



Touching Base Inc submission to the Joint Standing Committee on the National Disability Insurance Scheme - inquiry into Capability and Culture of the NDIA

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Who we are

Touching Base developed out of the need to assist people with disability and sex workers to connect with each other, focusing on access, discrimination, human rights, legal issues and attitudinal barriers. Touching Base has brought the disability sector and the sex industry together in respectful and meaningful ways, through education, policy development, lobbying, resources development and training workshops for disability workers and sex workers.

Why we are writing

Touching Base has worked in the field of bringing together sex workers and people disability for over two decades. We are in a unique position to provide the Joint Standing Committee with relevant background information and evidence to assess the capability and culture of the NDIA, in relation to sexual services being facilitated as a reasonable and necessary support for some people with disability.

Recommendations

1. That the operational guidelines the NDIA is currently preparing around 'sexual supports' be required to be co-designed with people with disability and other key stakeholders such as Touching Base.
2. That the NDIA provide person-centred guidelines and training in a top down approach, to make it clear to NDIS staff that the clients' sexual support needs are not subservient to prohibitive attitudes and beliefs of NDIS staff.
3. That operational guidelines broadly address the need to protect sensitive and personal information in records and files according to the NDIS participants' preferences.
4. That the NDIA prepare and promote explicit and implicit line item options which can accommodate a participants' privacy needs around the collection, storage and disclosure of sensitive personal information related to accessing sex services.
5. That consideration be given to increased NDIA training budgets to enable NDIS staff and self employed plan managers and support coordinators to pursue specific training around supporting sexual expression and relationships.
6. That consideration be given to ways for sex workers to be sub contracted by registered service providers in order to meet the sexual support needs of NDIS participants who have agency managed plans.
7. That consideration be given to the potential for sex workers to be sub contracted by registered service providers in order to meet the privacy needs of sex workers around invoicing and ABNs.
8. That the NDIA instigate the co-design of a broader relationships and sexuality policy.

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Background

The initial Australian Governments position on the NDIS covering sex services was articulated by Senator Mitch Fifield at a National Press Club, who reflected the objects of the NDIS Act in response to a question asked about the issue when he had carriage of the NDIS Bill in Dec 2013.

“This issue has come up before. When the Senate was having public hearings into the NDIS legislation, this particular proposition was put: would the sorts of services that you mentioned qualify as reasonable and necessary?”

I’m not going to, I guess, give an on-the-spot ruling, but what I will say is the NDIS isn’t there to provide a range of things which individuals, whether they have a disability or not, might seek to have as part of their life. It’s there to provide supports so that they can do and achieve things which are made a little more difficult because of the disability that they had.

I’ll leave the comments there. Partly because, you know, I don’t want to have a headline that says, you know, “Minister says x, y, z is in, shock horror”.

So I’m going to leave it there because the essence of the NDIS is working on a plan for an individual. It is: what are the goals, what the plans, what are the objectives for an individual? And each plan will be different, each plan will be personalised, and I’ll leave it at that.”

How did it get to the current situation?

Touching Base provides a sequential bullet list of related events since Senator Fifield’s speech as [APPENDIX A](#). We would be more than willing to expand on any of the events noted if the Committee would like us to attend a subsequent hearing in person.

We think it is important to note there is one highly significant event not included in APPENDIX A, as we have no documentary evidence. Earlier this year we were verbally informed by someone present at meetings at the time, that a Disability Reform Council (DRC) decision was made in 2012/2013 to permit sex services being funded under the NDIS. This would be consistent with the statement made in 2013 by Senator Fifield at the National Press Club.

If the Joint Standing Committee on the NDIS can determine this is true, what are the gaps in the DRC/NDIA governance and oversight frameworks that later permitted Minister Porter and subsequent Ministers to unilaterally and unlawfully override that DRC decision - without any apparent resistance from NDIA oversight bodies - to the direct detriment of some NDIS participants?

Notwithstanding that the Disability Reform Ministers' Meeting position on any NDIS issue may change over time, if a matter previously settled at the DRC is brought up again for discussion at that forum, surely it is in the interests of informed decision-making that all current Ministers should be made aware of the prior DRC decision (preferably along with some notes on the rationale behind the decision)?

If that had been done, a whole lot of anguish, grief, exposure of highly personal and sensitive information and money spent on lawyers would have been avoided!

Ministerial overreach and misinformation

More recent NDIS Ministers¹ and the NDIA² have publicly stated that sex services are not funded under the NDIS. However, the case [WRMF](#) clarified that NDIS Ministers have never had a unilateral capacity to rule out sex services being funded as a reasonable and necessary support. To create such a rule would require the unanimous support of all the State and Territories Disability Ministers, which they have made clear will not be provided³.

In the *Information Paper - [Improving the National Disability Insurance Scheme, Better Participant Experience and Improved Access and Planning](#)* (24 November 2020), the Department of Social Services (DSS) publicly released information stating “a new rule will make clear that NDIS funding is not to be used to purchase the services of a sex worker or devices solely for sexual stimulation” and that “Changes to the legislation will also make it clear that NDIS funds should not be used to purchase the services of a sex worker or devices solely intended for sexual stimulation and arousal.”

¹ E.g: [Transcript of 5AA radio interview](#) with Stuart Robert

² Daily Telegraph, [article dated 3rd June 2017](#) - NDIS funding: Prostitution providers banned from applying - “The NDIA does not cover sexual services, sexual therapy or sex workers in a participant’s NDIS plan,” it said in a statement on its website.”

³ Canberra Times, [article dated 4th Feb 2021](#), ACT stands against federal push to block NDIS access to sex services

This publication by the DSS implies that the practice of forbidding the use NDIS funds to purchase sex services was already in place in 2020. **Even though the proposed changes to the NDIA Act did not go through, we are aware that many NDIA staff tell NDIS participants funding for sex sex services is not permitted when they initially seek to have sex services included in their plan or submit receipts.**

In reality, the NDIA currently makes high level determinations on NDIS plans where the participant has requested 'sexual supports'. A few months ago Touching Base was made aware of this by a member of the NDIA Advisory Committee, who was informed that currently the 'technical advisory team' at the NDIA is reviewing any NDIS plans with sex services included as a requested support. They said the advisory team "*are applying their interpretation of the Federal Court decision [WRMF] and the NDIS Act to make decisions*".

We have unanswered questions relating to the decisions made by the technical advisory group, that perhaps the Committee would be able to get answers to?

- How many plans has the technical advisory team reviewed for participants who have sought to have sex services included in their plan?
- How many participants have had sex services refused in their plan by the technical advisory team?
 - Under what grounds has sex services been refused?
- How many participants have had sex services approved in their plan by the technical advisory team?
- What specific line items are being recommended to be used by participants, sex workers and plan managers for invoicing and receipts for sex services?

A change in position in latest NDIA Letter to the Roundtable on NDIS and Sex Services - written on behalf of NDIS Minister Shorten

Touching Base is a founding member of a national Roundtable on NDIS and Sex Services. The Roundtable consists of representatives from various peak disability orgs, other organisations and individuals with relevant background and experience. Over the last few years the Roundtable has been in correspondence with the various NDIS Ministers and NDIA CEOs.

The Roundtable recently received a letter from the NDIA, responding to a letter written to NDIA Minister Bill Shorten. It confirms how the NDIA now accepts *sexual activity supports* may be considered reasonable and necessary, but apparently only limited to

the narrow and specific circumstances of the Full Federal Court decision on WRMF. Here is the full body of the letter:

Thank you for your letter of 29 August 2022 to the Hon Bill Shorten MP, Minister for the National Disability Insurance Scheme (NDIS), about NDIS and sexual services. The Minister has asked me to reply on his behalf. I apologise for the delay in responding.

Following the Full Federal Court WRMF decision in 2019 the law is that sexual activity supports may be reasonable and necessary supports under the National Disability Insurance Scheme Act 2013 (NDIS Act) in specific circumstances based on the facts, evidence and the unique individual circumstances of the participant.

The National Disability Insurance Agency's (NDIA) position reflects the law, that sexual activity supports may be reasonable and necessary, limited to the narrow and specific circumstances of the Full Federal Court decision on WRFM. As the NDIA's position reflects the law and goes no further, it cannot be meaningfully consulted on and will therefore not be released for public consultation. In addition, no Rules are being developed in relation to sexual services.

Draft Operational Guidelines that are limited to the narrow and specific Full Federal Court decision on WRFM are currently being developed. These guidelines are designed to inform NDIA staff and participants about when a sexual activity support may be considered 'reasonable and necessary'.

As you are aware, the NDIS provides reasonable and necessary funding to people with a permanent and significant disability to access the supports and services they need to live their life.

Every NDIS participant has an individual plan that must include a participant's statement of goals and aspirations, with information about their life (environmental and personal context), as well as a statement of supports and NDIS funding.

Any requests that the NDIS receives from participants and their families to include funding for sex workers to have intimate contact with the participant is carefully considered in accordance with the participant's circumstances and the reasonable and necessary criteria in the NDIS Act.

Requests are found not to meet the reasonable and necessary criteria if there are concerns about risk, such as:

- a participants' ability to provide and withdraw consent for this support type as required*
- the potential for abuse of the participant*

- *the provider's capacity to deliver the support safely*
- *risks where there is a history of behaviours of concern, including violent behaviour towards others*

Sexual activity supports will also not be considered reasonable and necessary where they are a 'social activity'. This would be considered an ordinary cost of living that would not be funded under the NDIS.

Examples of other types of sexuality-related supports that the NDIS has funded includes therapists who specialise in assisting people with relationship and physical intimacy issues, assistive technology, and support workers to assist a participant before and after the act of intimacy.

Thank you again for writing.

Yours sincerely

*A/g Branch Manager, Agency Policy
National Disability Insurance Agency
14/10/2022*

Currently, to our knowledge no updated information has been published by the NDIA to reflect the new NDIA policy position outlined above and override the prior unlawful declarations of such services being forbidden. As a consequence many NDIA staff continue to disallow sex services to even be written into NDIS plans prior to being submitted for approval, meaning those participants are denied the opportunity of having their request for sex services to be funded reviewed by the NDIA *technical advisory team*.

Seeking consultation on Guidelines being developed

Seeking NDIA processes consistent with Minister Shorten's commitment, the Roundtable have written another letter to the NDIA asking them to inform us of how we may be included in the consultation and co-design of the draft Operational Guidelines to implement WRMF, "*designed to inform NDIA staff and participants about when a sexual activity support may be considered 'reasonable and necessary'*".

We note that members of the Disability Reform Ministers' Meeting have also previously expressed their desire for the NDIA to consult on the development of any policy or guidelines around the NDIS and sex services. **We are raising these concerns about the process to date with this Joint Standing Committee as it directly relates to the**

capability and culture of the NDIA in regards to engaging in genuine consultation and co-design.

As we are aware via our networks, many people are waiting for the development of such Operational Guidelines in the hope that they will aid them in accessing these services as a reasonable and necessary support as appropriate in their particular circumstances.

Unfortunately we have little faith that all the current problems that we can identify in relation to how sex services are being facilitated through the NDIS will be adequately addressed in the Guidelines currently being developed. That is why it is vital that proper consultation be conducted, that will also take into account the important privacy needs of participants and sex workers.

This week we have just been informed that in New Zealand, when it comes to government funds being spent on sex workers, the primary concern is in fact how to maintain the privacy of sensitive personal information of people with disability in regards to these sorts of transactions.

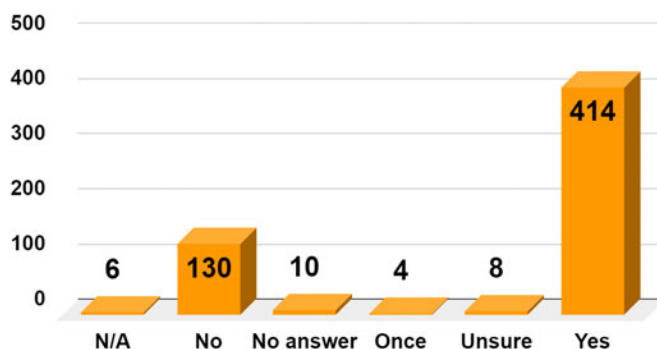
We are concerned that until the NDIA produces a policy and/or clear guidelines identifying best practice there is room for error, miscommunication and privacy breaches between the various parties who may be involved.

The current problems

Touching Base is aware of great inconsistencies in the way that people with disability are having their sexual needs and related goals supported within their NDIS packages.

When we consider why participants might want to fund sexual expression in their plans, the high number of referral requests Touching Base receives for adults with disability who have never had sex is notable. Here is a chart showing data from the referral Touching Base received in the last financial year (total 572).

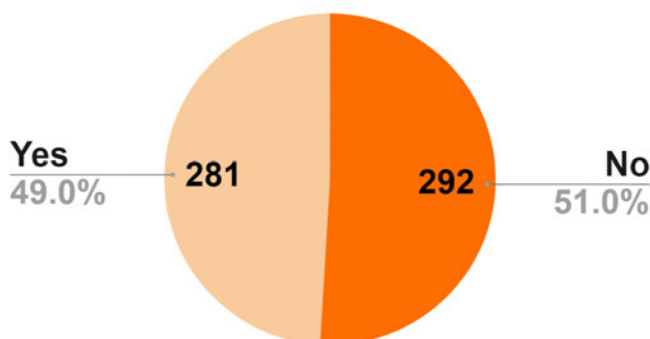
Ever had sex?



This data shows 23% of recent referral requests Touching Base receives are for adults seeking to lose their virginity.

Touching Base also would like to draw your attention to the fact that almost half the referral requests we got over this period were from people assisting the NDIS participant to fill out the form.

Assisted access?



The fact that almost 50% of referral requests required assistance for the form to be filled out, suggests that many of these people seeking referrals have significant disabilities and may be eligible to have sexual supports funded if they have an NDIS plan? Overall , compared to the size of the scheme, and number of participants overall, these are not large numbers of people seeking sex services through Touching Base

The case that has brought the Nation's attention of this issue to the attention of the nation is NDIA v WRMF, where a woman with multiple sclerosis won the right in the Federal Court to have sexual services provided and funded under her NDIS plan.

Even for this person, significant administrative and bureaucratic barriers have made it difficult for her to have her court approved payments accepted. She also told us she had to overcome difficulties having invoices processed in a way that protected the identity of her sex worker.

By contrast, we are also aware of several other situations where payment for sex services has progressed with minimal difficulty for some NDIS participants.

In the following section we provide general information, along with quotes from various stakeholders who responded to a recent call out, which identifies problems and proposed solutions to three steps of the NDIA process:

1. Including reasonable and necessary supports in a person's NDIS plan
2. Accessing supports
3. Invoicing and receipts for supports

Issues people experience when enquiring and exploring inclusion of access to sexual supports in an NDIS plan?

Due to prior Ministerial and NDIA CEO overreach and misinformation (combined with a failure to provide timely updated information), a culture of fear or reluctance has formed amongst many of their staff, affecting their capability to even consider including sex services in a persons plan. This is regardless of situations where it is likely to be a reasonable and necessary disability related support in the individuals' circumstances.

All my NDIS plan managers ... have only displayed their small-minded, sexist and ageist attitudes and denied sex services in my plan.

[NDIS participant Dec 2022]

When I've enquired about getting people with disability access to sexual services a lot of support staff are uneasy about this. I totally understand this from a personal point of view, but there appears to be a culture in disability care of putting staff fears or reluctance to deal with sexual supports above a client's rights and needs.

I have been challenged by Plan Managers as to the validity of the service also.
[Sex worker and advocate Dec 2022]

Mostly I hear how requests to include sexual services in an NDIS plan are immediately refused. Beyond this is also a person with disability feeling uncomfortable with having to share intimate details with a plan manager etc, or where this information could be found by family.

[Metropolitan sex worker and advocate Dec 2022]

Clients have been told by plan managers and at their reviews that 'you have arms so you they don't need to see a sex worker'. Clients have also told me that at the reviews they have had people tell them access to sex workers is a luxury and if they want it they will have to pay for it themselves.

[Sex worker providing services to clients with disability Dec 2022]

Many of my clients are unsure as to how to approach their plan managers, and are nervous about whether NDIS will fund their sexual support.

[Sex worker providing services to clients with disability Dec 2022]

This is a taboo subject - even though it's totally natural. Planners /LAC's don't wish to request the support.

[Regional Person with disability, working as NDIS support coordinator for a Disability Service Provider Organisation Dec 2022]

What is clear from these quotes is that clear policy and procedural guidelines need to be provided to all stakeholders as a matter of priority. The issues to address are to:

- update prior misinformation to make it clear that under certain circumstances participants may be able to claim NDIS funds in support of access to sex services
- address staff attitudes towards supporting sexual expression, and
- instruct on how to protect sensitive and personal information in records and files according to the participants privacy needs and preferences.

Solutions for the issues people experience regarding including access to sexual supports in an NDIS plan?

The intent of Australian Disability Service Standards, Standard Three - Individual Outcomes - is to promote person-centred approaches to service delivery whereby individuals lead and direct their services and supports. The following solutions suggested by stakeholders address issues around enquiring and exploring inclusion of sex services in an NDIS plan..

The care/support sector is given training in how to look after the physical / emotional and mental capacities of people living with disability. Why isn't sex included ?

Considering a lot of the time, if a client has high support needs in one area of their life, it's almost guaranteed they they will need help in their sex lives.

I believe training within the sector would reap benefits. Support staff will have an easier time with such an intimate topic and clients will better understand their rights and choices.

[Sex worker and advocate Dec 2022]

Specific line item and item number needs to be developed for this and it needs to be understood as a valid service that can be charged by all plan managers and support people.

[Sex worker Dec 2022]

Better to be self-managed and for staff to be provided education for the fair, inclusion of sexual supports for adults, no matter their injury or circumstances.

[NDIS participant Dec 2022]

It would be helpful if there was a line item for sexual support and that it doesn't need to be a stated goal that all providers can see.

[Regional Person with disability, working as NDIS support coordinator for a Disability Service Provider Organisation Dec 2022]

It would be great if there was an actual line item that referred specifically to sexual services, and that didn't have an hourly charge limit.

If more disability service providers did the training provided by Touching Base that would also be really helpful.

[Sex worker Dec 2022]

NDIA leadership has been absent around providing broader sexuality and relationship support guidance to assist staff to make person-centred decisions when accessing related supports in a persons' NDIS plan. Guidelines and training are required to address prior misinformation and staff attitudes affecting their ability to provide person-centred support around sexual expression and relationships.

Immediate clarification by the NDIA is required to explain what line items are available to document sex services supports. The NDIA must take care to ensure explicit and implicitly worded options are available, which can accommodate each participants' privacy needs around the collection, storage and disclosure of such sensitive personal information.

RECOMMENDATIONS

- 1. That the operational guidelines the NDIA is currently preparing around 'sexual supports' be required to be co-designed with people with disability and other key stakeholders such as Touching Base.**
- 2. That the NDIA provide person-centred guidelines and training in a top down approach, to make it clear to NDIS staff that the clients' sexual support needs are not subservient to prohibitive attitudes and beliefs of NDIS staff.**
- 3. That operational guidelines broadly address the need to protect sensitive and personal information in records and files according to the NDIS participants' preferences**
- 4. That the NDIA prepare and promote explicit and implicit line item options which can accommodate a participants' privacy needs around the collection, storage and disclosure of sensitive personal information related to accessing sex services.**

Issues experience when sourcing access to sex services?

Simiarly to the issues around enquiring and exploring inclusion of access to sexual supports in an NDIS plan, stakeholders recently identified staff attitudes and privacy as issues experienced when sourcing access to sex services.

Support staff that are against the idea, or hesitant to help those access sexual services.

[Sex worker Dec 2022]

Problems around my privacy.

[Person with Disability and Advocate Dec 2022]

Don't know where to even start - now I have a client who wishes to access the service. If there is no one on the Touching Base referral list in our area I'm going to have to approach the local brothel to investigate what is available.

[Regional Person with disability, working as NDIS support coordinator for a Disability Service Provider Organisation Dec 2022]

NDIS participants must be given choice and control over how personal sensitive information about them accessing 'sexual supports' is handled and recorded, especially in this era of wholesale data theft and exposure of personal and sensitive information, such as the recent Medicare debacle.

Touching Base have been operating a free referral service to disability-friendly sex workers and brothels across Australia for over 20 years. We can confirm that options for sex services in regional locations can be very limited and it can be a real challenge to access disability-friendly sex workers with suitable experience and/or training to meet the needs of some clients.

Also, to our knowledge no sex workers or brothels are registered as NDIS providers and are not likely to do so. This leaves NDIS participants with *agency managed plans* no current options to access sex services. However, some clients with high support needs and agency managed plans are likely to be eligible to access such services on the basis of their goals and disability related sexual support needs.

Solutions for the issues around sourcing access to sex services?

Stakeholders have raised education for NDIS staff as one solution to issues arising when seeking to access sex services.

Again, education around the process of sourcing access to sex services.
[Sex worker Dec 2022]

As an NDIS registered provider I would happily sub contract to sex workers to provide this service.
[Regional Person with disability, working as NDIS support coordinator for a Disability Service Provider Organisation Dec 2022]

Touching Base has Been delivering targeted training to disability service providers since 2002. More recently we have adapted our training to an online format and separated the content into two workshop sessions of three hours duration. We have had to do this to better accommodate the limited time disability support staff have to attend training workshops since the introduction of the NDIS. Numbers of participants attending this training are still down on pre-Covid levels.

We are aware that other training organisations have also experienced a remarkable drop-off in their sexuality disability training workshops in recent years which they have put down to disability support organisations, and individual NDIS support coordinators and plan managers, having less or no budget available to support Training and Workforce Development programs for their staff.

We find the suggestion of NDIS registered providers being able to sub contract to sex workers to provide sex services an intriguing potential solution that is worthy of more consideration.

RECOMMENDATIONS

- 5. That consideration be given to increased NDIA training budgets to enable NDIS staff and self employed plan managers and support coordinators to pursue specific training around supporting sexual expression and relationships.**
- 6. That consideration be given to ways for sex workers to be sub contracted by registered service providers in order to meet the sexual support needs of NDIS participants who have agency managed plans.**

Issues experienced around invoicing, receipts and payment of sex service providers under the NDIS?

This is another fraught aspect faced by NDIS participants and sex workers, as the following comments demonstrate.

After winning the right to have my sexual services funded under my NDIS plan, I requested a specific line item be created for sexual services, but none was forthcoming.

[WRMF July 2020]

As a provider of sex services I have had invoices knocked back because of incorrect or no item number.

[Sex worker and advocate Dec 2022]

The support coordinators and staff are happy and are all for it. It's the money holders that deem it inappropriate.

[Sex worker Dec 2022]

I have found the invoicing process challenging at times as there is no set line item for my services, and different clients have different requirements for their invoicing.

[Sex worker Dec 2022]

Invoices or receipts totally rejected.

[NSW NDIS participant]

There are no defined code lines to use for providing sexual services, even where this has been included in a plan.

[Metropolitan sex worker Dec 2022]

The failure of the NDIA to produce operational guidelines after the precedent setting Federal Court case WRMF in 2020, speaks volumes about inadequacies in the culture and capability of NDIA leadership to ensure such essential guidelines are produced in a timely manner. We note that the call for a specific line item by WRMF has been left unresolved since July 2020.

Privacy concerns for sex workers around NDIS invoicing and receipts

We've had reports coming from sex workers around Australia raising complicated issues around invoicing and receipts for sexual services.

With the requirement of adding ABN etc, there is a privacy risk for a sex worker working under a name differing from their legal name.

[Metropolitan sex worker Dec 2022]

Many sex workers are scared around the process.

[Metropolitan sex worker Dec 2022]

Privacy concerns are high on our agenda, as outing a sex worker, or revealing their real name can have serious consequences for the sex worker. That is why the ABN registrar will allow sex workers to have their real name and other details suppressed if requested. If a sex worker has their details suppressed, if their ABN is searched for in the ABN Register the results will only show their ABN and identify that this ABN is active and that the details have been suppressed.

But we have been made aware that having ABN details suppressed may then raise problems if someone processing invoices/receipts within the NDIS system is trying to match an ABN to a professional pseudonym on an invoice/receipt for sex services (or intimate services, sex therapy, et al), as follows:

It is my responsibility as a NDIS registered Plan Manager to ensure that ALL providers of support have a valid and active ABN – where the ABN's registered name does not match the name on invoices, this can be a red flag for fraudulent behaviour – providers could potentially be using another company's ABN in order to avoid detection by the ATO.

[Plan Manager Oct 2022]

Sex workers are also concerned if withholding or suppressing personal details will mean a refusal to pay NDIS invoices.

Regardless of whether a sex worker has an ABN suppression order or not, we are looking for safer alternatives than the following disturbing scenarios that have allegedly arisen:

- asking sex workers to reveal their real names, or
- if the sex worker's real name is found via an ABN search - asking a client if they can confirm if that is their sex workers' real name?

Solutions for issues around invoicing, receipts and payment of sex service providers?

We are cautiously hopeful that the planned NDIA operational guidelines on sexual supports will address current problems in regards to having explicit and generalised line items available for invoicing and receipts for sex services.

We remain concerned that the privacy needs of sex workers around invoicing and receipts may not be adequately supported if sufficient consultation and co-design does not take place.

Other solutions offered by stakeholders are around education and creating invoicing options to resolve privacy issues for sex workers.

Education around what is / isn't allowed and how the process is done - in accordance to the clients' privacy needs.

[Metropolitan Sex worker Dec 2022]

Maybe partnering with a disability support provider who can invoice for a subcontractor?

[Regional Person with disability, working as NDIS support coordinator for a Disability Service Provider Organisation Dec 2022]

Whilst waiting for the opportunity to be involved in co-design of the NDIA proposed operational guidelines on sexual supports, here are a couple of solutions we are suggesting to sex workers to avoid some of the ABN issues raised.

Potential Solution 1 - if the sex worker's ABN details are suppressed

The sex worker chooses a proactive approach of mentioning to the person processing the invoices/receipts in advance that their ABN details are suppressed so there is no room for confusion, surprises or privacy breaches.

Potential Solution 2 - if the sex worker's ABN details don't match the name on invoices/receipts

If the sex worker doesn't have their ABN details suppressed, they mention to the person processing the invoice/receipt in advance that the reason their ABN name doesn't match the documentation is because they are using a professional pseudonym for privacy reasons.

RECOMMENDATIONS

7. That consideration be given to the potential for sex workers to easily be sub contracted by registered service providers in order to meet the privacy needs of sex workers around invoicing and ABNs.

Time for a comprehensive policy framework on relationships and sexuality

With Minister Shorten seeking a reset of the relationship between the disability sector and the NDIA, we call upon this opportunity to instigate the co-design of a broader relationships and sexuality policy by the NDIA.

In 2019 Touching Base and the Disabled People's Organisations Australia, released [a joint position statement](#) calling for the NDIS to develop a sexuality policy. Our call for action was endorsed by several eminent Australians and over 40 organisations, including all the Australian peak disability organisations. Here are a couple of the key points:

We are concerned about the absence of a comprehensive policy framework on sexuality. A comprehensive NDIS policy recognises, encompasses and supports the types and range of professional support some people with disability may need to use to express their sexuality, and to have the opportunity for fulfilling sexual experiences in life.

Giving people with disability the right to exercise choice and control over the supports they need to achieve the goals they've identified is the primary objective the community expects the NDIS to deliver on.

ADD RECOMMENDATION

8. That the NDIA instigate the co-design of a broader relationships and sexuality policy.

APPENDIX A Sequence of related events

- Senator Fifield's response to question about sex workers being paid using NDIS funds at the National Press Club
- Ray Hadley radio program with NDIS Minister Christian Porter, when the Minister acted *ultra vires* (beyond his power) when declaring sex work is not permitted to be paid for using NDIS funds
- Ministers Porter's office NDIA privately acknowledged over the phone to Touching Base President that for some participant's accessing sex services will be a reasonable and necessary supports and arranges contacts between NDIA technical advisory team and Touching Base
- Touching Base and PWDA commence negotiation on developing a policy with NDIA. This progresses to the point of getting a quote for a literature review by academics to provide evidence baseline for policy development
- AAT case WMRF v NDIA proceeds
- NDIA goes silent and ceases all communications with Touching Base and PWDA on this issue
- AAT case decision handed down
- NDIA appeals to Federal Court and loses NDIA v WMRF
- NDIS Minister Robert disagrees with Federal Court decision and states ongoing objection to NDIA funding sex services as a reasonable and necessary support
- Roundtable on NDIS and Sex Services
- Over 40 disability organisations co-sign a joint statement calling for the NDIS to develop a sexuality in relationships policy
- Federal Minister Robert proposes NDIS rule changes to the Disability Reform Council to prohibit funding for sex toys and sex services
- State and Territory Ministers reject proposal and request NDIA pursues further consultation with relevant stakeholders in policy development

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- Federal Minister Robert proposes changes to the NDIS ACT to include banning sex services from being funded under participants' plans as part of a raft of significant changes to the NDIS Act, including Independent Assessments
- NDIA puts out an information paper presuming that after the proposed law changes are passed sex services will 'clearly' be not permitted to be funded under the NDIS.
- Enormous resistance and campaign by people with disability and their supporters leading to a withdrawal of the proposed changes and the independent assessments
- NDIS minister Reynolds proposes NDIS Reforms to Disability Reform Council
- State and Territory Ministers reject changes and insist upon any further amendments to the NDIS act be co-designed with the disability sector
- Change in Federal Government signals a change in policy position but fails to offer a consultation process for the develop of guidelines to operationalise WRMF
- Joint Standing Committee on NDIS opens inquiry into capability and culture of the NDIA