



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

Impact on reviews in the Administrative Appeals 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 Appeals 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 makes 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 will commence on 3 October 2024. This means the NDIS Act will be amended from that date to include all the changes made by the Amending Act.

The Amending Act includes a number of application and transitional provisions which mean that not all changes will be applied immediately from 3 October 2024.

The changes directly relevant to matters before the Tribunal, including when they will begin to apply, 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 commence is included as an attachment to this fact sheet.

Changes made by the Amending Act

Immediate commencement

NDIS supports

The Amending Act introduces 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, which are 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 allows for a transitional rule to be made prescribing supports that are, and are not, NDIS supports.

Planning provisions

The Amending Act makes a number of changes to the planning provisions in the NDIS Act. Relevantly, it creates a new planning framework and names the existing planning framework as the 'old framework'. In both frameworks, the decision to approve a statement of participant supports is reviewable. This includes all aspects of that decision.

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.

Subject to one exception, being the changes to section 33 described further below, all amendments to the old framework planning provisions will apply immediately from commencement of the Amending Act on 3 October 2024. This means that from 3 October 2024, all applications before the Tribunal for review of a decision to approve a statement of participant supports will be decided in accordance with the amended provisions. This applies regardless of when the original decision to approve the statement of participant supports was made and the stage of the proceedings the application is at when the Amending Act commences. Key changes are set out below.

Section 34 – reasonable and necessary supports

The Amending Act makes 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:

- Inserts 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). Note that these sections 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.
- This change is accompanied by legislative notes that make it clear the criteria requires 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. Another note confirms that 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.

- Replaces existing 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, 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. In effect, for a transitional period 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). It will apply only 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.

Sections 43 and 44 – plan management

The Amending Act also makes a number of changes to sections 43 and 44, which are relevant to management of funding 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

Additionally, the Amending Act includes a new provision to make NDIS rules about circumstances in which a participant is, or is not, at 'unreasonable risk' within the meaning of section 44. These rules are being worked on and are likely to be made before the end of the year. Once made, those rules must be applied immediately.

Section 47A – variations

The Amending Act makes a minor change to section 47A, which deals with variation of a participant's plan. Specifically, 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 will be made to section 47A to facilitate the changes to section 33. These are discussed below.

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. This includes the disability requirements (section 24) and the early intervention requirements (section 25). The Amending Act makes 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.

The Amending Act also inserts new section 30A, which is a new provision that requires the CEO to consider and revoke a participant's status in some circumstances. New section 30A will not commence until NDIS rules have been made about the circumstances in which it will apply. Once that occurs, decisions made under section 30A will be reviewable in the same way as decisions under section 30.

Section 24 and 25 – disability and early intervention requirements

The Amending Act makes minor changes to section 24 (disability requirements) and section 25 (early intervention requirements). Those changes will 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 to revoke a participant's status under section 30, section 24 and 25 as amended will need to be considered.

Information gathering

The Amending Act includes new information gathering provisions for the purpose of section 30 (revocation of participant status). This includes an ability for the CEO to revoke a participant's status if there has been a failure to comply with a request for information and it was not reasonable for the information not to have been provided. If the CEO does revoke a participant's status on that basis, this will be a reviewable decision.

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 does not make any changes to section 182. However, it does 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 changes the 'special circumstances' debt waiver provision in section 195 of the NDIS Act. This change applies to all debts that are outstanding on 3 October 2024, as well as any new debts that arise on or after this date. Any matters before the Tribunal on commencement 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 inserts 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 will make changes to content and structure of a statement of participant supports, to include a 'total funding amount', 'groups' of reasonable and necessary supports with an associated 'funding component amount', and 'funding periods'.

A legislative instrument will be made setting out the process for each of these matters. The changes do not commence until that instrument is in place. Additionally, the changes 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 in accordance with the new requirements by a delegate, 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.

Section 47A – variations

The Amending Act also makes 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 legislative instrument and new requirements, they will then be able to seek a variation of aspects of that plan.

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. These changes all apply to access requests that are lodged on or after 3 October 2024. This means they will not apply to access matters before the Tribunal until there has been an original decision and an internal review decision made in accordance with the new requirements.

Sections 21 and 28 – notification of access

Currently, under paragraph 21(1)(c), the decision-maker must be satisfied that the prospective participant meets the disability requirements or the early intervention requirements. The Amending Act amends 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.

Section 24 and 25 – disability and early intervention requirements

As noted above, the Amending Act makes changes to section 24 and 25. Specifically, the decision-maker must 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).

Impairment notices

The Amending Act includes new section 32BA, which will require 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	Immediate	3 October 2024
Revocation	New section 30A	Delayed	Depends on making of NDIS rules
Debts	Amended section 195	Immediate	3 October 2024
Planning	Amended section 33	Delayed	Requires determination to be in force Initially applies only to original decisions
Variations	Amended subsection 47A(1A)	Delayed	Applies only after amended 33 has been applied to a plan
Access	Amended section 21	Delayed	Access requests from 3 October 2024
Access	Amended section 24 and 25	Delayed	Access requests from 3 October 2024
Impairment notices	New section 32BA	Delayed	Access requests from 1 January 2025 Period prescribed in rules (yet to be made)