



Australian Government
Department of Social Services

NDIS Amendment (Getting the NDIS Back on Track – No. 1) Act 2024

The Amending Act at a glance



The Amending Act at a Glance

This document provides a summary of the key changes in the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (the Amending Act). It does not describe minor or technical changes.

The Amending Act is made up of two parts.

Part 1

Part 1 brings changes by:

- a) Adding a new definition of 'NDIS supports' to give a constitutional basis for the type of supports that are appropriately funded by the NDIS and those that are not. The new definition refers to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as well as the social welfare constitutional power (s 51(xxiiiA)). This change also includes a power to make new NDIS rules to identify supports that are and are not appropriately funded by the NDIS for participants individually or as a group. This change will provide clarity and transparency for participants and prospective participants about what can be provided as supports under the Scheme. This definition will also include the ability for the NDIA CEO to determine specific goods or services which are not considered to be NDIS supports to be substituted in limited or specific circumstances. A participant may request a substitution of supports on this list where replacing the NDIS support would be more cost effective. Under this definition sex worker services, alcohol and illicit drugs will be excluded from the NDIS.
- b) Changing the NDIS Act to require the NDIA to make a specific decision and record about whether a person meets the disability requirements, the early intervention requirements, or both. Participants will be told what criteria they have met as part of their access decision. Recording which pathway someone enters under will allow an early intervention pathway to be developed, so participants receive the supports and services that are most appropriate to them. As part of this process, participants will also be provided with a notice which sets out the kind of impairments a participant has, consistent with the disability and early intervention requirements for access. Participants will be able to request a variation to the notice. A decision not to vary the notice will be a reviewable decision.
- c) Revising NDIS rule-making powers about disability requirements and early intervention requirements. For early intervention, this rule-making power will allow new early intervention pathways for people with psychosocial disability and children (including access and planning for children younger than 9 years old). These rules will be Category A rules, meaning all states and territories need to agree with them before they are made.

- d) Providing a clear process for reassessment of participant status. This change allows:
1. the NDIA to seek up-to-date information about participants
 2. participants to undergo an assessment or examination by a medical or other health professional of their choice, and
 3. for the resulting report or assessment to be considered by the NDIA in making a decision whether the participant remains in the Scheme.

Where information was not provided, the NDIA will need to consider why the information was not provided before making a decision. New NDIS rules will be needed to direct the NDIA's decision making. These will also be Category A rules.

- e) Creating the concept of '*New framework plans*', which will be plans developed to work with the new budget framework. New framework plans will include a flexible budget and/or a budget for stated supports (including a total funding amount for each) and will be developed following a needs assessment.
- f) Giving the Minister the ability to make NDIS Rules to support the new budget framework planning process for the needs assessment, the methods for working out total funding amounts, and the transition arrangements for participants to move from old framework plans to new framework plans. Under this approach the NDIA and participants will be provided with a needs assessment report that assesses all of a participant's disability support needs, and identifies the disability support needs arising from impairments that the participant meets the disability requirements or the early intervention requirements for. This process will also take into account the fact a participant's disability support needs may be affected by a variety of factors, including environmental factors and the impact of another impairment in relation to which the participant does not meet either of those requirements.
- g) Requiring the planning process, for both old and new framework plans, to link the funding participants receive to their impairments that meet the disability, early intervention requirement (or both). This approach is already being applied administratively. These changes formalise the legal footing. This change is an important sustainability measure. As such, it is being applied to old framework plans so it can commence as soon as the Bill passes the Parliament and is signed off by the Governor-General. As part of this process, participants will also be provided with a notice which sets out the kind of impairments a participant has, consistent with the disability and early intervention requirements for access. Participants will also be able to request a variation to the notice. Decisions not to vary the notice will be reviewable.
- h) Providing new rule-making powers about new framework plans:
1. the statement of participant supports,
 2. flexible funding, funding for stated supports, and
 3. requirements for the NDIA in relation to working out a participant's reasonable and necessary budget.

These rules are Category A rules.

- i) Enabling old framework plans to specify a total funding amount and also a specified amount for individual supports or classes of support. Funding in a plan must only be spent on NDIS support for that participant. While the NDIA is currently including funding amounts in plans on an administrative basis, this change will provide a stronger legal footing and a control mechanism where participants overspend. This is an important sustainability measure which is why it is being applied to old framework plans so it can commence as soon as the Bill passes the Parliament and is signed off by the Governor-General.
- j) Establishing a legislative claims and payments framework setting out requirements that must be met for a claim to be paid. This includes the claim being made by the person managing funding under a plan (including a participant or their nominee), made in the approved form, and containing all required information. The NDIA will work with the disability community to design the payment framework to ensure it is accessible and meets the needs of different participants and their plan management arrangements.
- k) Updating circumstances in which the NDIA will change the plan management arrangements for a participant, particularly in circumstances where:
 - 1. the participant might be likely to suffer physical, mental, or financial harm, or
 - 2. where the requirement to spend money in accordance with the participant's plan has not been met.

As this is a protective measure for participants as well as a sustainability measure, it will take effect as soon as the Bill passes the Parliament and is signed off by the Governor-General.

- l) Redefining the process for agreeing all new and existing Category A rules, including steps that must be taken by the Commonwealth and state and territory Ministers. This includes the introduction of a dispute resolution process in the event of disagreements about proposed new Category A rules by Disability Ministers. The process sets out an escalation model to bring disagreements about proposed new Category A rules to the attention of the Prime Minister and First Ministers for resolution. Each State and Territory would be deemed to have agreed if a majority of First Ministers either signal their agreement or do not respond within the required period.
- m) Exempting all instruments made under the *National Disability Insurance Scheme Act 2013*, including NDIS rules, from ending after 10 years.
- n) Embedding consultation and co-design in the development of legislative instruments made under the NDIS Act, including NDIS rules. Firstly, the Minister must have regard to the principle of co-design when making legislative instruments. Secondly, the Amending Act will require the explanatory statements for all legislative instruments to include a consultation statement that sets out:

- i. A description of the nature of the consultation undertaken
 - ii. A general description of the persons, bodies or organisations who were consulted
 - iii. A summary of the views expressed by those persons, bodies or organisations.
- o) Establishing a legislative claims and payments framework for the NDIS. The NDIS Act does not currently have a legislated claims and payments framework which has led to confusion for participants, nominees and providers alike on how claims should be made, and how and when the NDIA must pay relevant amounts. The NDIA will work with the disability community to design the payment framework to ensure it is accessible and meets the needs of different participants and their plan management arrangements.

Part 2

2. Part 2 contains changes to allow:

- a) The NDIS Quality and Safeguards Commission to apply of conditions when approving quality auditors in relation to the employment of someone with a banning order against them; and
- b) An expansion of the delegation powers of the NDIS Quality and Safeguards Commission with respect to certain compliance and enforcement powers.