

National Disability Insurance Scheme – Frequently Asked Questions

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General

Why is this legislative change needed?

- The changes address some of the key recommendations from the 2023 independent review of the NDIS (NDIS Review).
- Many of the ways the Scheme works are embedded in law. These are called NDIS legislation and Rules.
- The legislation needs to be changed to enable some of the improvements proposed by the NDIS Review.
- We also need changes to the legislation to allow Government to make new Rules. We need these new Rules to change how the Scheme operates.
- The goal is to make better decisions that are fair, transparent and consistent.

Are changes being made to choice and control?

- Choice and control is one of the founding principles of the NDIS. That won't change. It puts participants at the centre of decision-making about their needs and supports. None of the changes in the Amending Act will change this fundamental principle.
- Participants will have more choice and control of their supports with a flexible budget. These changes aim to improve the social and economic participation for people with disability in their communities.

This Amending Act does not make any changes to the objects and principles in the NDIS Act. Supporting the independence and social and economic participation of people with disability as well as enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports remain key objects of the NDIS Act.

What immediate impacts will there be for participants?

- Many changes in the Amending Act rely on further rules being made and/or Ministerial determinations. A Ministerial determination is like a Rule. The Rules and Ministerial determinations will be developed over time with the disability community. We will also consult with states and territories on Rules and Ministerial determinations. The legislation that is dependent on new Ministerial determinations or Rules will have no immediate impact for participants.
- The new Rules will be implemented in stages. This will happen while other key reforms, like the development and implementation of foundational supports, are made.
- Some changes will come into effect immediately. These changes are about restoring the Scheme to its original intent. The Amending Act clarifies:
 - the NDIA has to tell participants if they have met access to the Scheme based on the disability or early intervention requirements, or both. This information is important for when the early intervention pathway is developed;

- what disability-related supports participants can use their NDIS funding for, as set out in the current NDIS Rules and the Applied Principles and Tables of Support (APTOS). APTOS is an agreement between states and territories and the NDIA about responsibilities;
 - participants need to provide information to the NDIA, as part of an eligibility reassessment process, if asked;
 - NDIS supports in a plan relate to the impairment(s) that meet the access requirements;
 - plan management types can be changed by the NDIA where there is financial risk to the participant, or the plan nominee, child representative or plan manager has not spent NDIS amounts on 'NDIS supports'; and
 - there is a strengthened obligation for participants to remain within their funding limit. This change will only come into effect when a ministerial determination is made.
- These changes mean participants will receive the right services from the right service system.
 - The quality and safety improvements will also commence immediately. These changes will make it easier for the Commission to use its compliance and enforcement powers under the Act.

Eligibility

Does the Act still define who is eligible for the NDIS?

- The Act still defines who is eligible for the NDIS. This is described in the disability requirements (section 24) and the early intervention requirements (section 25).
- It is important to be aware that the Act already allows rules to be made about section 24 and section 25. The new section 27 simplifies and clarifies the existing rule-making powers.
- Any new rules will be developed in consultation and co-design with the disability community and will aim provide clarity and detail to these changes in the Act. For example, the Rules might tell us how to understand and measure substantially reduced functional capacity, or when an Early Intervention support is likely to benefit a participant.

Does the Amending Act make changes to eligibility?

- The Amending Act makes no changes to eligibility for the NDIS.
- A person can access the NDIS if they meet the disability requirements (section 24) or the early intervention requirements (section 25) or both.
- The Rules that will be developed in consultation and co-design with the disability community will provide clarity and detail about the meaning of key concepts in the NDIS Act.
- For example, the rules might tell us how to understand and measure substantially reduced functional capacity, or when an early intervention support is likely to benefit a participant.
- This change will address current barriers to access and provide greater consistency and equity in decision-making.
- Section 27 of the NDIS Act currently allows for rules about section 24 and section 25 to be made, the Amending Act does not change that, but only simplifies the way the rule-making power is explained to make it easier to understand and apply.

Will everyone who currently has a personal NDIS plan be reassessed for eligibility?

How will this work?

- No. NDIS participants already in the scheme will continue to receive funding under the current framework while the new budget framework is being developed.
- Under the framework, a participant's access to the Scheme can already be reviewed from time to time. For example, if a child has entered the Scheme to access early intervention supports, whether as the child ages, they continue to need access to the Scheme under the disability criteria.
- Once the new planning framework is developed, participants' plans will be progressively transitioned to the new framework.
- It is anticipated that both the current and new frameworks will operate side-by-side for a period until all Scheme participants sit under the new planning framework.

Access

Will existing participants be removed from the NDIS under the new changes and will there be extra support in the period immediately after this?

- The Amending Act does not change your participant status or remove your access to the NDIS.

What is an impairment notice?

- Participants' impairments should be clearly identified and communicated to a participant as part of access and planning.
- From 1 January 2025 all new participants will receive an impairment notice when they access the Scheme.
- The notice will set out the kind of impairments a participant has, rather than focus on diagnoses. This process recognises people with disability who have the same 'diagnoses' may have significantly different impairments and support needs.
- Participants will be able to request a variation of this notice to add or remove impairments. A decision not to vary a notice will be subject to internal and external merits review. This will address concerns raised about a participant's lack of visibility of impairments the Agency considers meet the disability or early intervention requirements, noting it is only these impairments which will be used to determine a participant's NDIS funding.
- The Minister will make an instrument determining the circumstances in which an impairments notice may be provided to a participant. This reflects the fact that the NDIA cannot issue notices to all of the over 660,000 current participants in the Scheme.

Needs Assessments

How does the Act make sure the needs assessment report will contain all relevant and appropriate information about a participant and their disability?

- The Amending Act introduces a new planning framework, which will be based on a needs assessment conducted under proposed new section 32L. The needs assessment will result in an assessment report, with the information in this report being used to calculate a participant's reasonable and necessary budget and factored into a method determined under proposed new section 32K.
- While the Committee did not make a specific recommendation around this issue, it acknowledged that it had received significant evidence in relation to the provisions on the support needs assessment in new section 32L. Much of this evidence focused on

concerns about whether the needs assessment is a 'whole of person' assessment which assesses all of a participant's disability related support needs (whether or not those will be met by the NDIS).

- The intent of section 32L has always been that a needs assessment will assess a person holistically, looking at all of their disability related support needs, consistent with recommendations of the 2023 Independent Review into the National Disability Insurance Scheme (NDIS Review). While the assessment itself is holistic, funding for supports under the NDIS can only be provided in relation to impairments that meet the disability or early intervention requirements. This approach is consistent with the original intention of the NDIS, to provide disability supports to Australians with permanent and significant disability as part of a broader system of available supports and is consistent with recommendations of the NDIS Review. It makes it clear the method for calculating a participant's reasonable and necessary budget should recognise that a range of factors may impact a participant's support needs.
- The proposed amendments also make changes around the ministerial determination that prescribes the method for determining a participant's reasonable and necessary. The amendments require the Minister to be satisfied that the determination adequately takes into account the variety of factors may affect a participant's need for NDIS supports.
- These amendments clarify that a needs assessment will be undertaken on a whole person basis by assessing all of a person's disability support needs. Other information to be included in the needs assessment report will be outlined in a legislative instrument that will be the subject of consultation and co-design. This will ensure that the needs assessment report contains all relevant and appropriate information about a participant and their disability.

Can a participant seek a review of a needs assessment or request a new one?

- The needs assessment is not a separate decision. Rather it is part of the process for approving a statement of participant supports.
- If a participant considers that their statement of participant supports, which includes a reasonable and necessary budget, has not been determined correctly or is not adequate to meet needs, they can seek a review of the CEO's decision to approve the statement of participant supports.
- Consistent with recommendations of the NDIS Review, a participant's reasonable and necessary budget will be based on a holistic assessment of their support needs.
- Participants can seek internal and external review of the decision to approve their statement of participant supports.
- In certain circumstances, the decision-maker will arrange a 'replacement' assessment before finalising and approving the participant's statement of participant supports. This is not a separate decision, but rather is part of the process for approving a statement of participant supports.
- This does not mean the entire assessment will need to be completed again, but that will depend on the information provided by the participant seeking review.
- If a new assessment identifies different support needs, the reasonable and necessary budget may need to be changed as part of the review.
- At any time, as is the case now, a participant will also be able to request a reassessment or variation of their plan prior to its end date if their circumstances change.

Will a participant get to see their needs assessment?

- Yes. The new section (32D) requires the statement of participant supports to be prepared with the participant. This means that the individual will need to be provided with their needs assessment in order to participate in the process of deriving their supports.
- The specifics about the needs assessment and the participant experience, will be developed with the disability community through co-design and will then be set out in the rules and operational policy.
- Amendments made in the House of Representative require the National Disability Insurance Agency to provide a participant a copy of their needs assessment upon receipt.
- Assessments will be undertaken with participants to support their understanding about what will go into the report.

How will people with disability with complex or invisible disabilities be confident that the ‘needs assessment’ will accurately capture their impairments?

- The goal of the new budget settings is to provide participants with a more dignified, person-centred assessment and budget setting experience.
- These provisions will allow a flexible budget to operate alongside a stated supports budget, to be defined and set out in Rules.
- New rules will set out the process by which the budget is determined, and when supports can be stated (as non-flexible items) in plans. They will also provide greater clarity and transparency about flexible budgets and what NDIS funds can be used.

Why is the needs assessment going to be in a ministerial legislative instrument and not rules? What are the safeguards?

- A key safeguard in the process for use of an instrument is the process required for the making of the instrument. This process means the instrument cannot be changed or altered without following the consultation and transparency requirements of the Legislation Act 2003.
- Among other things, this requires consultation to be undertaken and detailed in the explanatory statement to the instrument. The instrument itself is subject to scrutiny in the Parliament and disallowance.
- There will be consultation with the disability community and states and territories on all of the legislative instruments, and the needs assessment tool will be based on extensive consultation with experts in a range of areas to ensure it can adequately assess the needs of all people with disability.

Budgets

Can a participant only receive funding for impairments that meet the access requirements?

- The amount of funding a participant receives under their plan is not linked to the access decision. Funding depends on the participant’s impairments that meet the requirements of section 24 and/or section 25 at the time of the planning decision. This ensures that funding meets the participant’s disability needs at the time of the planning decision.
- The introduction of a flexible budget will allow greater flexibility in how participants can spend their budget.

- People with disability know their own support needs best, so in line with the NDIS Review, flexible funding may be used for any NDIS supports that meet a participant's support needs.
- This means that a participant may use flexible funds for a range of supports they need as a result of their impairment/s, provided those supports are appropriately funded by the NDIS.
- Participants will no longer be constrained by line-by-line plans that specify particular supports and support intensity.

Can I spend my NDIS budget on my impairments that don't meet the access criteria?

- People with disability know their own support needs best, so flexible funding may be used for any NDIS supports that the participant requires as a result of their disability.
- This means that a participant may use flexible funds for a range of supports that they need as a result of their impairment/s, provided those supports are appropriately funded by the NDIS.
- Participants will no longer be constrained by line-by-line plans that specify particular supports and support intensity.

Some sections appear to limit the lengths of plans – can you explain about intervals of funding?

- The Act introduces funding periods, that enable participants to receive funding in manageable intervals rather than all at once. For example, a participant with a five-year plan may have funding allocated in yearly periods, allowing for better budget management. This approach enables the participant have clear guidance on their funding allocation over each time period, providing effective financial management and still supporting flexibility in how they access support services.

How will the NDIA support participants to better manage their plan funding to avoid overspends, noting providers play a role here too?

- Changes to in the Act create the idea of a whole-of-person budget.
- These changes are intended to provide participants with greater choice and control about how they use their NDIS funding to meet their disability-related support needs. The goal of the new budget settings is to provide participants with a more dignified, person-centred assessment and budget setting experience.
- These changes allow a flexible budget to operate alongside a stated supports budget, to be defined and set out in Rules.
- The NDIA has been working with participant reference groups to understand how it can best support participants to manage funding.
- Future changes will set out the process by which the budget is determined, and when supports can be stated (as non-flexible items) in plans.
- The new rules about what is and is not an NDIS support will let participants know what their flexible budgets can and cannot be spent on, providing transparency and clarity for participants.

Changes to definition of NDIS Support

What is the new definition of NDIS support?

- If adopted, the proposed parliamentary amendment will replace the definition of NDIS support currently in the Amending Act to clarify it and make it more accessible.

- Instead of making reference to specific articles, the definition now requires the support to implement any of Australia's obligations under the Convention on the Rights for People with Disability (CRPD) or fall within the relevant aspect of the social welfare power under the Constitution.

Why do we need a definition of NDIS support?

- The definition of NDIS support serves two primary purposes:
 - It makes clear the constitutional basis for the new budget setting framework recommended by the NDIS Review, and helps to clarify and identify the constitutional basis of the NDIS as a whole.
 - Assist participants and the disability community to understand what is (and always has been) capable of being funded by the NDIS having regard to intergovernmental agreements and constitutional considerations.
- For the sake of consistency and simplicity across the entirety of the NDIS Act, the definition has been adopted in key areas, particularly where references to supports being appropriately funded by the NDIS already exist.

Does the definition of NDIS support limit the kinds of supports the NDIS will fund?

- The original intention of the NDIS was to provide particular kinds of supports ('reasonable and necessary supports') to people with disability. This continues with the definition of NDIS supports.
- By inserting a definition of 'NDIS support', the Amending Act does not tighten the kinds of supports the NDIS will fund. Instead, the Amending Act clarifies the supports that have always been available under the NDIS to ensure certainty for participants now and into the future.
- This definition will include all supports capable of being funded by the NDIS, but something will only be an NDIS support for a participant if they have a need for that support as a result of their disability.

What is the NDIS Supports substitution process?

- The substitutions process, allows a participant to seek to 'substitute' a support that has been listed as not an NDIS support for one that is. This amendment responds to community feedback and concerns about the supports that will be listed in rules as not NDIS supports.
- In practice, if a participant considers an item that is excluded from being an NDIS support would be more beneficial for them than an alternate support that is not excluded, then the participant may make an application to substitute that support.
- The substituted support must replace one or more supports that are NDIS supports. The substituted support must also be something that still falls within the broader definition of NDIS support and is appropriately funded by the NDIS.
- This will ensure there is some flexibility for participants who have unique disability support needs, while maintaining the original intention of section 10 (which is to provide clear boundaries of supports the NDIS can and cannot fund).

I am worried about the talk of debts being raised, what are you doing to make sure it's not another Robodebt?

- Although the Amending Act does not make any changes to the debt provisions of the NDIS Act, there have been many concerns about the raising and waiver of debts under the NDIS Act.

- The Amending Act now replaces the existing 'special circumstances' debt waiver provision in the NDIS Act to expand the circumstances in which a debt can be waived.
- Special circumstances may include things such as where a debt has been raised as a result of the abuse, exploitation or coercion of a participant.
- The CEO will also be able to consider the participant's disability as part of a holistic assessment of their circumstances, which will inform the assessment of whether there are special circumstances that make waiver of the debt appropriate.

Changes at the NDIA

What reforms are happening at the NDIA?

- The Government has been making changes at the NDIA, including to its leadership, and employing more staff.
In the 2023-24 Budget, the Federal Government announced it was investing more than \$720 million in the NDIA.
- This money has gone towards the Agency's 'Reform for Outcomes' program, designed to deliver better outcomes for people with disability and help secure the ongoing sustainability of the Scheme.
- This work is underway, and includes boosting staff numbers, uplifting systems to be able to better detect and catch anyone looking to exploit the Scheme for their benefit, as well as improving efficiency and the planning process for those who rely on it.

What is being done to make it easier to contact the NDIA?

- The NDIA is working to ensure that when you call the National Contact Centre, the first person you speak to should be able to assist you straight away. This may not always be possible for more complex issues.
- The Agency continues to recruit more National Contact Centre staff to meet the demands of the Scheme's continued growth.
- Anyone wishing to contact the NDIA can call 1800 800 110. More info is available on the [NDIS website\(link is external\)](#).

Some people with disability don't know they can choose their support services. What is the NDIS doing to help educate them?

- The NDIS is a world-first Scheme that gives people with disability choice and control in how they are supported, and by whom.
- Early Childhood (EC) partners and Local Area Coordinators (LACs) play a key role in supporting NDIS participants and their network to understand how they can best make their NDIS plan work for them.
- In some circumstances, where a participant may need further support to understand how to use their NDIS plan, the NDIA may include funding for a support coordinator – whose role is to help a participant use their plan.
- More information on using your plan is available on [the NDIS website\(link is external\)](#).

What additional functions were given to the NDIA?

- Integrity is not currently an actual function of the Agency. This creates a level of uncertainty about the extent of the Agency's responsibilities in relation to protecting the Scheme from fraud and non-compliance that results in misuse of NDIS funds.

- To combat significant concerns about the impact of abuses and fraud on the Scheme, the Australian Government is formalising the Agency's role to address risks around fraud, misuse and abuse in relation to NDIS funds.
- The Agency will have a new explicit function of preventing, detecting, investigating and responding to behaviour which threatens the integrity of the Scheme. This will provide a clear statutory basis for the establishment of processes and procedures to control and protect participants against integrity risks.
- This supports and complements the Australian Government's continued investment in strengthening the Scheme through measures such as the Crack Down on Fraud Program and the Fraud Fusion Taskforce.

What is the Claims and Payments Framework, and why do we need it?

- The NDIS Act does not currently have a legislated claims and payments framework which is highly unusual across agencies responsible for administering significant payments and means it has been unclear for people, including participants and providers, how 'claims' should be made and how and when the Agency must 'pay' relevant amounts.
- The Agency processes approximately 400,000 claims per day. Many of these claims contain very limited information to identify whether the claim is appropriate to be paid under the Scheme.
- New section 45A outlines the mechanical requirements for a claim. For a claim to be payable, it must be made by the person managing funding under a plan, be made in the approved form, and contain all required information.
- The Agency will work with the disability community to design the payment form to ensure it is accessible and meets the needs of different participants and their plan management arrangements.

Will I have to make a claim within a certain timeframe?

- The Amending Act now requires claims must be made within two years of the support being provided which is the same as payments made under Medicare. This applies to claims made on or after commencement of the Amending Act.
- This is important for Scheme quality and integrity now and into the future but there will be a 12 month 'grace period' following commencement of the Amending Act during which no time limit on claims will apply. This allows participants and providers a period of 12 months to gather necessary information and submit any outstanding claims for supports obtained or provided more than 2 years in the past.

What are the new information gathering powers, and what safety measures have been put in place?

- Recommendation 3 made by the Community Affairs Legislation Committee was that Government further clarify the circumstances under which some additional information gathering powers granted to the CEO of the National Disability Insurance Agency will be used.
- Although requests for information from participants and other people under the NDIS Act are generally given in writing, the amendment clarifies that fact, and ensures the CEO has the power to explicitly vary or revoke their request at any time after it has been made. For example, a request for information may be withdrawn because information has been obtained elsewhere, is no longer required or because it is reasonable for the relevant person not to provide the information.

- It is important to note that if written communication is not the most suitable method of communicating with a participant, they will also be given the request in their preferred manner of communication.
- These amendments also provide guidance to the CEO in considering whether or not it is reasonable for a person not to have complied with certain requests for information within the timeframe prescribed in that request for example, whether the failure to comply with the request was beyond the control of the participant.

New CEO powers

Information gathering powers for eligibility assessments

- (e.g., if a planner asked for your diary for the last year, would you have to hand it over?)
- The new information gathering powers inserted by the Amending Act are limited to enabling the CEO to request information that is 'reasonably necessary' for the particular decision being made.
- There are no general or broad information gathering powers in the NDIS Act. All information-gathering powers, including the new ones in the Amending Act, are limited and specific.
- In the context of sections 30 and 30A, this means the CEO can only request information that is reasonably necessary to deciding whether a participant continues to meet the access criteria.
- The language of 'reasonably necessary' is taken from the Privacy Act 1988 which means it is a clearly defined legal concept for explaining the scope of the power to collect personal information which is consistent with other existing information gathering powers in the Act.
- For example, it is unlikely a participant's personal diary would be 'reasonably necessary' for a decision about ongoing access to the Scheme, so it would not be able to be requested under these new powers. It may be reasonable for a participant to be asked to provide a schedule of their use of particular supports.

Powers to switch plan management

- The Amending Act does not significantly change the existing provisions around plan management.
- The change made by the Amending Act is to ensure a participant cannot have a particular plan management type if that would put them at risk of section 46 not being complied with (which may cause a debt to be raised against the participant). This is intended to safeguard participants.
- This power is to be clarified in the rules which will be co-designed with the disability community and to which all states and territories need to agree. These rules will likely include criteria around the risk to the participant which will be straight forward to operationalise.

What safeguards will be in place to protect the NDIS and the disability community from the Minister or CEO potentially abusing the proposed powers introduced in the Amending Act?

- The CEO of the NDIA and the Minister for the NDIS must act in accordance with the NDIS Act and other federal and state laws at all times. This Amending Act does not change that obligation.

- The majority of Rules developed will be Category A Rules, meaning all states and territories must agree to any changes proposed by the Minister or CEO.
- All legislative instruments, including NDIS Rules, will be subject to the requirements of the Legislation Act 2003 which, among other things, requires appropriate consultation to be undertaken.

New planning framework

What is the new planning framework?

- The Amending Act creates a new planning framework to build participant plans to include a reasonable and necessary budget, rather than identifying reasonable and necessary supports line-by-line.
- Participants will be able to spend their budget on NDIS supports.
- This change is to give participants more flexibility to use their plan to support their needs without applying to the NDIA for a variation or reassessment.
- Under the new framework, participants' reasonable and necessary budgets will be based on the outcomes of a needs assessment using a method set out in a legislative instrument (not an NDIS rule).
- This needs assessment will be designed with the disability community and technical experts to ensure it identifies the supports the participant needs, that the NDIS is responsible for funding.
- Participants will not move to the new framework until the needs assessment and the method for calculating the budget have been developed.
- New framework plans will include similar elements to old framework plans including a statement of goals and aspirations and statement of participant supports.

Reasonable and necessary budgets

- Reasonable and necessary budgets form part of the statement of participant supports.
- It can consist of both flexible funding and stated supports.

Flexible funding

- Flexible funding will be available to a participant where the needs assessment report for the plan indicates the participant requires at least some NDIS supports that are not stated supports.
- This is an amount, informed by the needs assessment, a participant may use to acquire a range of supports they need because of their impairment/s, provided those supports are appropriately funded by the NDIS.
- This change implements action 3.5 of the NDIS Review, to allow greater flexibility in how participants can spend their budget, with minimal exceptions.
- This change is based on the principle that people with disability know their own support needs and are best placed to determine how to meet these needs.
- The inclusion of flexible funding in a plan is the default position.
- In certain circumstances, the CEO may place restrictions on the spending of some or all of the flexible funding provided for in a reasonable and necessary budget.
- This will only occur where the CEO is satisfied that any of the following circumstances exist:

- A participant is likely to suffer physical, mental or financial harms if the flexible funding was not subject to restriction.
- A participant, their plan nominee or registered plan. management provider has not complied with the spending requirements (set out in section 46).
- A circumstance provided by NDIS rules (category A).
- These restrictions will only be used where a participant has a history of over-spending, non-compliance with the relevant NDIS rules, or the Agency has identified risk of harm to a participant.

Stated supports

- A stated support is a support, or class of supports, specifically identified in a plan.
- Funding for stated supports can only be spent on that support (or class of supports) and cannot be spent for any other purpose, including acquiring other NDIS supports.
- A participant's need for stated supports will be identified through the needs assessment report.
- Category A NDIS rules will prescribe supports that are stated support for all participants or certain groups of participants. For example, high-cost assistive technology, home modifications and supported independent living may all be stated supports.
- These rules will be co-designed with the disability community.
- Including stated supports in participant plans is an important mechanism to ensure alternative commissioning agreements operate effectively.
- Stated supports are also an important safeguarding mechanism for the provision of higher risk supports that need to be provided by particular providers, or in a particular manner, to protect the participant from harm.

Funding periods/intervals

- Under new framework plans, flexible funding will be divided into funding periods, allocating the proportion of the total flexible funding within each period. Funding periods also apply to stated supports.
- Each period will be no more than 12 months, with each period to run consecutively.
- This amendment ensures that funding is not spent in excess of the total budget. If funding is not spent within one plan period, it will be rolled over into the next, however not between plans.

What happens if I spend all of my budget before my plan ends?

- Participants will be supported to manage their budget and be able to seek a plan review or reassessment if their circumstances change.

Does this mean my plan funding will be cut?

- The Scheme has always been set-up to make changes to a participant's NDIS funding, as necessary.
- A participant's funding may continue to go up and down in line with their support needs.
- The Review recommended changes to planning and plan budgets. This will give participants more choice and control of their supports with a flexible budget.
- The Government will work in partnership with the disability community to develop the Rules for any changes to the planning process.

Are there changes to review rights under the new planning framework?

- Under the proposed legislation a decision to approve the statement of participant supports in a new framework plan will continue to be subject to internal and external review.
- The new planning framework addresses the findings of the NDIS Review that heard there are a number of significant problems with the current planning framework, including that people with the same or very similar support needs too often receive different levels of funding, which undermines trust and confidence in the NDIS. Central to the new planning framework will be a comprehensive needs assessment and new method for generating a reasonable and necessary budget based on the assessment report.
- The methodology for how the reasonable and necessary budget is generated will only be finalised after deep engagement with the disability community and subject matter experts. This will be a transparent process to ensure the trust and confidence of the disability community. It will then be set out in a legislative instrument determined by the Minister, that will be designed to be fair and consistent and would be disallowable by the Parliament.
- For the new planning framework, as with the old framework, a participant's plan will primarily consist of a statement of goals and aspirations and a statement of participant supports. The statement of participant supports will include a reasonable and necessary budget, stated supports, general supports, a plan period and details of the plan management arrangements.
- The new planning framework will allow for a much more flexible budget and so if a participant changes their goals or aspirations they will be able to apply their existing budget to meet these new goals and aspirations without needing to go back to the NDIA for approval to change individual line items in a plan or to seek a new plan. This was also a key finding from the NDIS Review.
- It is expected that discussions with the participant will occur before the needs assessment report is finalised, to confirm that all the information on a person's support needs has been taken into account. How this works will be part of the work done during codesign.
- Where a participant identifies that the assessment report does not accurately reflect their needs and circumstances, they can request that a new needs assessment be conducted as part of the review application. This does not mean that the entire assessment will need to be completed again, but this will depend on the information provided by the participant seeking review. If the updated assessment identifies different support needs then this may mean that the reasonable and necessary budget is changed.
- This means that the focus of internal and external review is on ensuring that the needs of a participant are accurately assessed and reflected in the needs assessment, in order to ensure consistent and fair decision making that will build trust and confidence in the NDIS.

Quality and Safeguards

What will the NDIS Commission do with its additional compliance powers?

- The changes to quality and safeguarding are designed to:
- protect people with disability against exploitation
- combat fraud in the Scheme.

- These are immediate measures. They will improve the scope and powers of the Quality and Safeguards Commission. This will give Government time to consider the findings of the NDIS Review and the Disability Royal Commission.
- The changes will help the NDIS Commission to better administer parts of its compliance and enforcement powers.

What do the changes about quality auditors mean?

- Quality auditors play an important role in safeguarding participants. The NDIS Quality and Safeguards Commissioner (the Commissioner) will make a Rule that means an approved quality auditor does not employ or engage a person who has a banning order.
- This will stop banned persons from being able to move from the NDIS market system into the role of an Approved Quality Auditor.

Why increase the number of Commission officers with compliance powers?

- The Government wants to ensure when we discover bad behaviour, we can act on it.
- The Commissioner will have the power to delegate compliance and enforcement powers and functions to more of the skilled officers in the Commission.
- This will make it easier for the Commission to use its compliance and enforcement powers under the Act.

Fraud

We have heard the Minister talking about fraud and pricing – why hasn't this been included in the Amending Act?

- Cracking down on fraud remains a priority for the Australian Government. The NDIA continues to take a range of actions to detect and address fraud using existing legislation.
- Responding to the NDIS Review's recommendations around pricing also remains a priority. The Government expects to make further decisions about that in future.
- The Government announced a Fraud Fusion Taskforce (the Taskforce) in October 2022 to strengthen fraud detection and better safeguard the NDIS from serious organised crime and other fraudsters.
- The Taskforce allows better intelligence sharing, identification and response by the NDIA, NDIS Quality and Safeguards Commission, Services Australia, other program departments, law enforcement agencies and other regulators to fraud perpetrated by those seeking to exploit the Government's system of social supports.
- It is expected that this Taskforce will, over time, reduce the amount of money lost to fraud and take criminal, regulatory and administrative action against those who seek to take advantage of NDIS participants.

Timelines

Is there a timeline for implementing the NDIS Review recommendations?

- The NDIS Review called for a 5-year transition.
- The proposed changes to the legislation are the start. They will enable design and testing of changes with people with disability as further improvements are made to the Scheme.

Will this legislation make the NDIS more sustainable?

- The legislation will:

- support a better participant experience and outcomes
- and support the sustainability of the Scheme.
- The changes will make sure the Scheme can provide life-changing support for people with disability into the future.
- National Cabinet set a growth target for the NDIS of 8% by 2026-27. The changes to the legislation and the new NDIS Rule will help the Scheme achieve that target.

Why is the Government making changes now?

- In December last year, the Prime Minister, Premiers and Chief Ministers announced there would be new NDIS legislation in 2024.
- Many of the changes will only come into effect once the new NDIS Rules have been developed and put in place. This will be done in close consultation with the disability community and states and territories.
- The legislative changes will establish the power to make the new Rules, so they're the first step.

How can the legislation be supported without knowing what the rules will be? When will we see the proposed rules and operational guidelines?

- The Department is working on a public roadmap to provide opportunities for consultation and engagement in the development of policy and rules outlining details of reforms.

Diversity of experience

What can be done to improve NDIS services in areas with limited access to services, like regional communities?

- The Government knows that different approaches to the NDIS are needed to ensure people in regional areas can still access services.
- The Government is looking at "direct commissioning" to use NDIS funding in areas with few providers. The Government would like to work more with local partners to make this happen.

People in remote Aboriginal communities are finding it hard to get NDIS services. How will the NDIS make sure they are included?

- The NDIA recognises the challenges facing many Australians, particularly First Nations peoples, living in more remote parts of Australia to access the NDIS.
- The NDIA is partnering with the First Peoples Disability Network (FPDN) to co-design a new First Nations Strategy and action plan.
- The NDIA has appointed a Deputy CEO, First Nations, in recognition of the work needed to ensure First Nations people living with disability have access to the disability support they need.
- A key part of this role is to lead Agency work to improve access and outcomes for First Nations people with disability.

Children and families

I am the parent of a 5-year-old child with developmental delay who is in the NDIS. Do the changes in the Amending Act mean my child will no longer receive support from the Scheme?

- The Amending Act does not change a child's participant status or remove their access to the NDIS.
- There will be a new early intervention pathway for children who enter the Scheme under the early intervention requirements (s.25).
- There will be targeted early intervention support for children.
- We will work with the disability community to develop the new early intervention pathway.

What will the new early intervention pathway for children with high support needs look like?

- We will work with the disability community to develop a new early intervention pathway.
- When the new early intervention pathway is implemented, the supports your child receives will be tailored to their needs.

Will children still be able to get Behaviour Support Services? Getting support early is important to prevent restrictions when children become adults. This aligns with the recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

- The Australian Government and state/territory governments are working together on developing Foundational Supports, including Foundational Supports for children, while the NIDA are leading work to develop a new early intervention pathway for children under 9 years old.
- Both processes will include engagement with people with disability, families, carers and the broader disability sector and will consider evidence-based supports and best practice in respect to any funded services.

How will the Government ensure that support workers are trained, qualified, and checked for child-safety?

- The final report of the NDIS Review says the Australian Government should work on:
- Attracting, keeping, and training a workforce that meets the needs of participants and provides suitable support.
- Create and test new ways to attract and keep workers.
- The Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also suggests:
- More training for workers.
- Ongoing professional development.
- The Australian Government knows it's important to attract and keep workers in the disability sector and is looking at the findings of these reports.

Psychosocial disability

How will the changes affect people with psychosocial disability's access to the NDIS?

- The Amending Act does not change your participant status or remove your access to the NDIS.
- We will work with the disability community to consider the recommendation in the NDIS Review about a new early intervention pathway for people with psychosocial disability.

Regarding section 27 changes, how does this build an early intervention pathway for psychosocial participants?

- The proposed changes to section 27 will help define certain aspects of the Act more clearly. For example, they might explain how we measure someone's reduced functional capacity or when early intervention support could help someone with psychosocial needs. We'll be developing these rules together with input from the mental health sector and disability community.

What protections are there to ensure mental health participants are not adversely affected by any changes?

- The design of new rules is still to occur and will involve the disability community. It is important that people who access the NDIS meet the eligibility criteria and once an NDIS participant that they inform the NDIS where there has been a change in their circumstances.
- The NDIS may seek information from a NDIS participant from time to time, where the NDIS participant does not respond to this request, the NDIS may make further attempts to get in connect with them to better understand why they have not responded. This would assist in determining if the NDIS participant remains eligible, or in instances where the NDIS is not able to make further contact with the NDIS participant they might be existed from the NDIS.

Explanatory memorandum uses mention of alternative commissioning – is this possible for psychosocial supports?

- Rules could be made to use alternative commissioning for psychosocial supports, but this needs to be discussed as part of the rules engagement process.

How will it be ensured that any changes do not disproportionately affect the mental health community?

- The NDIA's preference is always for NDIS participants to manage their plans whenever possible. There are instances where NDIA management may be considered, several measures are in place to ensure fairness and minimal impact, especially on the mental health community.
- Decisions regarding NDIA management are made after careful consideration of various factors, including the participant's well-being, past spending behaviour, and whether any harm—physical, mental, or financial—might result from alternative arrangements. Additionally, the process allows for flexibility, such as accommodating participants who request plan management by themselves, a nominee, or a registered plan management provider. This approach aims to strike a balance between empowering participants and ensuring responsible management of NDIS funds.

What will be the impact of provider registration for psychosocial services?

- The Amending Act does not cover provider registration. The Government has set up a task force to gather input on this issue and develop a new regulatory model. The Taskforce will provide advice to government on the design and implementation of a graduated risk-proportionate regulatory model later this year.

Foundational Supports

When will foundational supports be implemented?

- The Review sets out a 5-year implementation plan for changes to the NDIS and improvements to the broader ecosystem.

- Last year, National Cabinet agreed to design additional Foundational Supports. These will be jointly commissioned by the Commonwealth and the states.
- Earlier this year, the Government announced \$11.6 million to support the development of a Foundational Supports Strategy.
- There will be a phased approach to designing and delivering foundational supports. Services are expected to will be commissioned from mid-2025, and progressively scaled to full roll out by mid-2027.
- Foundational supports will improve access to evidence-based supports for people with disability in community settings and better connect them to the mainstream services that all Australians rely on.

How will foundational supports for children work? Home-schooled students and students in isolated areas have not been factored into the foundational supports recommendations. How will they be supported?

- Where or how a child is schooled would not preclude their ability to access support.
- Foundational supports are about bringing more disability supports into and around spaces where children live, play, and learn.

How will eligibility be satisfied for foundational supports? And how would this be different to NDIS eligibility based on permanency and functional impact of disability?

- The Australian Government and state and territory governments have begun preliminary work to develop a shared approach to the design and implementation of Foundational Supports which will include engagement with people with disability, families, carers and the broader disability sector. Consideration is being given to the kinds of supports available under Foundational Supports and eligibility.
- Targeted Foundational Supports are focused on people do not require the level of specialist individualised support provided as part of NDIS and are specific supports designed for specific cohorts of people with disability not in the NDIS.

Will there be formal arrangements between state and territory governments to guarantee the delivery of foundational supports?

- In December 2023 National Cabinet agreed the Commonwealth and the state would jointly design and fund additional Foundational Supports.
- National Cabinet also agreed funding would be agreed through new Federation Funding Agreements.

How can the disability sector be involved in designing foundational supports for the NDIS?

- The NDIA is leading the co-design, consultation, and community engagement on how proposed changes to the NDIS will be implemented and operationalised.
- DSS is working with states and territories on arrangements for national consultation on Foundational Supports. We encourage everyone to keep an eye on the [DSS Engagement website](#) and the [NDIA website](#).

Consultation/Co-design

What measures are you taking ensure people can participate in consultations on reforms in an accessible way?

- Engagement by the Department with the disability community on key NDIS Rules will start happening from July 2024 and continue throughout 2024 and 2025. This

engagement will include discussion papers on DSS Engage, face-to-face workshops and roundtables, as well as online engagement.

- The NDIA will lead co-design, consultation and community engagement on how proposed changes will be implemented and operationalised.
- The NDIA has been working with people with disability and their supporters through engagement and co-design to deliver the Reform for Outcomes program and will build on this work, as well as other established and new reference and advisory groups, to support engagement on these changes.
- Since the Government introduced proposed changes to the NDIS Act, the NDIA has been working with Disability Representative and Carer Organisations (DRCOs), our Independent Advisory Council (IAC) and Participant Reference Group (PRG) to improve their approach and confirm the next set of priority topics for co-design.
- We recognise the experience of living rurally and remotely provides different challenges that need to be considered in the development of these reforms. We are still developing our engagement plan and will ensure we provide appropriate opportunities for people living rurally and remotely to participate fully in consultation and co-design.

What consultation has occurred and with who?

- The changes address some of the key recommendations from the 2023 independent review of the NDIS.
- As part of the NDIS Review, there was deep engagement with the disability community.
- The disability community helped develop the Terms of Reference for the Review. This was a key step to restore the trust between the disability community and government.
- The Review Panel consulted broadly across Australia. They used lived experience from people with disability to inform their recommendations.
- The Panel:
 - heard from over 10,000 people and organisations
 - received over 4,000 submissions
 - spent over 2,000 hours listening to the stories, ideas, and feedback of people with disability
 - had regular meetings with Commonwealth, state, and territory disability ministers.
- The Panel used findings from other reviews and inquiries, like the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- The voices of people with disability will stay at the centre of implementing the changes to the NDIS.
- There will be more consultation about the development of the NDIS Rules and other changes.

How does the Act make sure you consult better next time?

- The Community Affairs Legislation Committee recommended (recommendation 2) that a 'consultation statement' be tabled along with all legislative instruments made under the NDIS Act that sets out consultations undertaken. The proposed amendment requires the following information about consultation to be included in explanatory statements to all legislative instruments made under the NDIS Act:

- describe the nature of the consultation
- describe in general terms the persons, bodies or organisations who were consulted
- contain a summary of the views expressed by those persons, bodies or organisations.
- Note: The statement must not identify a person, body or organisation, or reveal the views of a person, body or organisation, except with the agreement of the person, body or organisation.

What will consultation look like on legislative instruments?

- You can choose to share your contact details with the department to be kept up to date on engagement activities about the NDIS reforms, including any changes to legislation and the NDIS rules. You can subscribe here: [Subscribe to receive updates on the NDIS reforms | engage.dss.gov.au](https://engage.dss.gov.au) or you can find out more about our engagement activities here: engage.dss.gov.au

Some people with a psychological disability feel that they were not heard as part of the NDIS Review, how can you assure that we will be heard through these changes?

- We are very keen to provide the opportunity for everyone to have their say in a way that suits them, wherever possible. We invite you to let us know the best way to engage with people with psychological and psychosocial disability via Enquiries@dss.gov.au (link sends e-mail)

How will First Nations people be involved in this process?

- We recognise the importance and value of First Nations voices in developing and implementing these reforms and acknowledge that engagements need to be culturally safe and appropriate. We are still developing our engagement plan and will ensure we appropriate opportunities for First Nations people to participate fully in consultation and co-design.

How will engagement work in regional, rural, and remote areas? Will we also have the ability to engage in person?

- We recognise the experience of living rurally and remotely provides different challenges that need to be considered in the development of these reforms. We are still developing our engagement plan and will ensure we appropriate opportunities for people living rurally and remotely to participate fully in consultation and co-design.

What agreement did the Government reach with the States and Territories to ensure that they continue to play their critical co-governance role, while also ensuring that critical rules can be made in a timely and efficient manner?

- **First**, most legislative instruments in the Amending Act will be made into Category A NDIS rules. The exceptions to this are:
 - Ministerial determination made under section 33 that deals with total funding amounts and funding periods in old framework plans
 - Transitional rules
 - Rules relating to new impairment notices, which will be Category D rules.
- **Second**, there will be a new more confined process for seeking agreement to Category A rules, with specific parameters around the kinds of objections that States and Territories may raise to the content of rules. Instead of the current 90 day timeframe that for States and Territories to provide agreement, each jurisdiction will

have 14 days to 'disagree' to rules. This disagreement must be based on the objects and principles of the Act.

- If agreement cannot be reached with all states and territories, a new dispute resolution process will allow for referral to the Prime Minister and direct engagement with First Ministers. If unanimous agreement can still not be reached, only majority agreement is required before the rules can be made.
- **Third**, there is a truncated process for agreeing to certain amendments to the rules setting out the Needs Assessment and Budget Tool. If the amendments will have no substantial policy or financial implications for the NDIS, agreement from States and Territories is not necessary. They will still have the ability to object if they consider that the amendments will have substantial policy or financial implications.
- **Fourth**, certain instruments are critical to operationalising the new budget based planning framework that was a key recommendation of the NDIS Review (recommendation 3). The Minister will have the ability to make transitional rules if agreement cannot be reached through the new category A and dispute resolution processes. These rules will only be in place until final Category A rules are made. These include:
 - subsection 32B(1) – Determining participants that are to have new framework plans
 - subparagraph 32C(c)(ii) – Adjusting the date by which full transition to new framework plans must occur
 - subsection 32E(4) – Prescribing kinds of supports that must be 'stated supports' under new framework plans
 - subsection 32K(1) – Setting out the method for working out total funding amounts
 - subsection 32L(2) – Setting out the support needs assessment tool or tools
 - subsection 32L(6) – Prescribing what must be included in a support needs assessment report
 - subsection 32L(7A) – Parameters around when a replacement support needs assessment will be undertaken.

Why are you allowing First Ministers to agree to NDIS rules?

- Currently, only state and territory Disability Ministers can agree to the rules. Now, both Disability Ministers and First Ministers can agree. This helps them talk about and decide on rules in meetings like the National Cabinet.

Will the rules be safeguarded from future changes by successive governments that could result in the NDIS becoming more restrictive and without codesign input?

- The current NDIS Act includes a general principle that 'people with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity'. The Amending Act does not change this principle in the NDIS Act.
- The majority of Rules will be Category A Rules, meaning all states and territories need to agree on any changes and Rules are all disallowable by the Australian Parliament.

The NDIS Review

Does the Amending Act mean the Government has agreed to the recommendations of the NDIS Review?

- The Government is considering the recommendations of the NDIS Review. It has not yet issued a formal response.

- The Amending Act responds to National Cabinet's agreement to legislative change. It is an initial response to the NDIS Review's findings.
- Government will release its full response to the Review later in the year.

The government has not formally responded to the recommendations of the NDIS Review (or DRC) how do you know that this is the way forward?

- The government is currently considering the findings of both the NDIS Review and the DRC to ensure that a holistic approach is taken towards improving the lives of people with disability, carers and their families.

When will other NDIS Review recommendations (not addressed in the Amending Act) be pursued?

- Government is considering all the recommendations made by the NDIS Review.

Government will release its full response to the Review later in the year.