

# **NDIS Support Rules Consultation**

Submission to the Department of Social Services

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**Australian  
Human Rights  
Commission**

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# Overview

## Summary

1. The National Disability Insurance Scheme (NDIS) was introduced with the recognition that people with disability are the experts in their own lives and should make the decisions about the supports they need and receive. The Scheme was designed alongside the disability community and was the result of decades long advocacy to have their right to receive individualised supports, and to self-determination, realised.
2. The participation of people with disability in the design of the NDIS was central to its shift away from the out-dated medical model of disability towards the human rights model that embraces disability as a natural part of human diversity.
3. A core legislative objective of the NDIS is to give effect to Australia's obligations under the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD)<sup>1</sup> by providing individualised support that enables people with disability to live independently and be included in the community.<sup>2</sup>
4. The Commission's mandate includes promoting implementation and understanding of the standards and principles of Australia's human rights obligations<sup>3</sup> including the CRPD, the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP), and the United Nations *Convention on the Rights of the Child* (CRC).
5. The Commission is concerned that the government's approach to NDIS reform, including the design and implementation of NDIS Support Rules, is regressing the NDIS away from the intended rights-based approach and from its legislated objectives.
6. A stronger human rights framework is required to ensure the NDIS delivers on its promise to give effect to CRPD obligations.

## Recommendations

7. The Commission makes four recommendations to ensure the development of NDIS Support Rules and further reform to the NDIS upholds human rights standards and principles.

### Recommendations

1. Governments should respond to the NDIS Review as a matter of priority.

2. The Australia Government should ensure that the development and implementation of NDIS Support Rules, and other NDIS reforms, is contingent on co-design that meets international human rights law principles and standards for participation and consultation.
3. The Australian Government should take a rights-based approach to NDIS reform, including NDIS Support Rules, by:
  - addressing the concerns raised in this submission by embedding the principles and standards of the United Nations *Convention on the Rights of Persons with Disabilities*, *Convention on the Rights of the Child* and *Declaration on the Rights of Indigenous Peoples* into policy design and implementation
  - ensuring NDIS participants can self-direct and determine their own supports based on their unique needs, preferences, goals and aspirations, and the barriers they face
  - ensuring NDIS participants have access to disability-related supports and services that are flexible and individually responsive
  - providing increased transparency and accountability around decision-making
  - ensuring government decision and policy makers receive adequate training on human rights obligations, and specifically Article 19 of the CRPD.
4. Governments should commit to ensuring no NDIS participant is worse off or loses continuity of essential support due to the introduction of NDIS Support Rules, in the absence of broader eco-system reform.

## 1 NDIS Review

8. The Independent Review of the NDIS (NDIS Review) was released in December 2023.
9. The NDIS review recommended enhanced clarity for participants, but focused on the need for trust-based, flexible funding with minimal exceptions.<sup>4</sup> It did not recommend prescriptive support lists.
10. Without a formal response to the NDIS Review, the government's approach to NDIS reform lacks the transparency required to understand its intent in securing the future of the NDIS and the broader eco-system of support.
11. **Recommendation 1: Governments should respond to the NDIS Review as a matter of priority.**

## 2 Human rights concerns

This section outlines concerns with the approach to NDIS Support Rules and broader NDIS Reform, including:

- Reform is being rushed without meaningful participation of people with disability in the design and implementation of legislation and policies.
- Narrowly defined and prescriptive NDIS Support Lists limit individualisation, flexibility and choice and control, and are incompatible with human rights obligations and the original intent of the scheme.

Also, this section advocates for a rights-based approach, emphasising the requirement to meaningfully involve people with disability.

### People with disability are not meaningfully involved

12. The Commission is deeply concerned that the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024* and the Transitional NDIS Support Rules were introduced despite significant community concerns<sup>5</sup> and without the involvement of people with disability to the standard of international human rights law.
13. The reforms are being implemented rapidly, without transparency or meaningful co-design, resulting in reform that does not reflect the needs, preferences and lived experience of people with disability, or the original intent of the NDIS. The effect of poor consultation disproportionately impacts First Peoples and Culturally and Linguistically Diverse communities and can result in policy design that privileges western and colonial perspectives of disability and support.

14. Participation in decision-making is a civil and political right that should be afforded equally to all people.<sup>6</sup> By signing and ratifying the CRPD, the Australian Government has committed to respecting, protecting and fulfilling the rights of people with disability. This includes an obligation to closely consult and actively involve people with disability, including children, in the development of laws and policies that implement the CRPD and in decisions that affect their lives and rights.<sup>7</sup> Meaningful participation at all stages of decision-making is integral to a human rights-based approach and a pre-condition for implementing the CRPD.<sup>8</sup>
15. A similar 'participation / consultation duty' is affirmed in other international instruments:
  - The UNDRIP recognises the right of First Peoples to self-determination and to be actively involved in decisions affecting them.<sup>9</sup>
  - The CRC requires governments to uphold the best interests of children and to respect their views in decision-making.<sup>10</sup>
16. The United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) is clear that 'full and effective participation should be understood as a process, not as an individual one-time event'.<sup>11</sup> Participation processes should represent and respond to the diversity of people with disability,<sup>12</sup> be grounded in 'transparency, mutual respect, meaningful dialogue and a sincere aim to reach a collective agreement',<sup>13</sup> and be underpinned by legal and regulatory frameworks.<sup>14</sup>
17. To support meaningful engagement with people with disability, the United Nations Partnership on the Rights of Persons with Disabilities (UNPRPD) endorses a participatory approach that goes beyond consultation to collaborative partnerships.<sup>15</sup> A key feature of which is shared decision-making and priority setting to ensure people with disability can play a more substantive role in the implementation of the CRPD and matters affecting their rights.
18. The NDIS Review noted that reforming the participant pathways is a long-term vision and recommended that reforms should be designed and implemented alongside people with disability.<sup>16</sup> The Review called for a strategically sequenced and staged approach to ensure adequate consultation and testing with the disability community before rolling out reforms.<sup>17</sup> Embedding a legislative requirement to co-design was also recommended by advocates during the Senate inquiry into the *Getting the NDIS Back on Track Bill 2024*.<sup>18</sup>
19. The Commission acknowledges the establishment of the NDIS Reform Advisory Committee and the 2024 amendments to the NDIS Act that codify co-design as a general principle<sup>19</sup> and introduce a requirement to consult on legislative instruments.<sup>20</sup> These are positive steps towards a participatory approach to reform. However, they fall short of meeting CRPD obligations for governments

to establish partnerships with organisations of people with disability to ensure services are shaped by lived experience.<sup>21</sup>

20. Any further development of NDIS Support Rules and other reforms needs to be co-designed with people with disability and their representative organisations, in line with human rights principles and standards. Essential elements include:
- **Equal partnership and shared decision-making**, where people with disability work alongside decision-makers from the outset, and have genuine influence over priorities, processes and outcomes.<sup>22</sup>
  - **Transparent, inclusive and well-resourced processes**, with attention to power imbalances, provision of reasonable adjustments and decision-making support, realistic timeframes and adequate funding to enable meaningful participation.<sup>23</sup>
  - **Recognition of diversity and intersectionality**, reflective of different disabilities, identities and experiences and including people from rural and remote areas.<sup>24</sup>
21. **Recommendation 2: The Australia Government should ensure that the development and implementation of NDIS Support Rules, and other NDIS reforms, is contingent on co-design that meets international human rights law principles and standards for participation and consultation.**

## NDIS reform is diverging from a rights-based approach

22. The NDIS was set up to replace the flawed block-funded support system that provided little to no control to people with disability over the supports they received and created isolated and segregated settings that increased vulnerability to abuse, neglect, violence, and exploitation. The introduction of the NDIS acknowledged that people with disability are the experts in their own lives and should make the decisions about which supports they need and receive.
23. The Commission holds significant concerns that the government's approach to NDIS reform is shifting the Scheme away from a human rights-based approach, reinstating the deficit-focused medical model of disability. Support lists are reminiscent of a block funding approach that dictates access to, and availability of, support.
24. The NDIS has a legislated objective to give effect to Australia's obligations under the CRPD<sup>25</sup> through the provision of individualised support<sup>26</sup> that enables people with disability to live independently and be included in the community on an equal basis as others.<sup>27</sup> This aligns with the rights and obligations outlined in CRPD Articles 19 (living independently and being included in the community)<sup>28</sup>, 20 (personal mobility)<sup>29</sup> and 26 (habilitation and rehabilitation),<sup>30</sup> and is interdependent with Article 12 (equal recognition before the law) that affirms

the right of people with disability to enjoy legal capacity on an equal basis with others in all aspects of their life.<sup>31</sup>

25. The CRPD is grounded in the principles of personal autonomy and independence, the freedom to make one's own choices, and respect for the human dignity and worth of people with disability.<sup>32</sup> These principles are reflected in the objects and guiding principles of the NDIS Act,<sup>33</sup> which explicitly outline that:
  - A core objective of the NDIS is to support independence and greater social and economic participation<sup>34</sup> and to provide people with disability choice and control over the supports they need and receive.<sup>35</sup>
  - People with disability have equal rights to determine their own best interests, exercise choice and control, and engage as equal partners in decisions that affect their lives.<sup>36</sup>
  - Supports provided by the NDIS should support people with disability to pursue their own unique goals and aspirations, maximise their independence, and participate and be included in social, economic and community life.<sup>37</sup> Plans need to be individualised and self-directed.<sup>38</sup>
26. The CRPD Committee affirms that CRPD Article 19 is 'integral to the full implementation of the [CRPD]'.<sup>39</sup> It makes clear that institutional models of support that segregate or restrict personal autonomy are incompatible with Article 19(b).<sup>40</sup> People with disability should have access to a range of individualised support services that 'should be flexible enough to adapt to the requirements of "users" not the other way around'.<sup>41</sup> This means that supports should be aimed at the realisation of full inclusion in the community and independent living, and cannot be based on a 'predefined' or standardised lifestyle.<sup>42</sup>
27. The CRPD Committee further emphasises that individualised support includes the right to choose services and providers based on individual needs and preferences.<sup>43</sup> Access to support should uphold and facilitate self-determination and not be biased towards certain cultural norms or values.<sup>44</sup> The rights of children with disability must be central to the design and delivery of support services. This includes the right to remain in one's family, to enjoy dignity and autonomy, and to participate and be included in the community.<sup>45</sup> Governments should ensure access to age-appropriate services and family support<sup>46</sup> and embed the best interests of the child in all policy and legislative reforms.<sup>47</sup>
28. The former Special Rapporteur on the Rights of Persons with Disabilities recommended new systems of support move away from a focus on impairments toward approaches that centre the whole person and promote autonomy and social inclusion.<sup>48</sup> Self-directed, personalised and responsive services are key to achieving this shift,<sup>49</sup> and are central to implementing CRPD Article 19 and the human rights model of disability.

29. The NDIS is vital to realising Australia's obligations under CRPD Article 19.<sup>50</sup> Care is required to ensure that policy reform does not have unintended consequences of segregating people with disability from the community or diminishing choice and control. Any retrogressive measures in relation to Article 19 constitute a violation of the CRPD.<sup>51</sup>
30. That the Statement of Compatibility for the Getting the NDIS Back on Track Bill 2024 fails to engage with CRPD Article 19 reflects an inherent misunderstanding as to the full human rights implications of the Bill, and of what is required to realise the rights of people with disability.<sup>52</sup> Reforms to the NDIS needs to be guided by the principles and standards of the CRPD, CRC and UNDRIP, and seek to achieve human rights outcomes.
31. While section 10 of the NDIS Act requires clarity around permissible uses of participants funding, the introduction of prescriptive support lists is problematic. Such measures are incompatible with CRPD obligations because they restrict personal autonomy, do not reflect the lived experience of people with disability, focus narrowly on impairment, and limit diversity and flexibility of supports available to NDIS participants.
32. The CRPD Committee is clear that governments need to implement personalised, rights-based disability support services.<sup>53</sup> Narrow support lists risk becoming a blunt instrument for decision-making, leaving little room for flexibility to meet individual needs and preferences. This approach undermines the original intent and legislated objective of the NDIS to give effect to CRPD obligations. In its inquiry into the design of the NDIS, the Productivity Commission thoroughly considered and ultimately rejected a prescriptive approach to the use of funding. Instead, it recommended a flexible and individualised model to better reflect the goals of contemporary disability policy and the diverse needs and preferences of participants.<sup>54</sup>
33. The NDIS Review recognised the need to provide participants with greater clarity about how they can use their funding, but it did not recommend the introduction of prescriptive lists. Rather, it recommended a trust-based, reasonable and necessary budget (based on needs assessments) that could be spent flexibly, with minimal exceptions.<sup>55</sup>
34. It is concerning that the government has begun implementing reforms without formally responding to the NDIS Review, particularly when there is a clear deviation from the recommended approach and significant policy implications that affect the availability and continuity of support for NDIS participants. The governments approach to NDIS reform lacks the transparency required to understand its intent in securing the future of the NDIS and the broader ecosystem of support.

35. The Commission raises the following human rights concerns regarding NDIS Support Rules more generally, which need to be addressed to meet Australia's obligations under the CRPD, CRC and UNDRIP:
- Focusing narrowly on impairment to determine access to supports undermines a holistic, whole of person approach to disability.<sup>56</sup>
  - Support lists create assumptions about what people with disability need, limiting individualisation, flexibility, choice and control and self-determination over supports. They do not reflect the diversity of disability or identity. These effects are compounded for people at the intersection of marginalised identities including First Peoples and Culturally and Linguistically Diverse participants.
  - There is a risk of increased segregation through reliance on specialist services and supports, which are often more costly and reduce opportunities for community inclusion.
  - Without foundational supports in place, redefining NDIS supports disrupts continuity of support, particularly for children. Where supports do not exist to fill the gap, they must be sustained until an alternative is made available.
  - Prescriptive lists are likely to distort the market by incentivising outdated service models and shaping service availability and design around system needs rather than consumers. This can stifle competition, market innovation and adaptability, and disproportionately impact thin markets.
36. To address these concerns, and in implementing recommendation 2, the Australian Government should undertake further consultation on the most appropriate policy and legislative mechanism/s to ensure personal autonomy, individualisation, community inclusion, choice and control, and access to justice are safeguarded within the NDIS.
37. 'Getting the NDIS back on track' requires renewed commitment to the Scheme's original intent and a focus on realising the right of people with disability to live independently and be included in the community.
38. **Recommendation 3: The Australian Government should take a rights-based approach to NDIS reform, including NDIS Support Rules, by:**
- **addressing the concerns raised in this submission by embedding the principles and standards of the United Nations *Convention on the Rights of Persons with Disabilities*, *Convention on the Rights of the Child* and *Declaration on the Rights of Indigenous Peoples* into policy design and implementation**
  - **ensuring NDIS participants can self-direct and determine their own supports based on their unique needs, preferences, goals and aspirations, and the barriers they face**

- **ensuring NDIS participants have access to disability-related supports and services that are flexible and individually responsive**
- **providing increased transparency and accountability around decision-making<sup>57</sup>**
- **ensuring government decision and policy makers receive adequate training on human rights obligations, and specifically Article 19 of the CRPD.<sup>58</sup>**

39. **Recommendation 4: Governments should commit to ensuring no NDIS participant is worse off or loses continuity of essential support due to the introduction of NDIS Support Rules, in the absence of broader eco-system reform.**

## Endnotes

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<sup>1</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(a).

<sup>2</sup> *Ibid* ss 4(11)(b), 31(a).

<sup>3</sup> *Australian Human Rights Commission Act 1986* (Cth) ss 11(e)-(n), 20, 46(c), 46MB.

<sup>4</sup> See recommendation 3, actions 3.3, 3.5 and 3.6: Department of Prime Minister and Cabinet (Cth), *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 87-90, 92, 93-4  
<<https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>> ('*NDIS Review*').

<sup>5</sup> **For a general overview of concerns regarding the Getting the NDIS Back on Track Bill 2024, see:** Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]* (Final Report, June 2024) 39-70  
<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/NDISAmendment2024/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NDISAmendment2024/Report)>; Disability Advocacy Network Australia, Submission No 21 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (May 2024); Australian Centre for Disability Law, Submission No 31 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (17 May 2024); Deafblind Australia, Submission No 36 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (May 2024); Every Australian Counts, Submission No 50 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (May 2024); Public Interest Advocacy Centre, Submission No 57 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (17 May 2024); Public Interest Advocacy Centre, Submission No 57 – Supplementary Submission to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (14 June 2024); Women with Disabilities Australia, Women with Disabilities Victoria, and Women with Disabilities ACT, Submission No 58 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (17 May 2024); People with Disability Australia, Submission No 63 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (May 2024); First Peoples Disability Network, Submission No 153 to Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance*

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*Scheme Amendment (Getting the NDIS Back on Track No.1) Bill 2024 [Provisions]* (11 June 2024).

**For a general overview of concerns regarding the Transitional Support Rules, see:**

Joint Submission from National Disability Representative Organisations, Submission to Department of Social Services, *Draft List of NDIS Supports* (19 August 2024); Every Australian Counts, Submission to Department of Social Services, *Draft List of NDIS Supports* (August 2024); First Peoples Disability Network, Submission to Department of Social Services, *Draft List of NDIS Supports* (August 2024); Disability Advocacy Network Australia, Submission to Department of Social Services, *Draft List of NDIS Supports* (August 2024); National Mental Health Consumer Alliance, Submission to Department of Social Services, *Draft List of NDIS Supports* (23 August 2024); Women with Disabilities Australia, Combined Submission 1 and 2 to Department of Social Services, *Draft List of NDIS Supports* (21 August 2024); People with Disability Australia, Submission to Department of Social Services, *Draft List of NDIS Supports* (23 August 2024); Justice and Equity Centre, Submission to Department of Social Services, *Draft List of NDIS Support* (16 August 2024).

<sup>6</sup> United Nations Committee on the Rights of Persons with Disabilities, *General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention*, UN Doc CRPD/C/GC/7 (9 November 2018) [28]; *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 21; *United Nations International Covenant on Civil and Political Rights*, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966) art 25.

<sup>7</sup> *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) arts 4(3), 33(3) ('CRDP')

<sup>8</sup> See United Nations Committee on the Rights of Persons with Disabilities, *General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention*, UN Doc CRPD/C/GC/7 (9 November 2018) [1]-[2]; CRPD (n 7) arts 4(3), 33(3).

<sup>9</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, 61<sup>st</sup> sess, Agenda Item 68, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 19 ('UNDRIP')

<sup>10</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 3, 12, 23(1) ('CRC').

<sup>11</sup> United Nations Committee on the Rights of Persons with Disabilities, *General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention*, UN Doc CRPD/C/GC/7 (9 November 2018) [28] ('CRPD General Comment No.7').

<sup>12</sup> *Ibid* [27].

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<sup>13</sup> Ibid [47].

<sup>14</sup> Ibid [53], [94(e)].

<sup>15</sup> United Nations Partnership on the Rights of Persons with Disabilities, *Guidance note on effective and meaningful participation of persons with disabilities through their representative organizations in UNPRPD Joint programming* (2024) 8-9  
<<https://unprpd.org/new/wp-content/uploads/2024/03/OPD-participation-guidance-note.pdf>>.

<sup>16</sup> *NDIS Review* (n 4) 89, 95.

<sup>17</sup> Ibid 269-70.

<sup>18</sup> See Senate Community Affairs Legislation Committee, Parliament of Australia, *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]* (Final Report, June 2024) 48-52  
<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/NDISAmendment2024/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/NDISAmendment2024/Report)>.

<sup>19</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 4(9A).

<sup>20</sup> Ibid s 211.

<sup>21</sup> *CRPD General Comment No. 7* (n 11) [56], [83], [94(f)].

<sup>22</sup> United Nations Partnership on the Rights of Persons with Disabilities, *Guidance note on effective and meaningful participation of persons with disabilities through their representative organizations in UNPRPD Joint programming* (2024) 8-9; See generally Ellen Fraser-Barbour et al, 'Shifting power to people with disability in co-designed research' (2023) 40(2) *Disability and Society* 259.

<sup>23</sup> Ibid 8-9; *CRPD General Comment No. 7* (n 11) [45], [21]-[22], [94(i)], [94(o)].

<sup>24</sup> *CRPD General Comment No. 7* (n 11) [50]; United Nations Partnership on the Rights of Persons with Disabilities, *Guidance note on effective and meaningful participation of persons with disabilities through their representative organizations in UNPRPD Joint programming* (2024) 9.

<sup>25</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 3(1)(a).

<sup>26</sup> Section 31(a) of the *National Disability Insurance Scheme Act 2013* (Cth) is clear that participant's plans should be individualised as far as reasonably practicable.

<sup>27</sup> *National Disability Insurance Scheme Act 2013* (Cth) s 4(11)(b).

<sup>28</sup> Article 19 of the Convention on the Rights of Persons with Disabilities recognizes the equal right of all persons with disabilities to live independently and be included in the community, with the freedom to choose and control their lives. Article 19(b) of the CRPD speaks directly to the need for personalised services and supports that facilitate living and being included in the community and prevent segregation and isolation: See *CRPD* (n 7) art 19.

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<sup>29</sup> Article 20 outlines the obligation on State Parties to ensure and facilitate personal mobility with the greatest possible independence for people with disability, in a manner and at the time of their choice. This includes access to mobility aids, devices, assistive technologies and other forms of assistance at an affordable cost: See *CRPD* (n 7) art 20.

<sup>30</sup> Under Article 26, State Parties have an obligation to ensure people with disability have access to a range of comprehensive, accessible, and individually responsive habilitation and rehabilitation services that support participation and inclusion in the community, inclusive of assistive technologies: See *CRPD* (n 7) art 26.

<sup>31</sup> See *CRPD* (n 7) art 12.

<sup>32</sup> *Ibid* art 3.

<sup>33</sup> See *National Disability Insurance Scheme Act 2013* (Cth) s 4.

<sup>34</sup> *Ibid* ss 3(c), 4(2).

<sup>35</sup> *Ibid* ss 3(1)(e), 4(4).

<sup>36</sup> *Ibid* s 4(8).

<sup>37</sup> *Ibid* s 4(11).

<sup>38</sup> *Ibid* s 31(a)-(b).

<sup>39</sup> United Nations Committee on the Rights of Persons with Disabilities, *General comment No. 5 (2017) on living independently and being included in the community*, UN Doc CRPD/C/GC/5 (27 October 2017) [6] (*'CRPD General Comment No. 5'*).

<sup>40</sup> *Ibid* [30].

<sup>41</sup> *Ibid* [28].

<sup>42</sup> *Ibid* [22].

<sup>43</sup> *Ibid* [28].

<sup>44</sup> *Ibid* [8].

<sup>45</sup> *Ibid* [12] [37], [75], [87]; See also *CRC* (n 10) arts 12, 23(1).

<sup>46</sup> *Ibid* [67], [75].

<sup>47</sup> See *CRC* (n 10) art 3; *CRPD* (n 7) art 7; See also *CRPD General Comment No. 5* (n 40) [11]-[12].

<sup>48</sup> Gerard Quinn, *Report of the Special Rapporteur on the rights of persons with disabilities: Transformation of services for persons with disabilities*, UN Doc A/HRC/52/32 (28 December 2022) [21], [24], [27], [30], [32], [36]-[38], [92].

<sup>49</sup> See *Ibid*.

<sup>50</sup> *CRPD* (n 7) Art 19.

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- <sup>51</sup> *CRPD General Comment No. 5* (n 40) [44]-[45].
- <sup>52</sup> See Explanatory Memorandum, National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (Cth), Statement of Compatibility with Human Rights 1-7.
- <sup>53</sup> *CRPD General Comment No. 5* (n 40) [38(e)].
- <sup>54</sup> Productivity Commission (Cth), *Disability Care and Support* (Inquiry Report No. 54, 31 July 2011) vol 1 370-1 <<https://www.pc.gov.au/inquiries/completed/disability-support/report/disability-support-volume1.pdf>>.
- <sup>55</sup> See recommendation 3, actions 3.3, 3.5 and 3.6: *NDIS Review* (n 4) 87-90, 92, 93-4.
- <sup>56</sup> A whole-of-person approach is central to the human rights model and was recommended by the NDIS Review (recommendation 3, action 3.3): *NDIS Review* (n 4) 88-9, 92; The United Nations Committee on the Rights of Persons with Disabilities affirms the need for a human rights based approach to assessments and personalised support that focuses on the requirements that exist because of the barriers within society rather than the impairment alone: *CRPD General Comment No 5* (n 40) [6], [63].
- <sup>57</sup> Public authorities must give due consideration and priority to the opinions and views of people with disability when addressing issues that affect them. Transparent and accountable decision-making requires public authorities to inform people with disability about the outcome of decision-making processes. They must clearly explain, in an easy-to-understand way, how the views of people with disability were considered, and why the final decision was made: See *CRPD General Comment No. 7* (n 11) [23].
- <sup>58</sup> State Parties are required to ensure that personnel working or about to work in disability-related services, including service personnel, decision makers and civil servants are trained on independent living within the community, in theory and practice. This is a key measure under the obligation to fulfil the right to live independently and be included in the community, as enshrined in Article 19 of the CPRD: See *CRPD General Comment No. 5* (n 40) [65].