



Australian Government

Department of Health

Draft National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Notice of Impairments) 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.

Purpose of Instrument

This explanatory document outlines the intended operation of the draft *National Disability Insurance Scheme (Notice of Impairments) Rules (the Instrument)*. The Instrument deals with the issuing and variation of Notices of Impairment given to participants under section 32BA of the *National Disability Insurance Scheme Act 2013 (NDIS Act)*.

This instrument is intended to provide participants with greater transparency around the kinds of impairments that are the basis for their participation in the National Disability Insurance Scheme (NDIS, Scheme). This instrument will also support the National Disability Insurance Agency (NDIA, Agency) to efficiently and consistently manage the amendment of notices of impairment.

The Instrument will do the following:

- enable the giving of a notice of impairments to all Scheme participants who became participants as a result of an access request made before 1 January 2025.
- specify circumstances in which the Chief Executive Officer (CEO) can, of their own initiative, vary a notice of impairments to ensure it is accurate and up to date.
- specify circumstances in which a participant may not make an application for variation of a notice.

Background

Notices of impairments were introduced by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024 (Amendment Act)* to give participants more clarity and transparency around the basis of their access and ongoing eligibility for the Scheme.

A notice of impairments informs NDIS participants about the category or categories of impairments that cover the impairment(s) for which they meet the disability and/or early intervention requirements. These categories are:

- (a) intellectual
- (b) cognitive
- (c) neurological
- (d) sensory
- (e) physical
- (f) impairments to which a psychosocial disability is attributable.

Alternatively, if a child meets the early intervention requirements because of developmental delay, the notice of impairments will state that the participant has developmental delay.

A participant's notice of impairment will not identify the participant's specific impairments, but rather the relevant category or categories of impairment.

Subparagraph 32BA(5)(a)(i) of the Act allows a participant to make an application to vary their notice of impairments, including to have an impairment category added or removed. If a participant seeks a variation to, for example, have a category of impairment added due to the acquisition or deterioration of an existing impairment, the CEO must consider the impact of a

participant's functional capacity holistically. That is, the CEO will not assess whether a new permanent impairment substantially reduces a participant's functional capacity in isolation but will also consider how interactions with a participant's other impairments may impact a participant's functional capacity. An application to vary a notice of impairments must be made in the form approved by the CEO and include any information, and be accompanied by documents, required by the CEO.

Subparagraph 32BA(5)(a)(ii) of the Act provides that NDIS rules may prescribe additional circumstances in which the CEO may also vary a notice of impairments.

In order to vary a notice of impairment, the CEO must be satisfied that a statement in the notice is not, or is no longer, correct.

A decision to vary, or not to vary, a notice of impairment is a reviewable decision under section 99 of the Act.

Outline

Notices of impairments are being issued for participants who gained access to the Scheme as a result of an access request made on or after 1 January 2025 in accordance with paragraph 32BA(1)(a) and subitem 128A of Schedule 1 to the Amending Act.

Participants who are to have notices of impairment will require the CEO to start issuing notices of impairments to all other existing participants as soon as this Instrument commences.

NDIS rules can prescribe circumstances in which a participant is not permitted to apply to vary their notice of impairments. These circumstances will set out in this document under circumstances in which the CEO may vary a notice of impairment.

The CEO may also decide to vary a notice of impairments of their own volition. This can only occur where the CEO is satisfied that the notice is not, or is no longer correct, and certain circumstances prescribed in NDIS rules exist. These circumstances are set out in this document under when an application for variation of a notice of impairments may not be made.

Detailed explanation

Name

The instrument will be titled the National Disability Insurance Scheme (Notices of Impairment) Rules.

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 section 209 of the Act, for the purposes of the purposes of paragraph 32BA(1)(b), subparagraph 32BA(5)(a)(ii), and paragraph 32BA(6)(c).

These rules are 'category D' NDIS rules under subsection 209(8), requiring consultation but not agreement with all states and territories.

Definitions

A number of expressions used in this Instrument are defined in the Act, including the following:

- (a) access request;
- (b) CEO;
- (c) participant.

This also includes the following key definitions for the purpose of the instrument:

Act means the National Disability Insurance Act 2013.

notice of impairments means a notice given to a participant under subsection 32BA(2) of the Act.

Participants who are to have notices of impairment

The Instrument will be made for the purposes of paragraph 32BA(1)(b) of the Act, which provides for NDIS rules to prescribe circumstances in which the CEO must give a participant a notice of impairments.

The Instrument will provide that the CEO must give a participant a notice of impairment if that person became a participant due to an access request made before 1 January 2025.

The result is that the CEO will have an immediate obligation to give a notice of impairments to all relevant participants. The Agency will administratively manage a staged roll-out of notices to all existing participants. All participants will receive a notice of impairments prior to transitioning to a new framework plan.

Circumstances in which the CEO may vary a notice of impairment

The Instrument will set out circumstances in which the CEO may vary a notice of impairment in accordance with subparagraph 32BA(5)(a)(ii) of the Act.

Subsection 32BA(5) of the NDIS Act confers a power on the CEO to vary a notice given under subsection 32BA(1) in either of the following circumstances (provided the CEO is satisfied that a statement in the notice is not, or is no longer, correct and any other conditions specified in the NDIS rules are met):

- the participant applies for a variation of the notice in accordance with subsection 32BA(6)
- circumstances specified in the NDIS rules for the purposes of subparagraph 32BA(5)(a)(ii) exist.

This Instrument will provide that the CEO may vary a notice if the CEO is satisfied that the notice is not or is no longer correct and one of the following circumstances exists:

- the CEO becomes aware of an error in a participant's notice of impairments
- the CEO becomes aware of information about an impairment or impairments which is relevant to a category or categories of impairments which is, or should be, stated in the notice of impairments for the purposes of paragraphs 32BA(1)(a) or (b) of the Act.

The existence of the above circumstances will not require the CEO to vary a notice of impairments but allows them to do so.

For example, the CEO may initiate a variation where:

- A factual error is identified in the notice, such as a typographical mistake or incorrect coding of an impairment category.

- New information about an existing impairment becomes available, which was not considered at the time the notice was prepared. This could include updated clinical evidence or diagnostic reports received during a scheduled plan reassessment.
- Information about changes to an existing impairment is provided, such as evidence an impairment has progressed or resolved, requiring the notice to be updated.
- Information about a new impairment is received, for instance, through a Support Needs Assessment or Eligibility Reassessment, and the current notice no longer accurately reflects the participant's circumstances.
- The CEO becomes aware that information relevant to the participant's impairments was held by the NDIA but was not considered when the notice was issued.

This will allow the CEO to proactively vary a notice of impairments where there has been a clear error or new information has become available, reducing undue administrative burden on a participant.

When an application for variation of a notice of impairments may not be made

This Instrument will set out when an application for a variation of a notice of impairments may not be made, in accordance with paragraph 32BA(6)(c) of the Act.

Subsection 32BA(6) provides that an application for variation of a notice of impairments made by a participant under subparagraph 32BA(5)(a)(i) must, among other things, be made in accordance with any requirements specified in the NDIS rules 'which may include requirements as to the circumstances in which an application may, or may not, be made'.

This Instrument will provide that a participant may not apply to vary a notice of impairments in the following circumstances:

- The participant has made an application to vary the notice of impairments and a decision has not been made on that application.
- The participant has sought review of a decision by the CEO to vary or not to vary the notice of impairments and that review has not been finalised.