Australian Government
Department of Health

# Draft National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (New Framework Plan Spending) Rules

Explanatory Document

Note that this explanatory document is for the purposes of consultation only and will form the basis of the explanatory statement for this instrument. Further updates will be made to the document following further consultation, development of other related rules and to meet the requirements of all explanatory statements. More detailed examples and cameos will also be developed and included.

# Purpose of the Instrument

The overarching intent of this Instrument is to set parameters around decision making by the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA, Agency) regarding certain aspects of reasonable and necessary budgets in new framework plans.

The instrument will deal with the following matters:

- rules about how the CEO is to make decisions about funding periods, specifically the length of funding periods to be applied to a participant's reasonable and necessary budget and the total amount of flexible funding or funding for stated supports that is allocated to each funding period
- prescribing stated supports that are not subject to funding periods
- rules about how the CEO is to make decisions about restrictions on a participant's flexible budget
- rules about how the CEO is to make decisions about requirements for using funding
- prescribing additional circumstances where the CEO can restrict a participant's flexible budget
- prescribing additional requirements the CEO may specify for using funding.

The Instrument will support flexibility for participants to use funding in a way that meets their individual needs, while allowing for exceptions to that flexibility where it is necessary to maintain scheme integrity, ensure value for money, and reduce the risk of harm to participants.

# Background

The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amendment Act) introduced substantial changes to the *National Disability Insurance Scheme Act 2013* (the Act), including the introduction of new framework plans. The changes made by the Amending Act are critical to improving the experience of people with disability participating in the Scheme while ensuring the long-term sustainability of the National Disability Insurance Scheme (NDIS), so that it is available to support Australians with disability for many years to come.

In particular, the Amending Act introduced into the Act the concept of a new budget-based planning framework in which participants get 'new framework plans'. This framework is operationalised through the exercise of new and expanded NDIS rule-making powers.

New framework plans include a participant's reasonable and necessary budget which is made up of one or both of flexible funding and funding for stated supports. Flexible funding can be used by a participant on any support that is a NDIS support for that participant, subject to any restrictions and requirements that may be placed on that funding. Funding for stated supports must be spent on the stated support as described in a participant's plan.

Reasonable and necessary budgets will be calculated using a method prescribed in the *National Disability Insurance Scheme (Reasonable and Necessary Budget Method) Rules* based on information contained in a needs assessment report (prepared in accordance with section 32L of the Act).

The Independent Review into the NDIS recommended that participants be provided with greater flexibility, with limited exceptions. If required, certain parameters may be placed around how funding may be spent, including funding periods, restrictions on flexible funding and requirements on the provision or acquisition of supports.

# Outline

## Funding periods

Part 2 of this Instrument deals with funding periods. There are two primary reasons for setting funding periods. The first is to assist participants to spend within the limits of their plan so that they do not ‘run out’ of funding before the end of their plan, leaving them without supports. This is particularly important with the transition to longer-term (up to 5 year) plans. Second, it is an important safeguarding measure, protecting participants where others may seek to coerce a participant or utilise a participant’s plan in a way that is not consistent with the interests and needs of the participant.

For example, a support that is provided to the participant over the duration of their plan with payments at regular intervals could be appropriate to have shorter funding periods to ensure the correct amount of funding is available at each required payment date. On the other hand, if a participant requires support in irregular patterns due to the episodic nature of their impairment, shorter funding periods may not be appropriate as this will limit the amount of support they can access in a particular timeframe.

Alternatively, a participant who is at risk of experiencing fraud or financial exploitation may benefit from having shorter funding periods in their plan, as any fraudulent or exploitative behaviour could cause the participant’s funding to be exhausted before the end of the relevant funding period.

Finally, it is important for the participant’s preferences and wishes to be considered. Some participants may have a preference for longer funding periods as this will provide them with greater flexibility to purchase supports at a rate and intensity that works for them. Other participants may prefer shorter funding periods as this will support them to manage their funding and ensure it continues to be available throughout the duration of their plan.

Funding periods, and the proportion of funding allocated to each period, can be varied through a plan variation.

## Restrictions on flexible funding

Part 3 of this Instrument deals with restrictions on how flexible funding is spent. While flexibility in how a participant utilises their flexible funding will be the standard approach wherever possible, in certain circumstances, the CEO may place restrictions on the spending of some or all of the flexible funding provided for in a reasonable and necessary budget.

Subsection 32F(7) of the Act provides that restrictions may be imposed in the following circumstances:

- where the participant is likely to experience physical, mental or financial harm (including risks of violence, abuse, neglect or exploitation) if the funding is not restricted

- where the participant has not complied with section 46 of the Act in relation to any of their previous plans

This Instrument will provide for the following additional circumstances:

- where the participant has requested restrictions be placed in their flexible funding
- to ensure a participant accesses capacity building supports to improve or maintain a participant's functional capacity and reduce their future support needs
- where the NDIA has arranged, directly or indirectly, for an NDIS provider to provide particular supports to identified participants.

Restrictions can be imposed on flexible funding at the time that a plan is approved or through a subsequent variation to the plan. Restrictions can also be varied or removed through a plan variation.

### Requirements on the provision or acquisition of supports

Part 4 of this Instrument deals with requirements that may be placed on the provision or acquisition of supports. The CEO may also provide that flexible funding and/or funding for stated supports will only be provided where certain requirements are met. This is separate to any restrictions that may be imposed on flexible funding.

For example, a requirement may be that a participant obtain a certain number of quotes for home modifications or major assistive technology before funding for that support is included in the reasonable and necessary budget.

Alternatively, the CEO could impose a requirement that a participant utilise a certain provider in a remote First Nations community where the supports have been co-designed with that community through an alternative commissioning approach.

Requirements can be imposed at the time that a plan is approved or through a subsequent variation to the plan. Requirements can also be varied or removed through a plan variation.

## Detailed explanation

### Preliminary

**Name**

The name of this instrument is the *National Disability Insurance Scheme (New Framework Plan Spending) Rules 2026*.

**Commencement**

The instrument will commence on the day after it is registered on the federal register of legislation.

**Authority**

The Instrument will be made under subsection 209(1) of the Act which provides that the Minister may, by legislative instrument, make rules (called National Disability Insurance Scheme rules (NDIS rules)) prescribing matters which the Act requires or permits to be prescribed by the rules.

In particular, this Instrument will deal with matters under the following provisions:

- Subsection 32F(2), which provides that if a participant's reasonable and necessary budget includes flexible funding, that budget must provide that the flexible funding will be provided during specified periods (funding periods), when each funding period begins and ends (that is the length of each funding period) and the total amount of flexible funding to be allocated during each of those funding periods.
- Subsection 32F(6), which allows the CEO, in certain circumstances, to restrict a participant's flexible budget so that one or more specified portions of flexible funding can only be spent on specified NDIS supports.
- Subsection 32G(3), which provides that, if a participant's reasonable and necessary budget includes funding for stated supports, the reasonable and necessary budget must include funding periods for those stated supports and/or certain requirements in relation to the acquisition or provision of those supports imposed under subsection 32H(1).
- Subsection 32H(1), which provides that the reasonable and necessary budget may specify that funding (either a portion of the flexible budget that has been restricted, or funding for a stated support) will only be provided where certain requirements are met.

Section 32J provides that NDIS rules may make provision for determining any matter for the purposes of section 32F, 32G or 32H, including but not limited to the following in making a decision under any of these sections:

- requirements with which the CEO must comply; and
- methods or criteria that the CEO is to apply; and
- matters that the CEO may, must or must not take into account.

In addition to the above, the Act provides that NDIS rules may make provision for the following:

- In accordance with paragraph 32F(7)(c), NDIS rules may prescribe additional circumstances in which the CEO may impose restrictions on how flexible funding is spent.
- In accordance with subsection 32G(4), NDIS rules may specify certain stated supports that are not subject to funding periods under subsection 32G(3).
- In accordance with paragraph 32H(2)(d), NDIS rules may specify additional requirements that may be specified in relation to the acquisition or provision of the supports under subsection 32H(1).

These rules are 'category A' NDIS rules under subsection 209(8) of the Act. The Minister must not make category A NDIS rules unless the Commonwealth, and each state and territory have agreed to the making of the rules.

**Definitions**

A number of expressions that will be used in the Instrument are defined in the Act, including the following:

(a) flexible funding
(b) funding period
(c) NDIS support
(d) participant's impairment
(e) plan
(f) stated support

(g) supports
(h) total funding amount.

In addition, this section includes the following key definitions for the purposes of the Instrument:

> **Act** means the *National Disability Insurance Scheme Act 2013.*
>
> **regulated restrictive practice** has the same meaning as in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018.*

## Matters relating to funding periods

**Matters to be taken into account—flexible funding**

The Instrument will set out the matters that the CEO must take into account when making decisions about funding periods for a participant's flexible funding, including the duration of funding periods, when those funding periods start and end and the proportion of flexible funding to be allocated to each funding period. Funding periods for flexible funding are decided based on the participant's individual circumstances and considering participant preference, risk and the total amount of flexible funding in the plan.

The Instrument will provide matters that the CEO must consider in determining the length of a funding period and when each funding period starts and ends.

The CEO will be required to consider any preferences the participant has expressed in relation to the duration of a funding period.

Consistent with the principle of choice and control, the CEO will seek to give effect to preferences expressed by the participant regarding funding periods, subject to other relevant considerations. For example, a newly self-managed participant may request shorter funding periods to help them manage their plan and provide certainty that they will have enough funding for the duration of a plan.

The CEO will be required to consider whether the participant would be likely to suffer physical, mental or financial harm if a funding period were, or were not, of a particular duration.

The CEO will be required to consider any restrictions to which the provision of flexible funding under the plan is subject under subsection 32F(6) of the Act.

Funding periods can work together with restrictions to help a participant manage their plan or to protect a participant from harm. Alternatively, placing restrictions on all or part of a participant's flexible funding may be an alternative to shorter funding periods, depending on a participant's particular circumstances.

The CEO will be required to consider whether the participant is at risk of experiencing fraud or financial exploitation.

If a participant is at particular risk of harm or of experiencing fraud or financial exploitation because of the participant's own specific circumstances it may be appropriate for the CEO to impose shorter funding periods on all or a portion of a participant's flexible funding. This would ensure that the plan is not drawn down to quickly, leaving the participant without the supports that they need. This is most critical where there is a substantial risk of harm to the participant if the support is not delivered as required.

The CEO will be required to consider whether section 46 of the Act (acquittal of NDIS amounts) would be unlikely to be complied with in relation to the plan, and whether that section was complied with in relation to any previous plan for the participant.

If there has been a history of non-compliance with section 46 of the Act, it may be appropriate for the CEO to impose shorter funding periods to help a participant manage their plan. In limited circumstances shorter funding periods may also be imposed to manage integrity risks where there has been significant or systemic non-compliance.

The CEO will be required to consider the total funding amount for flexible funding that will be provided under the plan. This ensures that the plan is considered holistically so that funding can be appropriately allocated across the life of the plan in accordance with the participant’s needs.

The Instrument will set out matters that the CEO must consider in determining the proportion of a participant’s flexible funding to be allocated to each funding period.

The CEO will be required to consider whether the participant requires flexible funding at a different frequency or intensity during different funding periods. This ensures that a participant will have access to sufficient funding to meet their needs during each funding period.

Where it is known that a participant will be receiving high intensity supports at certain intervals or times, the amount of funding allocated to a funding period can be adjusted accordingly. Alternatively, if a participant’s needs fluctuate significantly, a participant may require a longer funding period to ensure that they have sufficient funding to meet their needs at any given time.

The CEO will be required to consider whether the participant would be likely to suffer physical, mental or financial harm if a particular proportion of the total funding amount were, or were not, provided in a particular funding period.

> **Example – Tina**
>
> Tina was exposed to fraudulent behaviour in a previous plan which resulted in her running out of funds early and not having enough support to meet her needs for the duration of her plan.
>
> Tina does not have other safeguards in place, such as informal supports and the NDIA holds concerns that she is at risk of experiencing further fraud or financial exploitation. Tina lives in a remote location where there are limited providers and changing her plan to agency managed would prevent her from accessing the disability related supports she needs.
>
> Shorter funding periods may be used to safeguard Tina and ensure her supports can be accessed consistently and do not run out early.

**Matters to be taken into account—stated supports**

The Instrument will set out the matters that the CEO must take into account in making decisions about funding periods for funding for stated supports, including the duration of funding periods, when funding periods start and end and the proportion of the total funding amount for stated supports to be allocated to each funding period.

The CEO will be required to consider a number of matters in determining a funding period for funding for stated supports and when that funding period starts and ends.

The CEO will be required to consider whether the participant would be likely to suffer physical, mental or financial harm if a funding period were, or were not, of a particular duration.

The CEO will be required to consider whether the participant is at risk of experiencing fraud or financial exploitation.

If a participant is at particular risk of harm or of experiencing fraud or financial exploitation because of the participant's own specific circumstances it may be appropriate for the CEO to impose a shorter funding period on all or a portion of a participant's funding for stated supports. This would ensure that the plan is not drawn down to quickly, leaving the participant without the supports that they need. This is most critical where there is a substantial risk of harm to the participant if the support is not delivered as required.

The CEO will be required to consider any preferences the participant has expressed in relation to the duration of a funding period.

Consistent with the principle of choice and control the CEO will seek to give effect to preferences expressed by the participant regarding funding periods, subject to other relevant considerations. For example, a newly self-managed participant may request shorter funding periods to help them manage their plan and provide certainty that they will have enough funding for the duration of a plan.

The CEO will be required to consider whether section 46 of the Act (acquittal of NDIS amounts) would be unlikely to be complied with in relation to the plan, and whether that section was complied with in relation to any previous plan for the participant.

If there has been a history of non-compliance with section 46 of the Act, it may be appropriate for the CEO to impose shorter funding periods to help a participant manage their plan. In limited circumstances shorter funding periods may also be imposed to manage integrity risks where there has been significant or systemic non-compliance.

The CEO will be required to consider the nature of the stated support or class of stated supports for which the funding will be provided, and the cost of such a support or supports in the class.

**Supports for which funding periods do not apply**

The Instrument will specify stated supports that are not subject to funding periods, in accordance with subsection 32G(4) of the Act.

Funding periods will not apply to the following stated supports:

(a) assistive technology assets
(b) home modifications
(c) medium-term accommodation
(d) private vehicle transport
(e) residential aged care
(f) in-kind supports

Assistive technology assets and home modifications will not be subject to funding periods as they are unlikely to be recurring and are generally required for a one-off purchase. Maintenance for assistive technology assets cannot necessarily be anticipated and may be required at any time and is therefore not appropriate to be subject to funding periods.

Funding for medium term accommodation is provided to cover a specific time (for example a 90-day period) and therefore does not need to be subject to funding periods.

Private vehicle transport is exempt as it is provided through cash payments made directly to the participant's bank account at set intervals. Given that the payment intervals are already set, funding periods are not appropriate or necessary.

The payment arrangements for residential aged care and in-kind supports mean that funding periods are not appropriate or necessary.

The above supports will have the same meaning as in the *National Disability Insurance Scheme (Stated Supports) Rule* as in force from time to time. This incorporation by reference will be done in accordance with subsection 14(1) (read with subsection 14(3)) of the *Legislation Act 2003*.

## Matters relating to restrictions on how flexible funding is spent – Determining matters relating to restrictions

The CEO will be required to take into account specified matters when determining if the provision of flexible funding under a plan is subject to a restriction, and the proportion or proportions of funding subject to a restriction.

**Matters to be taken into account – general**

The Instrument will set out matters to be taken into account if any circumstance exists that would allow a restriction to be applied. This includes circumstances set out in the Act as well as circumstances prescribed in section 13 of this Instrument.

The CEO will be required to consider any requests made, or preferences expressed, by the participant in relation to the restriction or the proportion or proportions.

Consistent with the principle of choice and control, the CEO will consider a participant's preferences regarding restrictions, subject to other relevant considerations. A participant may request a restriction is applied on their flexible budget to set aside a portion of funding on certain supports. This can provide certainty to participants that they will have enough funding for that support for the duration of the plan. In some cases, a restriction may not be necessary where there are better or alternative safeguards to help the participant manage their funding throughout the plan.

The CEO will also consider the participant's preference to determine the portion of funding that is subject to the restriction. For example, a participant may have calculated an amount of funding they wish to set aside for particular supports, based on the number of hours they need to work towards a particular goal.

The CEO will be required to consider the basis on which the total funding amount for flexible funding that will be provided under the participant's plan is calculated under paragraph 32K(1)(a) of the Act. This ensures that the amount of funding that is subject to a restriction reflects the actual amount of funding that was calculated for that support. For example, if the CEO decides to restrict a portion of the flexible funding to be spent on therapy supports, they should apply the restriction to the amount of funding the budget method allocated for therapy supports.

The CEO will be required to consider the type of NDIS supports that would be the subject of the restriction. This will require the CEO to consider the types of supports the participant is likely to obtain using their flexible funding, such as therapy or employment supports.

The CEO will be required to consider the ability or capacity of the person [or persons] managing the funding for supports under the participant's plan to make decisions or to appropriately manage finances, taking into account any support or assistance the person or persons are likely to receive to do so.

This may be relevant where a participant lacks a capacity to understand which supports they are able to purchase, how much funding to use on different supports, and which supports are NDIS supports. Before imposing a restriction, the CEO must consider the availability of other options to help a participant make those decisions, such as informal and funded supports, which may be an alternative to applying a restriction.

The CEO will be required to consider the availability of NDIS providers to provide the NDIS supports that would be the subject of the restriction.

This will ensure that the CEO will not restrict part of a participants flexible funding to be used on a support that cannot be accessed by the participant due to a lack of availability. For example, if a participant lives in a remote or rural location where there is no or limited access to physiotherapists, the CEO should not impose a restriction that a portion of flexible funding be used to access physiotherapy supports.

The CEO will be required to consider whether the NDIA has arranged, directly or indirectly, for a NDIS provider to provide the NDIS supports to the participant.

The NDIA conducts market intervention activities in thin markets where there are few or no providers of certain supports, such as therapy in remote and very remote communities. The NDIA works with those communities to facilitate agreements between a group of participants and a provider, or in some cases the NDIA will enter into an agreement with a provider directly. The CEO may need to restrict a portion of a participant’s flexible funding to give effect to those arrangements.

The CEO will also be permitted to consider any other matters that the CEO considers relevant. This will allow the CEO to consider additional factors beyond those explicitly listed in the legislation or rules as long as they are directly relevant to decisions about restrictions on flexible funding.

**Additional matters to be taken into account – circumstances relating to physical, mental or financial harm**

The Instrument will set out the matters the CEO will be required to consider if the CEO is considering applying a restriction to a participant’s flexible funding because the participant would be at risk of physical, mental or financial harm if the restriction were not applied.

The CEO will be required to consider the following in relation to each NDIS support that would be the subject of the restriction;

(i) the nature of the NDIS support;
(ii) the NDIS provider (if known) that would provide the NDIS support;
(iii) the manner in which the NDIS support would be provided;
(iv) whether, during the provision of the NDIS support, there would, or would likely, be an interim or ongoing need to use a regulated restrictive practice in relation to the participant;

Certain types of supports may involve greater risk if they are not delivered. This could include disability-related health supports which may require a specific model of care, for example, a participant with an invasive ventilation support needs would require specifically trained support workers under a delegation of care from a registered nurse.

Participants receiving high-intensity in-home care in group environments may also be at greater risk without a restriction, for example if a lack of funding for providers may put their housing situation at risk. Additionally, participants with behaviours of concern may have certain requirements specified in their positive behaviour support plan about the amount and type of support that must be in place to ensure safety to the participant and others.

The CEO will be required to consider whether the participant is or will be transitioning, or has transitioned, back into the community from a hospital, mental health, rehabilitation or justice setting.

People transitioning from hospital, mental health, rehabilitation or justice settings, such as prisons, youth detention, or forensic mental health facilities, face extra risks when re-entering the community and accessing supports through the NDIS. These risks arise from a combination of personal, systemic, and environmental factors which can affect their safety, wellbeing, and ability to engage effectively with supports. For example, a participant may need certainty of daily support at home to safely transition back into the community. Awareness of these risks must be considered as part of any decision to apply a restriction.

The CEO will be required to consider, if they are aware, whether the participant has previously been the subject of exploitation or undue influence in the management of the participant's legal or financial affairs.

The NDIA may need to restrict a portion of the flexible budget if the participant is subject to ongoing exploitation or undue influence, or if those risks are likely to arise again without a restriction. Alternatively, the CEO may consider this matter in the context of removing a restriction where those risks are no longer be present, or where there are more appropriate safeguards to mitigate those risks.

The CEO will be required to consider the plan management type for the participant's plan and whether that type may mitigate the risk to the participant, having regard to: the supports that will be included in the plan and the safeguards and strategies associated with the plan; and any informal, community or mainstream supports that are available to the participant.

As part of whether to apply a restriction, consideration will be given to how the plan is managed, and if the way the participant's plan is being managed is sufficient protection for a participant. This requirement ensures that the Agency does not make decisions about a restriction without first considering if plan management is a better way to mitigate the potential for physical, mental or financial harm. For example, a participant who needs support managing their finances may benefit from having their funding plan-managed rather than restrictions being imposed on flexible funding.

**Additional matters to be taken into account – circumstances relating to acquittal of NDIS amounts exist**

The Instrument will outline the matters the CEO will be required to take into account if the CEO is considering applying a restriction to a participant's flexible funding because section 46 of the Act (acquittal of NDIS amounts) has not been complied with in relation to any of the participant's previous plans.

The CEO will be required to consider the history of compliance with section 46 of the Act (acquittal of NDIS amounts), in relation to the management of the funding for supports under any of the participant's plans, by the participant or another person managing that funding.

For example, a restriction may be appropriate if the participant has repeatedly spent NDIS funding on things that are not NDIS supports, noting that the CEO is also required to consider whether the Agency has attempted an educative approach before making a decision about a restriction.

The CEO will be required to consider any advice, guidance or other assistance previously provided by the Agency to the participant or another person responsible for managing the funding for supports under any of the participant's plans, to assist the participant or other person to comply with section 46 of the Act.

This will require the CEO to consider if an educative process has occurred, and if this is sufficient control to mitigate the risk of future non-compliance with section 46. A restriction may be appropriate where the NDIA has previously provided advice on spending but the non-compliance with section 46 has continued.

The CEO will be required to consider the history of compliance, by the participant or another person responsible for managing the funding for supports under any of the participant's plans, with requests or requirements made under the Act to give or produce information or documents and, if the participant or other person refused or failed to comply with such a request or requirement:

- (i) whether the participant or other person had a reasonable excuse for that refusal or failure; and
- (ii) whether the participant or other person took reasonable steps to comply with the request or requirement, including after the time by which the request or requirement needed to be complied with.

If a person has previously refused to produce required documentation, without a reasonable excuse and without taking reasonable steps to comply, it may be appropriate to impose a restriction on flexible funding. This will depend on the nature of the documents requested and whether this was a one-off or systemic issue.

The CEO will be required to consider (if the CEO is aware) whether the participant or another person responsible for managing the funding for supports under any of the participant's plans, has engaged in any conduct involving fraud or the mismanagement or misapplication of funds or other assets.

If the CEO is aware that a person had engaged in fraud, either within or outside the NDIS, it may be appropriate to impose a restriction to mitigate integrity risks and ensure that NDIS amounts are used to obtain supports needed by the participant.

The CEO will be required to consider the following in regards to when section 46 of the Act was not complied with in relation to any of the participant's plans:

- (i) whether the participant or another person responsible for managing the funding for supports under the participant's plans, was the subject of exploitation or undue influence in the management of legal or financial affairs;
- (ii) whether the non-compliance was due to genuine error;
- (iii) the amount of funding that was spent in a way that did not comply with that section.

This will ensure that 'accidental' or 'coincidental' non-compliance is weighed against participant choice and control. A restriction may not be necessary if the non-compliance with section 46 involved a genuine error and a relatively low amount of funding. It will also ensure that participants are not penalised if the non-compliance was a result of undue influence or fraud.

For example, a participant may have unintentionally spent a small amount of flexible funding on supports that are not NDIS supports, such as a kitchen appliance unrelated to their disability, because a provider told them it was allowed under the NDIS. A restriction would likely not be required, as the mistake was not intentional and is unlikely to reoccur. The NDIA would instead take an educative approach.

**Additional matters to be taken into account – prescribed circumstances exist in relation to participants**

The Instrument will set out the matters the CEO will be required to take into account in applying a restriction on a participant's flexible funding if any of the circumstances prescribed in section 13 of this Instrument exist.

The Instrument will require that the following matters to be taken into account if the participant requests a restriction on their flexible funding:

(a) the reason the participant made the request;
(b) whether less restrictive methods of managing the provision of flexible funding under the participant's plan could be implemented instead.
(c) the following in relation to each NDIS support that would be the subject of the restriction:
    (i) the NDIS provider (if known) that would provide the NDIS support;
    (ii) the proportion of the flexible funding that may be spent only on the NDIS support;

Whether or not it is appropriate to impose a restriction on the basis of a participant's request will depend, in part, on the reason that the participant made the request and the participant's particular circumstances. For instance, a participant may wish to limit the potential for overservicing by certain NDIS providers. In considering the participant's request the CEO would work with the participant to consider the best way to impose restrictions, as well as exploring whether there are any other less restrictive measures to protect a participant from overservicing.

Alternatively, a participant who is newly self-managed may request that restrictions be placed on all or parts of their funding and may or may not be aware of other options open to them. In these circumstances the Agency may work with the participant to identify whether there are other less restrictive ways of managing funding such as informal supports, shorter funding periods or NDIA resources to manage a participant's budget throughout the plan period.

The CEO will be required to take certain matters into account if the CEO is considering imposing a restriction because they are satisfied that the circumstances specified at paragraph 13(b) of this Instrument exist, namely that supports are required to improve, maintain or slow the decline in, the participant's functional capacity and may not otherwise be obtained.

The CEO will be required to consider whether the participant meets the disability requirements, meets the early intervention requirements, or both. While supports to improve, maintain or slow the decline in a participant's functional capacity are generally of benefit for participants who met the early intervention requirements, they may also be of benefit to those who have degenerative or fluctuating conditions.

The CEO will be required to consider the participant's age and stage of life. There are certain ages and stages in a participant's life where supports to improve, maintain or slow the decline in a participant's functional capacity will be of particular benefit or have a more substantial impact.

For example, participants may be most likely to benefit from early intervention therapies when they are new to the NDIS or have a newly acquired impairment. Similarly, a participant with a degenerative condition such as multiple sclerosis may benefit from physiotherapy to maintain their mobility as long as possible. A restriction may be appropriate to ensure funding is spent on therapy at the time it is has the greatest potential to increase, maintain or slow the decline in a participant's function.

The CEO will be required to consider the informal supports, including peer supports, that are available to the participant. This could impact whether a participant is likely to access capacity building supports or supports designed to slow a decline in the person's functional capacity.

The CEO will be required to consider the participant's goals and aspirations, allowing the CEO to consider the kinds of supports would be most useful in the participant's achieving their goals.

The CEO will be required to consider whether the NDIS supports that would be the subject of the restriction are likely to benefit the participant by:

(i) reducing the participant's future needs for supports in relation to disability; or
(ii) mitigating or alleviating the impact of the participant's impairment upon the functional capacity of the participant to undertake communication, social interaction, learning, mobility, self-care or self-management; or
(iii) preventing the deterioration of such functional capacity; or
(iv) improving such functional capacity; or
(v) strengthening the sustainability of informal supports [that are available to the participant], including through building the capacity of the participant's carer.

The CEO will consider the participant's individual circumstances to determine the potential impact of supports that are required to improve, maintain or slow the decline in, the participant's functional capacity, what types of supports may be appropriate, and whether other supports and safeguards may be more appropriate than applying a restriction.

## Prescribed circumstances

The Instrument will prescribe additional circumstances (beyond those set out in the Act) where a restriction may be applied.

The Instrument will allow the CEO to apply a restriction where the participant has requested that the provision of flexible funding under the participant's plan be subject to a restriction.

Agency consultations with NDIS participants identified that in some circumstances, participants want the ability to have a restriction applied to their funding in order to ensure they maintain funding for access to certain supports.

The CEO will be permitted to apply a restriction where all of the following apply:

(i) the participant needs particular NDIS supports to improve, maintain or slow the decline in, the participant's functional capacity and
(ii) the participant is unlikely to acquire the particular NDIS supports if the provision of flexible funding under the participant's plan is not subject to a restriction.

This will allow the CEO to impose a restriction to require a participant to use their flexible-funding to accesses certain evidence-based supports that improve, maintain or slow decline in their functional capacity. This circumstance arises only if the participant is unlikely to acquire the particular NDIS supports if a restriction is not applied. Imposing a restriction on this basis will be rare but is most likely to arise where there has been a history of a participant not accessing these kinds of supports.

If a participant does not use certain supports such as therapy designed to positively impact their functional capacity, they may not achieve the intended outcomes of the support such as improved functioning and increased independence. They may also need more NDIS supports over time.

Alternatively, failure to utilise supports that are needed to slow the decline in a participant's functional capacity may have long term implications for the participant.

While it may not cause an immediate risk of harm, non-delivery of certain supports when they are needed is may have significant impact a participant's long-term outcomes, including on a participant's safety and quality of life. In cases where non-delivery of capacity building supports would substantially harm a participant or prevent a participant from experiencing particular benefits the CEO may make some or all of a participant's flexible funding subject to a restriction to ensure that the participant uses that funding to receive those supports.

The CEO will be permitted to apply a restriction where the Agency has arranged, directly or indirectly, for an NDIS provider to provide particular NDIS supports to identified participants.

The NDIA conducts market intervention activities in remote First Nations communities, to ensure participants can get supports in areas with few or no providers, especially for therapy supports. These include coordinated funding proposals where the NDIA helps participants and providers agree on an amount of support, as well as direct commissioning where the NDIA directly contracts a provider to deliver a service to a group of participants. The NDIA co-designs these activities with the First Nations communities for a group of participants within the community. Applying a restriction ensures funding is set aside in line with these agreements, providing certainty to the providers they will be paid in line with the agreement including for high travel costs associated with delivering the support.

## Matters relating to acquisition or provision of supports

**Matters to be taken into account – requirement that supports be provided by specified person or persons in specified class**

The Instrument will set out the matters that the CEO will be required to take into account when determining whether funding under a participant's plan for particular supports will be provided only if the supports are provided by a specified person or persons in a specified class in accordance with paragraph 32H(2)(a) of the Act.

The CEO will be required to consider whether the Commonwealth or the Agency has entered into any arrangements with an NDIS provider to provide the supports.

For example, a requirement may be imposed when a market intervention arrangement has been co-designed with a remote First Nations community. If so, the plan will include a requirement to use the provider as part of that arrangement.

The CEO will be required to consider the nature of the supports. Some supports should only be provided by certain providers such as Specialist Disability Accommodation. For example, complex home modifications require assessment from an occupational therapist with experience in disability home modifications, as well as that the modification is delivered by a registered builder with expertise in accessible building modifications.

The CEO will be required to consider whether, to appropriately and safely provide the supports:

(i) particular qualifications, specialisations or experience are required; or

(ii) particular requirements must be complied with.

This may be used to ensure that participants access supports from a suitably qualified person where this is necessary. For example, a disability-related health support may require a person with specific medical qualifications to deliver the support, or a complex home modification may require an occupational therapist and architect or builder specialising in home accessibility modifications.

The CEO will be required to must consider whether a quote or scope of works for the supports has been provided by a particular NDIS provider. This would allow the CEO to ensure the participant uses the same person who provided the quote to do the work or provide the support.

The CEO will be required to consider whether the participant meets the disability requirements, meets the early intervention requirements, or both.

Early intervention supports are often highly specialised to a particular group, such as psychosocial disability or children with delays in their development and should follow specific evidence informed best practice to ensure the efficacy of the intervention. This consideration will allow the CEO to ensure certain disability or early intervention supports can be provided by distinct classes of provider, such as those that meet appropriate standards to deliver best practice early intervention supports

The CEO will be required to consider whether the provision of the supports by a particular NDIS provider would reduce the risk of fraud or unethical or dishonest practices.

In cases where a participant has been subject to financial abuse or fraud from a particular provider, the NDIA may decide to specify a participant can only receive supports from a specific provider, or a provider other than the fraudulent provider, thereby preventing the fraudulent provider from accessing a participant's funding.

For example, where a participant has experienced inappropriate pressure from a certain support provider to purchase additional or unwanted services, the participant may request a requirement be placed in their plan that the provider cannot provide supports, to safeguard against future abuse. The NDIA will explore other safeguards that may be less restrictive, as well as work with the NDIS Commission in cases involving provider misconduct.

The CEO will be required to consider whether, during the provision of the supports, there would, or would likely, be an interim or ongoing need to use a regulated restrictive practice in relation to the participant.

If there is a likely to be a need to use a regulated restrictive practice in the course of providing a support, it may be appropriate for the CEO to require that that support only be provided by a specific provider or class of providers. While the use of regulated restrictive practices can only be carried out by registered and properly qualified providers, it may still be necessary or appropriate to require certain supports to be provided by a specific provider who is best positioned to ensure the safety of the participant, workers and other individuals interacting with the participant.

The CEO will be required to consider whether requiring that the supports are to be provided by a specified person or persons in a specified class would, due to local market conditions, substantially limit the participant's access to the supports.

This will ensure that the CEO will not impose a requirement to obtain supports from a provider, or class of providers, not available or easily accessible in the participant's local area. This is particularly relevant for participants who live in a remote or rural location where there may be shortages of particular services.

**Matters to be taken into account – requirement that specified process be undertaken before supports acquired or provided**

The Instrument will set out the matters the CEO will be required to take into account when determining whether funding under a participant's plan for particular supports will be provided only if a specified process is undertaken before the supports are acquired or provided, in accordance with paragraph 32H(2)(b) of the Act.

The CEO will be required to consider whether the participant needs specialist advice to choose the supports, such as architectural or design work for home modifications

The CEO will be required to consider the nature of the supports.

The CEO will be required to consider whether supports of that type require certification due to the complexity or risks associated with the supports. Supports such as home modifications and certain assistive technology assets may require certification and pose significant risk if not correctly provided.

The CEO will be required to consider whether the participant’s impairments require the supports to be provided in a certain manner.

The CEO will be required to consider whether quotes or cost estimates for the supports need to be evaluated to ensure they represent value for money, having regard to both the benefits of the supports and the costs of alternative supports.

For example, a support needs assessment could identify a participant’s need for home modifications, and a plan could be approved on that basis before design work or a quote has been obtained or finalised. Even minor home modifications may pose a high risk to a participant if not completed correctly and in accordance with the participant’s specific requirements. In this case the CEO could require the participant to obtain certain assessments or design advice, as well as quotes, before the supports can be acquired. This mitigates the risks in selecting an inappropriate support but does not slow down the approval of a plan.

Alternatively, a support needs assessment could identify a participant’s need for medium cost assistive technology assets and a plan could be approved with the requirement that the participant seek advice from an appropriately qualified professional to select the assistive technology item that best meets their needs.

**Matters to be taken into account – requirement that specified conditions be satisfied before supports acquired or provided**

The Instrument will require the CEO to have regard to certain matters when determining whether funding under a participant’s plan for particular supports will be provided only if specified conditions are satisfied in relation to the participant before the supports are acquired or provided, in accordance with paragraph 32H(2)(c) of the Act. These matters will be:

(a) the nature of the supports;
(b) the participant’s age and stage of life;
(c) any anticipated changes to the participant’s situation or circumstances.

The purpose is to allow the CEO to include funding for upcoming life stage transitions or changes in circumstances before they occur. For example, a reasonable and necessary budget may include a certain support that will only be provided once the participant turns 18, finishes school or moves out of home. This will still allow a participant to receive a long-term plan and avoid the need for a plan variation or reassessment following an anticipated change in circumstances.

**Specified requirements**

The Instrument will specify that the CEO may require that the support acquired or provided must be in in accordance with the description of the support set out in the plan. For example, the plan may provide funding for the assistive technology stated support budget following the provision of a quote for a high-cost wheelchair. This requirement will ensure the funding is spent on the specific wheelchair identified in the quote.