

## FAQ on including sexual services in your NDIS plan

This FAQ information has been prepared by Touching Base and Northcott. It is specific to people enquiring about where and how to include accessing sexual services within their NDIS plan. It also includes your review/appeal options if the NDIA does not accept accessing sexual services in your plan.

Please note that this information is not intended to cover services supporting other areas of people's sexual expression/relationship goals, or purchasing sex toys, adaptive technology, sex education resources, or the services of a psychologist or sex therapist.

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## Who is a sex worker?

A sex worker is the preferred term in Australia for someone who accepts payment for providing sexual services.

## What are sexual services?

Sexual services may involve any intimate or sexual activity a sex worker is paid for to provide another person/s with sexual pleasure or stimulation. Sex workers may also be employed to provide hands-on sex education or therapeutic services to assist people with disability meet specific sex/sexuality related goals.

Sexual services must take place between consenting adults who are of the legal age and have a capacity to consent.

## Can I include sexual services in my NDIS plan?

Yes you can. Before being rolled over to NDIS funding, many people with disability were utilising some of their state-based disability supported funds to access sexual services. The NDIS was designed to increase peoples' support and well-being, not to reduce their support services.

## What goals might be achievable through accessing sexual services?

Getting support to access the services of a sex worker may be reasonable and necessary to enable you to achieve various goals. Here is a list of some broad goals and specific goals that may represent what you need - depending on your particular circumstances:

### **Broad goals**

- explore your sexuality;
- understand, explore and engage in the sexual activities of your choosing;
- develop the social skills to engage with others;
- participate in social activities and meet people to improve your self-confidence; or
- maintain your general, emotional and/or mental health and wellbeing, etc...

## Specific goals

- I would like to learn more about verbal and non-verbal cues and/or practice giving/withholding consent, within a sexual context.
- I would like to receive assistance to have sex with both formal (sex worker) and informal (partner/girlfriend/boyfriend) supports.
- I would like to learn how to have different kinds sex, in order to develop skills for sexual relationships/to help meet my physical needs.
- I would like to learn about sexual intimacy from an experienced escort.
- I would like to engage in masturbation/sex, with physical support and assistance from a sex worker
- I would like to engage in mutual masturbation/sex alongside my chosen partner with assistance from a sex worker
- I would like to better understand my body and engage in self-exploration / masturbation with assistance from a sex worker
- I would like to learn how to use a sex toy with assistance from a sex worker
- I would like to increase my independence in using a sex toy with assistance from a sex worker
- I would like to learn how to practice safe sex with assistance from a sex worker
- I would like to increase my emotion regulation skills, through engaging in masturbation/sexual intercourse with assistance from a sex worker
- I would like to experience less periods of extreme stress/distress/anger, by increasing my ability to engage in sexuality activities of my choosing with a sex worker
- I would like to experience less periods of high tone / spasticity, by increasing my ability to engage in sexuality activities of my choosing with a sex worker

## Can I include sexual services in my NDIS plan if I haven't previously included it?

Yes you can. You can also include sexual services in your NDIS plan, even if you have never previously seen a sex worker. It will be between yourself and your planner to outline why it would be reasonable and necessary for you to access such services, the same as you have to justify other services in your plan.

## Has anyone ever had sexual services funded by the NDIS?

Yes. In August 2019 the Administrative Appeals Tribunal (AAT) accepted a person with disability who has within their NDIS plan a personal statement that the achievement of sexual release from the sexual services provided was good for their mental well-being, their emotional well-being and their physical well-being. The AAT also accepted outcomes of sexual services being accessed included the person's mood was less dull, it releases tension and anxiety, and improves their outlook on life.<sup>1</sup> The NDIA challenged this decision but in April 2020 the Federal Court upheld the AAT's decision that access to the sexual services can be a reasonable and necessary support to be funded under the NDIS, though that will depend on individual circumstances.

## Does a sex worker I choose have to have specialised training?

No. Here is what the Federal Court said about specialist sex worker services:

*The Agency's submission suggests that use of expressions such as 'therapist', 'qualified' and 'specialised' requires that there be some formal, regulated or lengthy training. But that is not how the expressions must be understood in the context. There is no reason that references to 'experienced' or 'trained' in the context of these proceedings must be understood narrowly. Rather, such terms can properly be understood as including training such as training through workshops or training from experience over time working with disabled persons with particular needs. Terms such as 'experienced' and 'skilled' can also properly be understood so as to include persons who obtain skills and experience over time working in a particular field, regardless of any formal qualification or completion of any particular course.*

This means that the Federal Court has recognised some sex workers have gained relevant specialised skills and knowledge through attending workshops. The Federal Court also acknowledged other sex workers have developed relevant specialised skills and knowledge through their prior experience in providing sexual services to clients with disability.

Whilst some sex workers may have acquired relevant specialist skills through adapting the sexual services they provide to best meet the needs of their clients with

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<sup>1</sup> *WRMF and National Disability Insurance Agency* [2019] AATA 1771, paragraph 34

disability, others may have acquired relevant skills and knowledge in working with clients with disability from other occupations they may have been employed in, or via other life experience.

### **Does the sex worker need to be referred by Touching Base?**

No. While there are many sex workers who choose to be members of Touching Base and choose to be included in the Touching Base Sex Worker Referral List, there are many other sex workers who are also happy, willing and experienced in providing services for clients with disability. See the FAQ page on the Touching Base website for a list of questions about sex workers, including how to find one:

<https://www.touchingbase.org/clients/faqs/>

### **Does the sex worker need to be an NDIS registered service provider?**

No. If the relevant supports within your NDIS Plan, are "Plan Managed" or "Self Managed" then you will be able to choose your preferred sex worker, including those who are not registered providers under the NDIS.

This is in alignment with the NDIS framework where participants who are "Plan Managed" or "Self Managed" have the flexibility of choosing their service providers, regardless of if they are registered NDIS service providers or not.

If the relevant supports within your NDIS Plan are "Agency Managed" then you will only be able to choose sex workers who are registered providers under the NDIS.

People in many different occupations, professions or trades who provide services to people with disability are choosing not to be registered as NDIS service providers. At this point in time we are not aware of any independent sex workers or sex services premises (brothels / massage parlours) seeking registration as an NDIS service provider.

Be aware that NDIS planners and local area coordinators may need to be referred to specific training or resources, such as information from Touching Base, in order to action funding requests for sexual services in an appropriate, sex positive manner.

## Who can assist me to include 'access to sexual services' in my plan?

You can get support from a number of people including an advocate, your NDIS Support Coordinator, your NDIS Local Area Coordinator (LAC) or a NDIA Planner.

## What other funding/supports can I include to support my access to sex workers?

In order to best meet your needs you may need to include additional hours for support workers to assist in bathing, un/dressing before and after the appointments, transfers to and from a person's wheelchair, coordination of the appointments, and assisting with transportation to and from the appointment. Transportation costs may also need to be included in addition to the sexual service payment if you have booked an 'outcall' where the sex worker travels to your location.

## Where can I include sexual services in my NDIS plan?

The NDIS uses the following terms to describe the funding categories you may be able to use to include sexual services that will help you to meet your goals:

- Improved relationships
- Improved daily living skills
- Increased social and community participation
- Assistance with daily life at home and in the community (Daily Activities - Core)
- Innovative Community Participation (a new section of [Capacity Building - Increased Social and Community Participation](#))
- The specific line item that the NDIS used to pay the receipt from a sex worker for 'sex therapy services' in the WRMF case was: 01\_046\_0115\_1\_1 Assistance in Individual Living Arrangement for Persons with Complex Needs.

If you have successfully included paid sexual services in your plan under a different category, please contact us via [NDISinfo@touchingbase.org](mailto:NDISinfo@touchingbase.org)

## What to do if the LAC or NDIA Planner won't write 'access to sexual services' within my plan?

People are currently getting assistance with creating and submitting their NDIS plans from either a Local Area Coordinator (LAC)<sup>2</sup> or NDIA planner. The role of this person is to guide and support you through the development and submission of your NDIS Plan. The very first stage of this is creating a *Participant's Statement of Goals and Aspirations*<sup>3</sup> and needs to be prepared by the person with disability. It is not the role of a LAC or NDIA planner to tell you what should or shouldn't be in this document, nor what services should or shouldn't be included in your plan to support your goals and aspirations.

If you are not happy with your current LAC or NDIA Planner you can also request someone different. You are under no obligation to stay with the person originally assigned to you. This could mean finding a planner within a different organisation or requesting the NDIA appoint someone different to assist you.

If NDIA planners still refuse to include sexual services in your plan tell them you have the right to ask for their decision to be reviewed. Tell them they also need to provide information on how you can seek a formal NDIA review of their decision to refuse to include sexual services in your NDIS plan.

## Should I put 'access to sexual services' into my plan even though I've been told the NDIS won't pay for it at the moment?

Yes. Whilst the NDIS Minister and NDIA have previously put out a statement saying sex workers are not included within the NDIA funding packages – the Federal Court decisions has overridden their position. It may take some time for the NDIA approval process to reflect this new situation,

In the meantime in your NDIS planning meeting ask for it to be specifically recorded if some of your goals will require access to sexual services. Do this even if your planner doesn't think that you will be successful in getting these services funded.

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<sup>2</sup> <https://www.ndis.gov.au/understanding/what-ndis/whos-rolling-out-ndis/lac-partners-community#role-of-local-area-coordination-lac>

<sup>3</sup> <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-participants-statement-goals-and-aspirations#7>

At your review meeting (usually in a years' time) the planner should go through a 'have your needs been met' review. Sometimes this doesn't occur, so the participant might have to ask for this to occur. But this will allow the participant to state their needs aren't being met. This is recorded and sent back to the NDIA.

As the NDIS states in their document, ***Planning Operational Guideline - The participant's statement of goals and aspirations*** the participant's statement of goals and aspirations is critical to the development of a person's plan.

While this may not help you in the short term, it is important data for the NDIA to know so they know what's been requested and where people's needs are not being met.

### What can I do if the NDIA denies me funding for sexual services within my submitted plan?

A participant can request an internal review of their plan if they do not agree with the decisions made. When you are notified about an NDIA decision, you will get information about how to request an internal review. The important thing to note is that a request for internal review of a decision must be made within three months of you receiving the NDIA's notice of the decision.

You might need additional support from your network (occupational therapist, sex therapist, or psychologist) to complete the required documentation for the internal review. You can now also refer to the [Federal Court decision](#) that upheld the right of a person with disability to access sexual services. The direct link to that decision is here: <https://www.touchingbase.org/national-disability-insurance-agency-v-wrmf-2020-fcafc-79/>

The direct link to your NDIA review options is here:

<https://www.ndis.gov.au/participants/how-review-planning-decision>

*If you think a NDIA decision is wrong, you can request an internal review of a decision. Any person directly affected by an NDIA decision can request an internal review.*

*There is a list of 'reviewable decisions' in the NDIS legislation. If the NDIA makes a decision about you on this list, you can request an internal review of that decision. Many decisions the NDIA makes are reviewable, including things like being accepted*

*as a participant, the provision of reasonable and necessary supports and becoming a registered provider of supports.*

*When you are notified about an NDIA decision, you will get information about how to request an internal review. A request for internal review of a decision must be made within three months of you receiving the NDIA's notice of the decision.*

If your request for funding to cover sexual services is rejected by the NDIA's Internal Review you can proceed to the Administrative Appeals Tribunal (AAT) for an external review: <https://www.aat.gov.au/apply-for-a-review/national-disability-insurance-scheme-ndis>

### ***What we can review***

*We can review a range of decisions made by the National Disability Insurance Agency. However, we can only review a decision if it has been internally reviewed by the Agency.*

*Some of the NDIS decisions we can review are:*

- *that a person does not meet the access criteria*
- *to approve the statement of supports in a participant's plan*
- *not to review a participant's plan*
- *to approve a person or entity as a registered provider of supports*
- *to revoke an approval as a registered provider of supports*
- *to make, or not to make, a determination about who may do things on behalf of a child*
- *to make, or not to make, a determination that a person has parental responsibility for a child*
- *to appoint a plan nominee or a correspondence nominee*

### ***What we cannot review***

- *a decision that has not been internally reviewed by the Agency*
- *every decision that the Agency makes.*

## Touching Base Inc

Website: [www.touchingbase.org](http://www.touchingbase.org)

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