

# National Disability Insurance Scheme - Frequently Asked Questions

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## Why is the government making changes to NDIS legislation?

### Why is this legislative change needed?

- The government has made changes to NDIS legislation to address some of the key recommendations from the 2023 independent review of the NDIS (NDIS Review).
- Many of the ways the NDIS works are embedded in law. These are called NDIS legislation and rules.
- Changes to the legislation allow government to make new rules. We need these new rules to change how the NDIS 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 a founding principle of the NDIS. This 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 these fundamental principles.
- Participants will have more choice and control over their supports with a flexible budget. These changes aim to improve the social and economic participation of people with disability in their communities.

### What are the immediate impacts for participants?

- Many changes made to the legislation rely on further rules being made.
- The rules will be developed over time with the disability community for agreement with states and territories.
- 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 will help to restore the NDIS to its original intent including:
  - the responsibility the NDIA has to tell participants if they have been accepted onto the NDIS 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. This information is 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
  - that participants need to provide information to the NDIA, as part of an eligibility reassessment process, if asked
  - that NDIS supports in a plan relate to the impairment(s) that meet the access requirements
  - that 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'
  - 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.

## Eligibility

### 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 will be developed in consultation and co-design with the disability community. They 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.

### Will everyone who currently has a personal NDIS plan be reassessed for eligibility? How will this work?

- No. Current NDIS participants already in the NDIS will continue to receive funding under the current framework while the new budget framework is being developed.
- Under the current framework, a participant's access to the NDIS can already be reviewed from time to time. For example, if a child has entered the NDIS to access early intervention supports, their continued need for access to the NDIS will be assessed, under the disability criteria, as they age.
- 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 NDIS participants sit under the new planning framework.

# Access

## 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 NDIS.
- The notice will set out the kind of impairments a participant has, rather than focusing on diagnoses. This process recognises that 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 NDIS.

## Needs Assessments

### How does the Act make sure a 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 the new section 32L. The needs assessment will result in an assessment report. The information in this report will be to calculate a participant's reasonable and necessary budget. The information will also be factored into a method determined under the new section 32K.
- 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 NDIS Review. While the assessment itself will be 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. The approach is also 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 amendments also make changes around the ministerial determination that prescribes the method for determining a participant's reasonable and necessary supports. 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.
- Assessments will be undertaken with participants to support their understanding about what will go into the report.

## How will people 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 outlined 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.

## Budgets

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

- Yes. 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.
- 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 disability 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.

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

- The Act introduces funding periods, which 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 to 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.

## The definition of NDIS Support

### Why do we need a new definition of NDIS support?

- The definition of NDIS support serves two primary purposes:
  - To make 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.

- To 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.
- This definition will outline 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. Further information can be found on the NDIA website about what is an NDIS support.

## What is the new management of funding rule (s.44(5))?

- The new rule will assist the NDIA in identifying risks and applying appropriate safeguards about risks of a person not spending in accordance with a participant's plan.
- It will introduce equity in decision making across plan management types including nominees, registered plan management providers, child representatives and participants.
- Implementation of the rule by the NDIA will include capability building supports for participants to support spending in accordance with their plan and reduce the risk of inadvertent or unintentional spending.
- For more information on the management of funding rule:
  - [Plain English summary \(s.44\(5\)\)](#)
  - [Easy read \(s.44\(5\)\)](#)

## Changes to the National Disability Insurance Agency

### 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 NDIS 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 NDIS, the Australian Government has formalised the Agency's role to address risks around fraud, misuse and abuse in relation to NDIS funds.
- The Agency has a new explicit function of preventing, detecting, investigating and responding to behaviour which threatens the integrity of the NDIS. 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 NDIS 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 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 NDIS.
- 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 in designing the payment form to ensure it is accessible and meets the needs of different participants and their plan management arrangements.
- A claim 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 NDIS 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.

## New CEO powers

### Information gathering powers for eligibility assessments

- 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.
- In the context of sections 30 and 30A, this means the CEO can only request information that is reasonably necessary when 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 NDIS, 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.

## 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.
- This needs assessment will be designed with the disability community and technical experts to ensure it identifies the supports a participant needs, and that the NDIS is responsible for funding.
- The needs assessment and the method for calculating the budget will be developed with the disability community.
- New framework plans will include similar elements to old framework plans including a statement of goals and aspirations and statement of participant 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.

## 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.
- 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.



## 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.

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

- No. Under the 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.

## 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 NDIS.
- 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.

## Timelines

### Is there a timeline for implementing the NDIS Review recommendations?

- The NDIS Review called for a 5-year transition.
- The 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 NDIS.

## 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 NDIS?

- 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 NDIS 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?

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

## 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 a participant status or remove 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.

### 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 exited from the NDIS.

## 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 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 is leading co-design, consultation, and community engagement on how changes will be designed, implemented and operationalised.

### 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.

### 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](https://engage.dss.gov.au)

## 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.

## The NDIS Review

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

Governments are considering the recommendations of the NDIS Review.