participant, authorised representatives or nominee, justice agencies, health and mental health services, housing and homelessness services, guardians, family, or kinship supports, support coordinators, service providers the NDIA, and other relevant stakeholders. Justice agencies remain responsible for release planning, including related intensive case co-ordination.
- Information required to support NDIS transition planning may include evidence of disability, functional impact, communication needs, safeguarding considerations, provider safety and support risks, custody dates, anticipated release or discharge dates, lawful order conditions, decision-making arrangements, and key stakeholder contact details.

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- The justice system retains responsibility for release planning, parole readiness, correctional case management, community safety functions, justice-led housing pathways, and connection to mainstream services.
- Where a person remains subject to a custodial, forensic or secure-care order but is permitted to spend time in the community through a leave of absence or therapeutic leave arrangement, stakeholders should understand the conditions of the leave, including the purpose, duration and supervision requirements.
- The NDIS may consider funding supports during a period of approved leave where those supports are NDIS supports, relate to the participant's impairment and support needs, and are not the responsibility of another service system[17].
- This may include supports that, where a participant has a disability related support need, provide assistance to access the community, build independence, develop skills, or prepare for transition to longer-term community living arrangements.
- The NDIS Act prohibits funding supports whose purpose is to supervise, monitor or enforce compliance with leave conditions, manage offending risk, provide a community safety function, or deliver secure accommodation[18]. Responsibility for those functions remains with the relevant state and territory justice system.

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Review and escalation

Participants, nominees or child representatives can contact us if they aren't sure why we've made a decision or don't agree with the decision we've made. We can explain the decision. Contact us by:

- calling us on 1800 800 110
- submitting an enquiry through our service hub
- talking to the my NDIS contact
- visiting the local office in person (where applicable).

If the participant still disagrees with the decision, they may ask for a decision review , if it is a reviewable decision under the NDIS Act.

Related guidance

- Justice system | NDIS
- Would we fund it | NDIS
- What are NDIS supports | NDIS
- Mainstream and Community Supports
- Behaviour Supports
- Working with Participants | NDIS
- Provider responsibilities | NDIS
- For support coordinators | NDIS
- Home and living providers | NDIS
- The Justice System and Lawful Orders: A guide for supporting people with disability| NDIS Quality and Safeguarding Commission
- Administrative Appeals Tribunal

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Appendix

Quick Reference: Service System Roles and Responsibilities

Topic Area	NDIS / NDIA	Justice System
NDIS Access and eligibility	Determine whether a person meets NDIS eligibility requirements and becomes a participant. Justice system involvement does not, in itself, determine eligibility.	With consent, support a person to apply for the NDIS by providing information, evidence, and referrals.
NDIS Supports	Determine whether a support is a NDIS support and may be funded under the NDIS Act.	Provide information relevant to support NDIS planning and transition activities, where lawful to do so.
Supports in the Community	May fund NDIS supports that assist with daily living, independence, functional capacity, and community participation.	Remain responsible for offender management, supervision, compliance monitoring, risk management and community safety, including funding and supports that provide these functions.
Supports in Custody	May fund NDIS supports permitted under the NDIS Act including some transition-related supports.	Responsible for accommodation, day-to-day care and support needs, health services, custodial management, security, supervision, rehabilitation programs, risk management and other supports required as a consequence of detention.

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Transition Planning	Undertake NDIS related transition planning. May fund transition supports that are NDIS supports.	Lead release planning, correctional case management, risk and safety assessments and planning, parole readiness and reintegration activities.
Information Sharing	Provide information about the participant's NDIS plan, supports and their use (in custody or upon release), and relevant safeguarding considerations.	Share lawful and relevant information required to support transition planning and safeguarding.
Leaves of Absence and Therapeutic Leave	May consider funding NDIS supports required during a period of approved leave where those supports are NDIS supports and are not the responsibility of another system.	Remain responsible for leave conditions, supervision, compliance monitoring, community safety requirements and decisions about leave arrangements.
Lawful Orders and Compliance	NDIS supports cannot be used to supervise, monitor or enforce compliance with lawful orders, though may provide incidental benefit.	Responsible for administration, monitoring and enforcement of lawful orders.
Reviews and Decisions	Decisions about NDIS eligibility and supports are made under the NDIS Act. A person may seek a	Decisions relating to custody, parole, supervision, court orders and risk and community safety remain matters for the relevant justice authority.

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	review in accordance with NDIS review process.	

Reference list

[1] *National Disability Insurance Scheme Act 2013* (Cth) ss 18, 19
[2] *National Disability Insurance Scheme Act 2013* (Cth) s 10.
[3] *National Disability Insurance Scheme Act 2013* (Cth) s 4(4).
[4] *National Disability Insurance Scheme Act 2013* (Cth) s 17A.
[5] *National Disability Insurance Scheme Act 2013* (Cth) s 4(4).
[6] *National Disability Insurance Scheme Act 2013* (Cth) s 34.
[7] *National Disability Insurance Scheme Act 2013* (Cth) s 44.
[8] *National Disability Insurance Scheme Act 2013* (Cth) s 50 – a 52.
[9] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.23.
[10] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.24.
[11] *National Disability Insurance Scheme (Getting the NDIS Back on Track No 1) (NDIS Supports) Transitional Rules 2024* (Cth) sch 1.
[12] *National Disability Insurance Scheme (Getting the NDIS Back on Track No 1) (NDIS Supports) Transitional Rules 2024* (Cth) sch 2.
[13] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.23.
[14] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.24.
[15] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.25.
[16] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.23.
[17] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.25.
[18] *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) r 7.25

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