



# Management of Funding Amendment Rules

## Plain English summary

DSS December 2024



# Management of Funding Amendment Rules

## Background

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is the law that sets out how the NDIS works. It tells the National Disability Insurance Agency (NDIA) they need to think about the risks to participants when making decisions, including plan management decisions. A plan management decision is when the NDIA decides who can manage a participant's plan. The person who manages a plan decides how the funding will be spent.

Participants can request their plan be managed by a particular person or in a particular way. This is called a plan management request.

A participant can ask for their plan to be managed by:

- **themselves**
- **their plan nominee** - a person who a participant chooses to manage the plan on their behalf such as a family member.
- **a child representative** – a person who manages a child's plan, like a parent or guardian.
- **a registered plan management provider** - private business or organisation that is paid to manage a participant's plan.
- **The NDIA**

The NDIA must accept a participant's plan management request unless the NDIS Act or rules give them a reason not to.

## New rules about managing NDIS funds

The NDIS Act also allows the Minister for the NDIS to make new rules about how the NDIS works.

The NDIS Amendment (Management of Funding and Plan Management) Rules 2025 is a new set of rules that set out the things the NDIA needs to consider when deciding if a participant's plan management request would create an unreasonable risk to the participant.

This amendment also brings all rules about plan management together.

## Public engagement on new rules

The NDIA held engagement sessions with participants, nominees, child representatives and members of Disability Representative and Carer Organisations (DRCOs) to hear their views on how the NDIA makes decisions on the management of funding in a participant's plan. The sessions ran from July to September 2024 and also covered supports and safeguards to reduce the risk of inappropriate spending and the risk of harm due to a participant's individual circumstances.

The NDIA also ran targeted engagement sessions about plan management decisions with members of:

- Independent Advisory Council
- DRCOs

- Participant Reference Group
- Participant First representatives
- Self-Management Working Group
- Better Planning Reform for Outcomes co-design group.

The NDIA also led 10 targeted consultation sessions from 11 – 25 November 2024. These sessions focused on the purpose of these rules and how they will be used.

The stakeholders for these sessions included the:

- Independent Advisory Council
- Disability Representative and Carer Organisations
- Implementation Steering Committee
- Participant Safeguarding co-design Group
- Participant Reference Group
- National Mental Health Sector Reference Group
- Assessment and Budgeting Working Group
- First Nations stakeholders
- Integrity Working Group
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group.

The disability community gave feedback on several themes including:

- **definitions and clarity** – a need for clarity around reasonable vs unreasonable risk and providing definitions for key terms in the rules to assist in understanding.
- **decision-making and evidence** – concern around the significant decision-making power of the NDIA, the need for more training and supervision of NDIA workforce, and more clarity around the types of evidence required to demonstrate financial competency.
- **participant-centred approach** – including providing information in more accessible ways, considering a participant’s perception of risk, and making sure support for decision making is available.
- **safeguards and support** - acknowledging that the NDIA or NDIS Commission should be actively managing risks, before controlling the risk that sits within the participant’s responsibility and building a participant’s capacity to manage their plan.
- **continuity and frameworks** - the importance of building participants’ capability, ensuring the continuity of supports and continued use of the Agency’s frameworks, including the existing supported decision-making framework.
- **risk and socioeconomic factors** - concerns that an individual’s circumstances could mean participants and supporters are disproportionately deemed as at unreasonable risk.
- **education and capacity building** – a need for early information, with a focus on education and clear communication.

## Things the NDIA must consider

### - for participants, nominees and child representatives

When the NDIA is deciding if there would be an unreasonable risk to a participant if they manage the funds in their plan, they must consider:

#### 1. whether a risk could be managed by:

- a. supports or strategies in a participant's plan.
- b. any informal, mainstream or community supports the participant has.

Supports in a plan are an important part of protecting a participant from harm while still recognising their dignity of risk. Dignity of risk means participants have the same rights as all people to make informed choices and take risks in order to learn and grow. Supports can allow participants to self-manage their funds unless the risks they face are 'unreasonable' and cannot be resolved by the appropriate supports.

For example, a participant who has recently finished school may wish to self-manage their plan. They may still be learning about managing finances and see managing their plan as part of this learning. The participant's level of experience in making decisions about NDIS supports and managing finances may create a risk to the participant. The risk is the participant may accidentally buy supports that don't help them to work towards their goals and achieve outcomes. This spending could result in the participant not having enough funds in their plan to pay for necessary supports.

When preparing the participant's statement of supports, the NDIA considers the supports that are intended to be included as well as the participant's informal supports. Informal supports are people like family members or neighbours. The NDIA includes additional supports to build the participant's capacity in financial management. They are satisfied that the additional supports and the participant's supportive parents will reduce the risks that the participant's inexperience could cause. On this basis, the NDIA decides that this risk is not 'unreasonable' and should not prevent the participant from self-managing their funding.

#### 2. whether a risk was managed in the past by:

- a. supports, safeguards or strategies included in the participant's previous plan.
- b. any informal, mainstream or community support a participant had in place.

#### 3. the type of supports in a participant's plan

For example, a participant wants to self-manage their NDIS funds and continue accessing supports which were not being delivered in line with service standards.

This could be where a participant has a positive behaviour support plan in place, however these supports are being delivered by a non-registered provider.

If the participant does not wish to change how the supports are being delivered or the service provider does not wish to register as a provider, this may present an unreasonable risk. It may be

appropriate for the CEO to propose a different plan management type for some funding within the plan.

If the NDIA believed a nominee managing funding for life-sustaining supports would create an unreasonable risk, that would not necessarily stop the nominee from managing the funding for other -low risk supports.

**4. whether and how much the participant is at risk of experiencing harm, including:**

- a. physical, mental or financial
- b. exploitation, influence or pressure

For example, if a participant, nominee or child representative has been manipulated by someone else to misuse NDIS funds in the past. This behaviour suggests they may be at risk of exploitation in the future, even if they are no longer in contact with the other person. The NDIA may consider the risk unreasonable, depending on the scale of the previous manipulation and other factors like when it happened and what has changed since then.

**5. the person's ability to make decisions and manage money, considering any support or help the person is likely to have.**

For example, a participant with impaired cognitive function who has no informal or formal decision-making supports may find it difficult to decide which supports in their plan are necessary or important. They may make choices that leave them without their necessary or important supports.

The NDIA must not consider the nature of the participant's impairments. They may consider the impact of a participant's impairment on what they can do, if it's relevant. The impact of the impaired cognitive function detailed above may mean that self-management would present an unreasonable risk for the participant. If the participant was being supported to make decisions, however, they may be able to make appropriate decisions about their supports. This support would remove or reduce the risk.

**6. whether a court has ordered another person to manage the money or property of the participant**

For example, a participant might request to self-manage their plan, however a court has decided the participant's money, and their plan needs to be managed by a Guardian, such as a specific family member or the Public Trustee.

The NDIA needs to consider who is responsible for managing the funding to ensure a plan management decision is made in line with what the court has ordered, and nominated person understands their roles and responsibilities as a nominee while managing NDIS funding.

**7. any other information raised by the person that the NDIA considers relevant** – to ensure a participant can provide information not listed above.

**8. any other information or circumstances the NDIA considers relevant.**

## Things the NDIA must consider

### - for plan managers

When the NDIA is deciding if there would be an unreasonable risk to a participant if a plan manager manages the funds in a participant's plan, they must consider:

#### 1. whether a risk could be managed by:

- a. supports or strategies in a participant's plan.
- b. any informal, mainstream or community supports the participant has.

For example, a participant might request their plan be managed by a plan manager. If the participant can't access the internet, they would not be able to see and approve invoices sent to the plan manager for payment. If payments were delayed, providers might not be paid on time. The delay could put the participant's supports at risk. If providers are not paid on time, they may stop providing supports. The longer a payment is delayed, the greater the risk to the participant. The NDIA would consider whether additional supports could be added to the plan to get the participant internet access.

The NDIA would also consider whether the participant had any informal supports that could give the participant internet access. If the NDIA was comfortable that these additional supports would allow the participant to approve their invoices in time, they would no longer consider the risk was unreasonable. The participant's lack of internet access would no longer be considered an unreasonable risk. The NDIA would be more likely to approve the participant's plan management request.

#### 2. whether a risk was managed in the past by:

- a. supports, safeguards or strategies included in the participant's previous plan.
- b. any informal, mainstream or community support a participant had in place.

#### 3. whether the participant is at risk of experiencing harm, including:

- a. physical, mental or financial
- b. significant exploitation, influence or pressure

For example, a participant might have experienced abuse and neglect from a provider in the past. They might be at risk of experiencing it in the future if appropriate steps are not taken. The risk to the participant's safety may be considered to be an unreasonable risk. It may be more appropriate for the NDIA to manage their plan. This way, only registered providers could be used. Registered providers have to follow stricter controls and regulations.

4. **any other information raised by the person that the NDIA considers relevant** – to ensure a participant or person can provide information not listed above.

5. **any other information or circumstances the NDIA considers relevant** – to ensure all relevant information about a participant's unique circumstances can be considered.

## Things the NDIA must NOT consider - for all decisions

When the NDIA is considering whether the participant's preferred plan management type will cause unreasonable risk to the participant, they must NOT consider:

**a. the nature of a participant's impairments**

The NDIA can still consider the impact of a participant's impairment, where it is relevant.

For example, a participant with a significant physical impairment may have difficulty using a computer and processing their invoices for supports. This difficulty may lead to unpaid invoices and supports being withdrawn. The loss of supports would place the participant at an unreasonable risk and would be relevant to consider. However, the participant's physical impairment is not a relevant factor, rather, the relevant factor is that the participant has difficulty using a computer (regardless of the reason why that is the case).

**b. any funding amount in the plan**

**c. whether the amount of funding is less than the amount which could have been provided**

### **This a reviewable decision**

The plan management decision is a reviewable decision under section 99 of the NDIS Act. The new rule does not change the review rights of participants in any way. If a participant is not happy with the plan management decision, they can ask the NDIA to review the decision.