

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

Explanatory Document

This document has been released under
the Freedom of Information Act 1982
by the Department of Health, Disability and Ageing

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.

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Draft National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Stated Supports) Transitional Rules

Explanatory Document

This document has been released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing

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 the Instrument

The Instrument will declare, for the purposes of subsection 32E(4) of the *National Disability Insurance Scheme Act 2013* (Act), what NDIS supports are to be stated supports under the new planning framework. It will set out the categories of supports that are stated supports and explain what supports fall within each of those categories.

Background

The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Act 2024* (the Amending Act) provided the basis for critical reforms to the National Disability Insurance Scheme (NDIS). In particular, the Amending Act introduced into the NDIS 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 an 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 NDIS Act).

This is consistent with the approach recommended by the Independent Review into the NDIS, that recognised that while participants should be given greater flexibility in how they spend their budget with minimal exceptions, some supports should always be 'stated supports'.

Subsection 32E(4) of the NDIS Act provides that a support will be a stated support if it is declared in NDIS rules to be a stated support for participants generally or a class of participants that includes the participant. All supports declared in the Instrument will be stated supports for all participants who have those supports in their new framework plan.

A participant's support needs assessment report will identify the need for a stated support. Depending on the support, the budget method may be able to identify the funding to be attached to the stated support. In other cases, quotes, assessments or other information may be required to identify the funding amount to be attached to the support. A participant's reasonable and necessary budget can then be varied to include the funding amount for that support.

Detailed explanation

Name

This instrument will be the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Stated Supports) Transitional Rules 2025*.

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 item 138 of Schedule 1 to the Amending Act.

Subitem 138(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Amending Act.

Item 139 of the Amending Act provides that certain NDIS rules can be made as transitional rules under item 138 if certain procedural steps are taken.

Definitions

A number of expressions used in the rule are defined by the NDIS Act including:

- (a) NDIS support
- (b) participant;
- (c) registered plan management provider;
- (d) stated support.

This section includes the following key definitions for the purpose of the Instrument:

Act means the *National Disability Insurance Scheme Act 2013*.

approved residential care home has the same meaning as in the *Aged Care Act 2024*.

eligible assistance animal has the same meaning as in the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024*.

personal care in schools means personal care that the student requires due to the impact of the student's impairments on their functional capacity and in addition to reasonable adjustments.

specialist behaviour support provider has the same meaning as in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

specialist school transport means specialist transport for children with disability between home and school, that the student requires due to the impact of the student's impairments on their functional capacity and in addition to reasonable adjustments.

specialist disability accommodation has the same meaning as in the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*.

Supports that are stated supports

The instrument will, for the purposes of subsection 32E(4) of the NDIS Act, identify supports that are to be stated supports for all participants. A table will set out the categories of supports and what supports fall within each category.

Generally, supports will be declared to be stated supports where:

- The absence of the support may cause harm to the participant or presents a safety risk to the participant, and the support has been stated to ensure that a participant's support needs will be met
- The item is high-cost
- The support has significant integrity risks attached and has been stated to ensure that a participant's support needs will be met

- The funding for the support is fixed for all participants, and the cost of delivering the support is unrelated to the participants support needs
- The NDIS reimburses another support system for the cost of delivering the support that is made available to the NDIS participant
- The support is funded as a cash payment.

Assistive technology assets

This category will include the following supports:

Devices or products that support an individual to perform tasks, improve independence and enhance safety, when a participant is limited by the functional impact of their disability.

This includes the following:

- (a) modified or adapted furniture, household items and fixtures;*
- (b) communication tools, including hearing and vision;*
- (c) home automation systems and equipment for environmental control;*
- (d) customised prosthetics;*
- (e) vehicle modifications;*
- (f) devices simulating body function;*
- (g) mobility aids, including wheelchairs, mobility devices, transfer devices and complex assistive products for walking;*
- (h) recreational equipment;*
- (i) services to deliver and set-up assistive technology;*
- (j) maintenance, spare parts and repairs specific to assistive product.*

The precise language and description of this category may evolve to ensure consistency with other NDIS rules currently under development to ensure consistency of language and approach.

Assistive technology assets will be stated supports for a combination of reasons, including that there may be safety risks to a participant if they do not get the specific assistive technology that they need and the additional assurance required to ensure that funding for high-cost items is used appropriately. These are also often one-off purchases that do not require ongoing funding. In addition, the NDIS Review recommended that assistive technology assets be stated supports.

Due to the fact that assistive technology is a stated support, it is appropriate that ancillary supports are also stated. There are serious safety risks to a participant if they cannot maintain or repair their assistive technology and as a result funding for repairs and maintenance must be guaranteed and separately provided for. Where appropriate, there will be funding specifically stated for the repairs and maintenance of assistive technology assets.

Assistance animals

This category will include the following supports:

Support provided by an eligible assistance animal.

This includes the following:

- (a) assessment, matching and provision of an eligible assistance animal;*
- (b) dietary needs;*
- (c) grooming;*

- (d) *veterinary services including flea and worm treatments, medication, and vaccinations;*
- (e) *yearly reviews to maintain accreditation.*

The definition of eligible assistance animal will be consistent with the definition in the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024* to ensure consistency with the definition of NDIS supports.

Assistance animals will be declared as a stated support due to the highly specialised nature of the support that is not interchangeable with other supports. The absence of an assistance animal, once identified as necessary, could significantly impact a participant's independence, safety, and ability to engage in daily life. This aligns with the principle that stated supports include those whose absence may cause harm or present a safety risk to the participant.

Making assistance animals a stated support also guarantees that funding for associated costs (such as veterinary care and annual accreditation) is clearly allocated and protected.

Support coordination

This category will include the following supports:

Supports that assist participants to connect with informal community and funded supports (including as part of psychosocial recovery supports).

This includes:

- (a) *building a participant's capacity to connect with supports;*
- (b) *assisting participants to understand and utilise their plan;*
- (c) *assisting participants to connect with providers and mainstream services;*
- (d) *addressing barriers and reducing complexity in the support environment;*
- (e) *transport which is ancillary to the provision of these supports.*

Support coordination is an NDIS support for participants who require additional assistance to identify, connect with and coordinate the supports they need and build their capacity to use their NDIS plan. It is offered at multiple levels to meet varying complexity in need, and in targeted forms including psychosocial recovery coaching and assistance to identify and maintain accommodation supports. It also includes provider travel for support coordination, and activity-based transport for participants receiving psychosocial recovery coaching.

Support coordination is a critical safeguard for many participants and facilitates choice and control in the acquisition and use of other supports. Declaring this support as stated will ensure participants who need this support can navigate the disability ecosystem.

The NDIA is considering options for reforming support coordination through a commissioned navigator service to reduce delivery of low value intermediary supports. Retaining support coordination as a stated support will minimise unintended market distortion and steward the market towards the future navigator role.

Short term respite

This category will include the following supports:

Supports that assist participants to have time apart from their primary informal supports overnight.

This includes the following:

- (a) *accommodation*
- (b) *supports that allow a person to stay in the accommodation*

These supports may be provided in both group and individual settings.

The purpose of short-term respite is to help sustain and maintain caring arrangements with primary informal supports overnight. These supports allow the opportunity for a participant to be supported by someone else whilst providing their primary informal support or supports with short term breaks from their usual caring responsibilities.

Short term respite will be declared as a stated support to ensure that the respite appropriately meets the needs of participants and their families and carers, or other informal supports.

Behaviour support

This category will include the following supports:

Supports dealing with the development, implementation and co-ordination of a behaviour support plan.

This includes:

(a) assessment, development and delivery of a comprehensive behaviour support plan that aims to reduce and manage behaviours of concern;

(b) development and delivery of interim or transitional behaviour support plans;

(c) training and ongoing monitoring of staff in implementation of a behaviour support plan;

(d) training and capacity building for a participant's informal supports in the use of positive behaviour support;

(e) supports to assist participants with behaviours of concern to develop their social skills for participation in the community and social activity

(f) transport which is ancillary to the provision of these supports.

Behaviour support includes specialist behavioural intervention support to develop a behaviour support plan, as well as training for informal carers and support workers in implementing the plan. These services must be delivered by a specialist behaviour support provider, as required by the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

Behaviour support also includes individual social skills development, which is a capacity building support to assist in implementing the strategies set out in a participant's behaviour support plan. This support can either be provided directly to the participant or to their informal supports.

These supports are stated supports due to the significant risk to participant safety and the safety of others if behaviour support plans are not appropriately developed and implemented as well as the complex legislative and reporting obligations attached to the provision of behaviour support.

This category does not include the use and implementation of behaviour support plans or the use of positive behaviour support strategies or restrictive practices, where this occurs in the context of delivering other NDIS supports. For example, a support worker delivering in-home and community supports may implement strategies set out in a behaviour support plan while delivering the support. This does not mean that the in-home and community support falls within the scope of the behaviour support stated support.

Plan management

This category will include the following supports:

Supports provided by a registered plan management provider to manage the funding of supports under a participant's plan.

It is important to note that registered plan management providers are only funded to manage the funding of supports under a participant's plan and not to provide other supports or services to a participant. Plan management funding is always a fixed amount that cannot be 'topped up'. Further, plan management type cannot be changed without a plan variation and so a participant's budget will always accurately reflect a participant's plan management type.

Specialist disability accommodation

This category will include the following supports:

The provision of specialist disability accommodation.

This Instrument will adopt the same definition of specialist disability accommodation as the one found in the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (SDA Rules) to ensure that there is a consistent approach to specialist disability accommodation across the Scheme.

Section 5 of the SDA Rules provide that specialist disability accommodation:

means accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person's extreme functional impairment or very high support needs; but

does not include supports delivered to the person while the person is living in the accommodation.

Specialist disability accommodation will be a stated support due to the strict eligibility criteria that apply as well as the serious risk of harm to participants if specialist disability accommodation is not guaranteed and delivered appropriately.

Home modifications

This category is likely to include the following supports:

Supports that change or modify a participant's home to help the participant live as independently as possible and to live safely at home.

This includes the following:

- (a) installing equipment or changing a building's structure, fixture or fittings;*
- (b) internal and external building modifications to remedy damage arising exclusively from disability related behaviours or use of NDIS funded assistive technology or equipment;*
- (c) the design of these changes or modifications;*
- (d) regulatory certification requirements for works.*

Home modifications will be a stated support due to the safety risks to the participants if the home modifications are not carried out exactly as required and the high-cost of many home-modifications. While there are some lower cost home modifications, these will still be stated supports. The NDIS Review also specifically recommended that home modifications be a stated support.

This category includes all design costs associated with home modifications, including architects or other design specialists. This does not include the assessment of the need for home modifications which is carried out by other providers such as occupational therapists and funded through a participant's flexible funding.

Medium-term accommodation

This category will include the following supports:

Accommodation that is required because a participant cannot move into long term or permanent accommodation where the participant's current accommodation is not suitable for the participant and:

- (a) the long term or permanent accommodation is not ready for the participant to reside in; or*
- (b) other supports necessary to allow the participant to live in that accommodation are not available.*

Medium-term accommodation is generally funded for 90 days but can be funded for up to 180 days in certain circumstances. This Instrument does not deal with the length of medium-term accommodation as this is currently dealt with in NDIA operational guidance.

Given that medium-term accommodation is a strictly capped support provided for a specified time frame, it is necessary for it to be a stated support.

Private vehicle transport

This category will include the following supports:

Costs associated with private transport for participants who cannot use public transport due to their disability. This does not include transport that is ancillary to the provision of an NDIS support.

Private vehicle transport may be provided by:

- (a) taxis;*
- (b) rideshares;*
- (c) other private travel options.*

This support is not intended to cover transport that is ancillary to the provision of supports as this is separately funded either as part of the support or through flexible funding.

The supports that fall within this category are intended to cover existing 'recurring transport' supports. The description of the category above may change as the budget method is settled or as longer-term intergovernmental arrangements are resolved.

Residential aged care

This category will include the following supports:

NDIS supports provided to participants living in an approved residential care home.

The above description aligns with the language of the *Aged Care Act 2024* and will continue to support the current cross-billing arrangements between the National Disability Insurance Agency and DHDA for supports to be funded through participant plans as well as reimbursements for means-tested care fees and daily accommodation payments.

In-kind supports

This category will include the following supports:

The following programs that are funded by State and Territory governments:

- (a) personal care in schools;*
- (b) specialist school transport.*

In-kind supports are disability related supports within the responsibilities of the NDIS (as set out in relevant intergovernmental agreements) that are provided by state and territory governments but included in a participant's plan. These supports have been gradually phased out and there are now only two in-kind programs in place. If in-kind supports are stated in a participant's plan there will be no funding allocated to those supports as the support is separately provided by the relevant State or Territory government. The purpose of stating the support in a participant's plan is to show that the participant receives the support, but payment for the support does not occur through the participant's plan. NDIS amounts cannot pay for the service.

The NDIS provides supports for students with disability to help with daily living activities (and not related to their learning), such as personal care and support and transport to and from school. Personal care may cover, for example, meals, toileting and personal hygiene. The NDIS cannot

personalise either learning or supports for students related to their schoolwork (including teaching, learning assistance and aids, school building modifications and transport between school activities).

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***Draft National Disability Insurance
Scheme (Getting the NDIS Back on
Track No. 1) (Transition to New
Framework Plans) Transitional Rules***

Explanatory Document

This document has been released under
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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 the Instrument

This Instrument will determine, for the purposes of subsection 32B(1) of the *National Disability Insurance Scheme Act 2013* (Act), classes of participants who will receive new framework plans and the period within which the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA, Agency) must give a notice of transition to each participant within that class.

Background

The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (the Amending Act) provided the basis for critical reforms to the National Disability Insurance Scheme (NDIS). 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'.

Section 32B of the Act allows NDIS rules to specify classes of participants that will have new framework plans and the period within which the CEO must give a notice to participants that they will receive a new framework plan. Once a class of participants has been prescribed, the CEO must give a participant a notice that they will have a new framework plan. This must happen within the time specified in NDIS rules.

The CEO cannot start to facilitate the preparation of a new framework plan for a participant until after they have been provided with a notice that they will have a new framework plan. This rule will allow the gradual roll out of new framework plans.

Once a participant has received a notice that they will have a new framework plan, the CEO will start to facilitate the preparation of the plan. The notice to have a new framework plan is not a reviewable decision and once issued a participant will proceed through the new framework planning process.

Outline

Participants aged 16 or older will start transitioning to new framework plans from 1 July 2026 after the *National Disability Insurance Scheme (Reasonable and Necessary Budget Method) Rules* and *National Disability Insurance Scheme (Support Needs Assessment) Rules* have been made. Participants under the age of 16 will start transitioning to new framework plans from 1 July 2027.

The age cohorts align with the age range for the use of the I-CAN assessment tool which can only be administered to individuals who are aged 16 years or over. The delayed transition for children will allow the NDIA to develop an appropriate needs assessment process for children and to enable foundational supports and the proposed Commonwealth model of Thriving Kids to commence for younger children.

The two classes of participants will be broken down further administratively as transition planning continues. The NDIA will continue to work with States and Territories as well as the broader disability community, including participants, families and carers and representative organisations to monitor the progress of transition to new framework plans and identify appropriate cohorts for transition. This will depend on operational considerations as well as feedback from participants and the community on the process and progress of transition.

Consistent with sub-paragraph 35C(c)(i) of the Act, this Instrument provides that all participants must receive a notice that they will transition to a new framework plan within 5 years of the commencement of the Amending Act (which is by 2 October 2029). If it is necessary or appropriate to extend the transition timeframe, the 5-year period can be extended through category A NDIS rules made in accordance with sub-paragraph 32C(c)(ii) of the Act.

Detailed explanation

Name

The Instrument will be called the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Transition to New Framework Plans) Transitional Rule*.

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 item 138 of Schedule 1 to the Amending Act.

Subitem 138(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Amending Act.

Item 139 of the Amending Act provides that certain NDIS rules can be made as transitional rules under item 138 if certain procedural steps will be taken.

Definitions

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

- (a) CEO;
- (b) participant.

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

Act means the *National Disability Insurance Act 2013*.

group 1 participant means a participant who is aged 16 years or older on 1 July 2026.

group 2 participant means a participant who has not yet attained the age of 16 years on 1 July 2027.

Transition to new framework plans – group 1 participants

This Instrument will provide that group 1 participants (that is participants who are aged 16 years or older on 1 July 2026) will receive a notice that they will transition to a new framework plan during the period commencing on 1 July 2026 and ending on 2 October 2029.

Transition to new framework plans – group 2 participants

The Instrument will provide that group 2 participants (that is participants who have not attained the age of 16 years on 1 July 2027) will receive a notice that they will transition to a new framework plan during the period commencing on 1 July 2027 and ending on 2 October 2029.