NDIS and the Justice System: A Guide to Assist Courts, Tribunals and Judicial Stakeholders

Quick summary: This guide is to explain the responsibilities of the National Disability Insurance Scheme (NDIS), the National Disability Insurance Agency (NDIA), and how they interact with state and territory justice systems when making decisions and providing supports for people with disability.

Key takeaways:

- Applying for the NDIS and using NDIS funded supports is voluntary.
- **The NDIS funds disability-related supports** for eligible participants, including people who are involved in the justice system. **It does not fund supports to perform justice-related functions**, such as lawful orders, offender management, supervision, community protection or the management of public safety risks.
- The NDIS does not have a legal framework that empowers the NDIA, NDIS providers or support workers to enforce lawful orders that may bind an NDIS participant.
- Practices that limit a person's rights or freedom of movement are subject to strict regulation in the NDIS and can only be used under limited circumstances.

*This guide should not be interpreted as legal advice.

What's in the document

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What do we mean by justice system involvement

The NDIA is committed to supporting all people with disability who are eligible for the NDIS. 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 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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NDIS Overview

- The NDIS supports people with disability to exercise choice and control, build independence, pursue their goals, and participate in social and economic life. The NDIS gives effect to a number of key provisions in the United Nations Convention on the Rights of Persons with Disabilities[1].
- The NDIS operates alongside but was never intended to replace or fulfil the responsibilities of mainstream service systems[2]. Accessing the NDIS is not the only pathway to support participants. Participants receive support through community networks, mainstream government services and specialist programs, with the NDIS forming one part of the broader service system.
- 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[3], 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. Only supports that are defined as NDIS supports can be funded by the NDIS.
- Applying for the NDIS and using NDIS supports is voluntary[4], and is not affected by a person's justice status, provided they meet the relevant NDIS eligibility requirements. A person cannot be compelled to use NDIS supports.
- States, territories and the Commonwealth have agreed that the NDIS is not responsible for the day-to-day care, support needs, and supervision of individuals in custody. Additionally, it excludes NDIS responsibility for ensuring criminal justice system services are accessible, funding general wider-population programs related to offending prevention and diversion and managing community corrections[5].

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NDIS and the justice system

- When a person is a NDIS participant, responsibility, funding and supports for community protection and public safety, offender management, supervision in the community, and enforcement of lawful orders remains with the relevant state or territory authority and cannot be transferred to the NDIA or funded as NDIS supports. This is reflected in the legal framework for the NDIS agreed between Commonwealth and state and territory governments.
- Only the Chief Executive Officer (CEO) of the NDIA, or their delegate can determine eligibility for the NDIS, and whether a support is a NDIS support and may be funded through a participant's plan, in accordance with the NDIS Act. Supports can be varied or reduced on reassessment, regardless of what a court has relied on as part of a lawful order.
- 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[6]. NDIS providers are not funded or supported to monitor compliance, report breaches or restrict movements for the purposes of a legal order.
- NDIS supports are designed to help participants exercise choice and control, build independence, pursue their goals, and participate in social and economic life. While a NDIS support may incidentally assist a participant to comply with a lawful order, it cannot replace a justice system function.
- Section 9 of the NDIS Act defines a restrictive practice as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability'. There are five restrictive practices that are subject to regulation and oversight by the NDIS Quality and Safeguards Commission. These are chemical restraint, mechanical restraint, physical restraint, environmental restraint and seclusion[7].

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- 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[8] 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.
- In practice, this means that NDIS providers are subject to significant legal constraints regarding the use of restrictive practices, including physical and environmental restraint. These practices cannot be used to enforce compliance with a lawful order and may only be used where authorised and consistent with applicable NDIS legal and regulatory requirements.
- When supporting and making decisions about people with disability who are involved in the justice system, both the NDIA and justice systems should maintain a clear understanding of the extent and boundaries of their distinct legislative and decision-making powers.
- The NDIA Information Sharing Protocol outlines how state and territory government agencies may request information from the NDIA about NDIS participants and prospective participants. Its purpose is to ensure that information is shared lawfully, consistently, and in a manner that supports outcomes for people with disability while protecting their privacy and rights.

NDIS eligibility and supports

NDIS eligibility

- A person's involvement with the justice system does not affect whether they may apply for, become or remain a NDIS participant. The person must still meet the eligibility requirements under the NDIS Act (s21).

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- With consent, external stakeholders can support a person to apply to the NDIS by assisting with identification, consent arrangements, evidence gathering and providing relevant information about functional impact and support needs.
- It cannot be assumed that a person will or has to apply for, accept or engage with the NDIS, even if that person may be eligible for the NDIS or is a NDIS participant.
- 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.

NDIS supports

- The NDIA funds disability-related NDIS supports[9]. In determining whether a support may be funded through the NDIS, consideration is given to whether the support is most appropriately funded or provided through the NDIS or another service system, including the justice system.
- The NDIS does not fund supports unless they are reasonable and necessary under the NDIS Act. This means day to day care and support needs in custody, offender management or supervision, compliance monitoring, community protection, the administration of justice orders, or public safety functions cannot be funded by the NDIS.
- A participant's involvement with the justice system, and their custodial status may influence the types of NDIS supports that can be funded[10] and how those supports are delivered. This includes risk and safeguarding considerations to support safe delivery of NDIS supports, relevant to participants, NDIS providers, workers, and NDIA staff, consistent with legislative and privacy requirements.

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Information sharing and transition planning

Timely, lawful, and proportionate information sharing is essential between correctional and justice agencies, the NDIA, the NDIS Quality and Safeguards Commission, NDIS providers, and other relevant stakeholders. Appropriate information sharing is critical to effective planning when a person enters custody, during periods of custody, and when preparing for transition back to the community.

- Agencies should share relevant information as early as practical, where authorised by law and consistent with applicable privacy and consent requirements. This includes information relevant to NDIS funded support needs, NDIS access and participation, safeguarding considerations, accommodation requirements, community supports, risk assessments, and anticipated release arrangements, including key dates.
- Where disability support needs are identified, and a person 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.
- Where the release date is unknown, or a participant is held on remand, justice agencies should undertake proactive release planning and information sharing with the NDIA.
- Delivery of NDIS supports within custody remains subject to operational, safety, and security requirements of the relevant custodial or forensic setting.

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- The NDIA may share information about a participant's NDIS plan and how their NDIS supports can be used, where authorised by law and consistent with privacy requirements. This can support coordination of services during entry to custody, periods of incarceration, and transition to the community.
- Where lawful, relevant, and proportionate, agencies should continue to exchange information throughout a person's involvement with the justice system to support safe, coordinated, and effective NDIS funded support arrangements.
- Requests for participant information should be made in accordance with applicable legislative requirements and established information-sharing arrangements, including the NDIA Information Sharing Protocol.

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Related guidance

- How to give consent | NDIS
- 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 Review 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 or prevent 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

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Topic Area	NDIS / NDIA	Justice System
		supports required as a consequence of detention.
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	Responsible for administration, monitoring, and enforcement of lawful orders.

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Topic Area	NDIS / NDIA	Justice System
	orders, though may provide incidental benefit.	
Reviews and Decisions	Decisions about NDIS eligibility and supports are made under the NDIS Act. A person may seek a review in accordance with NDIS review process.	Decisions relating to custody, parole, supervision, court orders and risk and community safety remain matters for the relevant justice authority.

Reference list

[1] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12.
[2] Productivity Commission, *Disability Care and Support*, Inquiry Report No 54 (2011) vol 1, 240.
[3] *National Disability Insurance Scheme Act 2013* (Cth) ss 10, 34.
[4] *National Disability Insurance Scheme Act 2013* (Cth) ss 4(4), 17A.
[5] National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth) paras 7.23–7.25.
[6] NDIS Quality and Safeguards Commission, *The Justice System and Lawful Orders: A Guide for Supporting People with Disability* (Version 1.0, November 2025).
[7] *National Disability Insurance Scheme Act 2013* (Cth) s 9
[8] *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Cth) s 6.
[9] *National Disability Insurance Scheme Act 2013* (Cth) s 10.
[10] *National Disability Insurance Scheme Act 2013* (Cth) s 34; *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) paras 7.23–7.25.

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