



Australian Government  
Department of Social Services

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# *National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Act 2024*

## **Impact on reviews in the Administrative Review Tribunal**

This fact sheet is intended to provide a quick reference guide to how changes made by the *National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Act 2024* (Amending Act) will impact on matters relating to the National Disability Insurance Scheme (NDIS) currently before the Administrative Review Tribunal (Tribunal). It is not intended to provide an overview of all changes made by the Amending Act or to provide legal advice.

## **Background**

The Amending Act made a range of changes to the *National Disability Insurance Scheme Act 2013* (NDIS Act).


The Amending Act received Royal Assent on 5 September 2024 and commenced on 3 October 2024. This means that from 3 October 2024, the NDIS Act has been amended to include all the changes made by the Amending Act.

The Amending Act includes a number of application and transitional provisions that mean not all changes became operational immediately from 3 October 2024.

The changes directly relevant to NDIS matters before the Tribunal, including when they will begin to apply if they have not already, are set out below.

Details of other changes made by the Amending Act can be found here: [Summary of legislation changes | NDIS](#).

A list of the relevant provisions and when they did or will commence operating is included as an attachment to this fact sheet.



# Changes made by the Amending Act

## Immediate commencement

### General provisions

#### Section 10 - NDIS supports

The Amending Act introduced new section 10 into the NDIS Act. That new section provides for a definition of 'NDIS support', which will play a key role in the NDIS moving forward. New section 10 is relevant to a range of other sections in the NDIS Act, each of which is discussed below where relevant to Tribunal matters.

NDIS supports will be defined in NDIS rules made under new section 10. Until a permanent rule has been developed and agreed with all states and territories, the Amending Act allowed for a transitional rule to be made prescribing supports that are, and are not, NDIS supports. Transitional rules for this purpose came into effect on the same day as the Amending Act.<sup>1</sup> They contain a list of supports that are NDIS supports at Schedule 1, which is subject to a list of supports that are not NDIS supports at Schedule 2.

If a support is prescribed by the section 10 rules as a support that is not an NDIS support, for certain supports a participant may still apply for that support to be deemed as an NDIS support. This process is outlined in subsection 10(6) of the NDIS Act and section 7 of the NDIS supports transitional rule.

However, this is not a reviewable decision.

### Planning provisions

The Amending Act made a number of changes to the planning provisions in the NDIS Act. Relevantly, it has created a new planning framework and named the existing planning framework as the 'old framework'. In both frameworks, all aspects of a decision to approve a statement of participant supports are reviewable.

The new planning framework will not commence for at least 12 months, as time is needed to draft the NDIS rules needed to support it. Until that has occurred, all plans will continue to be prepared and approved in accordance with the old planning framework. Subsection 32C(1) provides that all participants should have been transitioned to the new framework within five years, but provides leeway for a longer or shorter period to be specified by the rules.

Subject to one exception, being the changes to section 33 (which commenced on 9 October 2024 and are described below), all amendments to the old framework planning provisions applied immediately from commencement of the Amending Act on 3 October 2024. This means that as of 3 October 2024, all applications before the Tribunal for review of a decision to approve a statement of participant supports must be decided in accordance with the amended provisions. This applies regardless of when the original decision to approve the statement of participant supports was

<sup>3</sup> The relevant instrument is the [National Disability Insurance Scheme \(Old Framework Plans\) Determination 2024](#).

made and the stage of the proceedings the application was at when the Amending Act commenced. Key changes are set out below.

### **Section 34 – reasonable and necessary supports**

The Amending Act made some changes to existing section 34 (which sets out the criteria that must be satisfied for a support to be reasonable and necessary for old framework plans). Specifically, the Amending Act:

- Inserted new paragraph 34(1)(aa), which requires that a support is necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements (see section 24) or the early intervention requirements (see section 25). Sections 24 and 25 have been amended and it is the amended versions that must be applied. See further discussion about the amendments to section 24 and 25 below.
- Two accompanying legislative notes to paragraph 34(1)(aa) state that:
  - The criteria require consideration of impairments that meet section 24 and/or 25 at the time the planning decision is made, rather than at the time of the participant’s access decision.
  - A participant’s disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.
- Replaced previous paragraph 34(1)(f) with a requirement that a support is an NDIS support. This requires the decision-maker to consider the new definition in section 10, along with associated rules.

A transitional rule is in place that effectively re-imposes the previous requirement of paragraph 34(1)(f) for a period of time.<sup>2</sup> The decision-maker will need to consider both whether a support is an NDIS support and whether it is most appropriately funded by the NDIS. This change is intended to ensure decision-makers can continue to assess whether supports are more appropriately provided by a statutory insurance scheme or similar compensation arrangement (which is not covered by the transitional section 10 rule). This will only apply until rules are made under new paragraph 35(4)(d), which allows for rules to be made prescribing how the decision-maker is to take into account a support that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law.

For the vast majority of supports, it will be clear from the transitional section 10 instrument whether a support is appropriately funded or provided by the NDIS making this additional consideration very straightforward.

### **Section 24 and 25 – disability and early intervention requirements**

The Amending Act made minor changes to section 24 (disability requirements) and section 25 (early intervention requirements). As above, these provisions now have direct relevance to considering

<sup>3</sup> The relevant instrument is the [National Disability Insurance Scheme \(Old Framework Plans\) Determination 2024](#).

whether a support is reasonable and necessary for a participant.

Those changes require that:

- The person requires NDIS supports for their lifetime (to meet the disability requirements).
- Early intervention supports the person needs are NDIS supports (to meet the early intervention requirements).

When considering whether a support meets the requirements of new paragraph 34(1)(aa), section 24 and 25 as amended will need to be considered.

### **Sections 43 and 44 – plan management**

The Amending Act also made a number of changes to sections 43 and 44, which are relevant to management of funding for supports under a participant's plan. This is part of the statement of participant supports. There will now be a requirement or ability to change a participant's plan management type (or refuse to give effect to a plan management request) where:

- The participant or nominee has been convicted of a relevant offence, being one that is punishable by imprisonment for 2 years or more or involves fraud or dishonesty.
- Section 46 (which deals with how funding under an NDIS plan can be spent) is unlikely to be complied with if funding is managed by the participant, their nominee, or a plan manager

The changes to sections 43 and 44 apply to plan management decisions for all participants, regardless of when they became a participant and including if they made a plan management request prior to 3 October 2024.

### **Section 47A – variations**

The Amending Act made a number of changes to section 47A, which deals with variation of a participant's plan. Relevantly, new paragraph 47A(3)(g) will require the decision-maker to have regard to whether section 46 was complied with in relation to the plan and any previous plans of the participant when deciding whether to vary a participant's plan.

Note: other changes have been made to section 47A, including to facilitate the changes to section 33. These are discussed below.

This change to section 47A applies from 3 October 2024, regardless of whether the plan was made before or after that date.

## **Debts**

There are a number of circumstances under the NDIS Act where a debt will arise (see section 182). A debt can be waived or written off (see sections 190 to 195), and a decision not to do so is a reviewable decision.

The Amending Act did not make any changes to section 182. However, it did make changes to section 46 of the NDIS Act, which deals with spending of NDIS amounts. If a participant or other person fails to comply with section 46, they will owe a debt under section 182.

The Amending Act changed the 'special circumstances' debt waiver provision in section 195 of the

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<sup>3</sup> The relevant instrument is the [National Disability Insurance Scheme \(Old Framework Plans\) Determination 2024](#).

NDIS Act. This change applies to all debts that were outstanding on 3 October 2024, as well as any new debts that arise on or after this date. From 3 October 2024, any matters before the Tribunal that deal with waiver of debts will need to consider the amended section 195.

## Later commencement

### Planning provisions

#### Section 33 – statement of participant supports

The Amending Act inserted a range of new subsections into section 33 (which is the section under which a decision to approve a statement of participant supports is made). These new subsections are relevant to the content and structure of a statement of participant supports, which must now include a 'total funding amount', 'groups' of reasonable and necessary supports with an associated 'funding component amount', and 'funding periods'. A funding period is to be no more than 12 months, but a plan may include multiple funding periods.

A legislative instrument has been made setting out the process for categorising reasonable and necessary supports into groups, calculating a funding component amount, and deciding the length of a funding period.<sup>3</sup> The changes to section 33 commenced on 9 October 2024 when the relevant legislative instrument commenced, but will initially apply only to decisions made by an original decision-maker (i.e. the initial decision to approve the statement of participant supports). Once a participant's plan has been prepared by a delegate in accordance with the new requirements, the participant may then seek internal and external review of that decision. This means the Tribunal will not be required to decide a matter in accordance with the legislative instrument and new requirements until they have been applied by an original delegate and an internal review delegate (unless the plan falls within subsection 103(2), in which case there may only be an original delegate decision before the statement of participant supports comes before the Tribunal).

#### Section 47A – variations

The Amending Act also made changes to section 47A to enable a variation of the various new aspects of a participant's plan. Once a participant's plan has been prepared in accordance with the new aspects of section 33, they will then be able to seek a variation of these aspects of their plan as outlined in paragraphs 47A(1A)(ab) to (ae).

### Access

A prospective participant may make a request to access the NDIS. The CEO is required to make a decision on that request, under section 21 of the NDIS Act, and a decision not to grant the prospective participant access to the NDIS is a reviewable decision

Meeting the access requirements includes meeting the disability requirements (section 24) or early intervention requirements (section 25), as well as age and residence requirements. Relevant changes are set out below.

<sup>3</sup> The relevant instrument is the [National Disability Insurance Scheme \(Old Framework Plans\) Determination 2024](#).

All of these changes apply to access requests lodged on or after 3 October 2024. This means they do not apply to access matters before the Tribunal unless the prospective participant made a request to access the NDIS on or after 3 October 2024. In practical terms, this means there will always have been an original decision as well as an internal review decision made in accordance with the new requirements, before Tribunal consideration. If a person made an access request prior to 3 October 2024, the changes made by Amending Act will not apply to the review of that application.

### **Sections 21 and 28 – notification of access**

Previously, under paragraph 21(1)(c), the decision-maker would only need to be satisfied that the prospective participant met the disability requirements or the early intervention requirements. The Amending Act amended section 21 to provide that the decision-maker must separately consider and decide whether the prospective participant meets section 24 and/or section 25. This must then be notified to the prospective participant in accordance with section 28.

### **Section 24 and 25 – disability and early intervention requirements**

As noted above, the Amending Act made changes to section 24 and 25. Specifically, the decision-maker must now be satisfied that:

- The prospective participant requires NDIS supports for their lifetime (to meet the disability requirements).
- Early intervention supports the prospective participant needs are NDIS supports (to meet the early intervention requirements).

Under the Amending Act, existing NDIS rules made under section 27 (such as the 'Becoming a Participant' rules) will continue to apply.

## **Revocation of participant status**

### **Section 30 – revocation of participant status**

Section 30 of the NDIS Act allows the CEO to revoke a participant's status if they no longer meet the access requirements. For instance, a participant's status may be revoked if they no longer meet the disability requirements (section 24) or the early intervention requirements (section 25).

The Amending Act made some changes to section 30, which are discussed below.

A decision to revoke a participant's status under section 30 is, and will continue to be, a reviewable decision. When considering whether to revoke a participant's status on or after 3 October 2024, the decision-maker is required to consider the amended sections 24 and 25. However, if a person has had their participant status revoked prior to 3 October 2024, the Amending Act does not apply in reviewing that revocation decision. As such, matters before the Tribunal relating to revocation of participant status will continue to be decided in accordance with the previous sections 24 and 25 unless the revocation decision was made on or after 3 October 2024. The Tribunal will only need to consider the amended sections 24 and 25 if the participant's status was revoked on or after

3 October 2024, which in practical terms means there will be an original decision and an internal review decision applying the new requirements.

### **Section 30A – requirement to consider status of certain participants**

The Amending Act also inserted new section 30A, which requires the CEO to consider and revoke a participant's status in circumstances to be prescribed by the rules. Given that the applicable rules are not yet in place, new section 30A does not yet have practical effect. Once that occurs, decisions made under section 30A will be reviewable in the same way as decisions under section 30.

### **Information gathering**

The Amending Act provided new information gathering powers for the purpose of sections 30 and 30A. The CEO may revoke a participant's status if there is a failure to comply with a request for information and it was not reasonable for the information request to not have been complied with. If the CEO does revoke a participant's status on that basis, this will be a reviewable decision. These changes apply to a person who is a participant on or after 3 October 2024, i.e. any person for whom the CEO is considering revocation of their status as a participant on or after 3 October 2024.

## **Impairment notices**

### **Section 32BA – impairment notices**

The Amending Act inserted new section 32BA, which requires the CEO to provide a participant with a notice specifying the categories of impairments in respect of which the participant meets section 24 and/or section 25.

This notice is required to be provided to a participant as soon as practicable after their access request is decided, or at another time prescribed in NDIS rules. The requirement applies only to access requests made on or after 1 January 2025. For participants that gained access prior to this date, NDIS rules will be made to identify when they will receive their notice.

Provision of a notice is not a reviewable decision. However, a participant may request to vary their notice. A decision to vary, or not vary, the participant's notice is a reviewable decision.



## Attachment – summary of legislative amendments

The table below includes key amendments relevant to matters before the Tribunal.

Type of provision	Amendment	Commencement	Details
General	New section 10	Immediate	3 October 2024
Planning	Amended section 34	Immediate	3 October 2024
Planning	Amended sections 43 and 44	Immediate	3 October 2024
Variations	Amended 47A(3)	Immediate	3 October 2024
Revocation	Amended section 30	Immediate	3 October 2024
Revocation	Amended sections 24 and 25	At a later date	Revocation decisions from 3 October 2024
Revocation	New section 30A	At a later date	Timing dependent on making of NDIS rules
Debts	Amended section 195	Immediate	3 October 2024
Planning	Amended section 33	9 October 2024	Initially applies only to original decisions made on or after 9 October 2024
Variations	Amended subsection 47A(1A)	At a later date	Applies only after amended 33 has been applied to a plan
Access	Amended section 21	At a later date	Access requests from 3 October 2024
Access	Amended section 24 and 25	At a later date	Access requests from 3 October 2024
Impairment notices	New section 32BA	At a later date	Access requests from 1 January 2025  Period prescribed in rules (yet to be made)