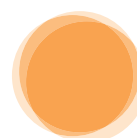


NEW NDIS LEGISLATION

A guide for NDIS participants
APRIL 2022



SUMMER
FOUNDATION

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Introduction

On 30 March 2022, the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2022* passed through both Houses of Parliament.

The National Disability Insurance Scheme (NDIS) is now fully rolled out and the legislation that guided its rollout has been updated. Many of these changes come from an [independent review of the NDIS laws by Mr David Tune](#). We call this "The Tune Review".

The changes add new Rules, fix some existing ones and remove old language that's no longer needed.

The Summer Foundation has produced this document to explain the changes along with some potential issues we see for participants, their decision-supporters and their families.

A table of changes and timeframes can be found [here](#).

The changes aim to provide participants with greater confidence and clarity around what they can expect from the NDIS. This relates to:

- Applying for a plan
- Getting funding
- Applying for additional supports
- Making sure your service providers are giving you the best services they can
- Ensuring the NDIS is funding participants to achieve their goals



People with disability have told us that they would like to have clear information about what the changes are and how the changes apply to them.



"[I really just want] straightforward information, without jargon, which is written in clear language that isn't designed to give them 'wiggle room' when they don't or can't meet the timeline."

Rachel* - Participant

Changes to the legislation

The legislation contains:



The Participant Service Guarantee (PSG)



The Plan Administration Rules (Admin Rules)



Amendments focused on flexibility

It does not affect functional assessments, what is reasonable and necessary or plan budgeting.

Many of these changes were suggested in the 2019 [Tune Review](#).



Section 1: The Participant Service Guarantee (PSG)

The PSG has been placed within the legislation.

This means that the PSG is now the law and the NDIS must follow its standards. The PSG:

- Sets out timeframes, such as letting you know how long it will take to get a decision
- Provides engagement principles between you and the NDIS, such as making sure the NDIA is clear, transparent, and talks to you in your preferred format
- Empowers participants to request reasons for decisions, and receive and talk about a draft plan before it is approved
- Establishes an annual report by the Commonwealth Ombudsman, where the NDIA must demonstrate that the NDIS is being delivered the way the PSG says it must



1.1 Timeframes

Many timeframes are clearer. The NDIA has made a website with their timeframes [here](#).

The Process		Timeframes
Handling access requests: The CEO must either decide on the access request, ask for more information, request an assessment, or request an examination		21 days
Asking for more information		90 days
Developing a participant's plan Assistance to implement a plan		Within 28 days of you agreeing to meet
Starting a scheduled assessment		56 days before the review date
Deciding whether to review a plan		21 days
Review changes the NDIA has agreed to	Small changes	28 days
	Large changes	50 days
Deciding whether to approve statements of supports (starting a new plan)		56 days
Get you a copy of your new plan or a copy of your plan after it was changed		7 days
Cancelling appointments of nominees Periods for cancelling appointments of nominees		14 days
Information required by the agency Period for the Agency to review information or ask for more		28 days, to 90 days
Period for actioning requests relating to a CEO-initiated reassessment, such as providing further information		28 days
Reviewing decisions, either to vary or reassess	Period for giving reasons for a reviewable decision	28 days
	Period for reviewing a reviewable decision	60 days
Administrative Appeals Tribunal (AAT) Period to make changes after being notified by the AAT		28 days
Internal reviews Timeframes for internal reviews		Within 60 days, if not otherwise stated
Other timeframes Resolving a complaint if they can		21 days

As seen on the previous page, the NDIA should complete a reassessment within 28 days for most cases, and within 50 days for addressing complex needs. Ideally, complex funding decisions taking up to 50 days shouldn't hold up the rest of a participant's plan.



"I believe that the chain of command needs to be outlined, including a 'transparent' breakdown of individual timeframes along the way, to keep each investigator/decision-maker accountable at each step in the processes required to achieve that final timeframe albeit 28 or 56 days."

Claire* - Participant



"I feel there are lots of delays with communication from NDIA.... I want them to give more power to us by responding quickly (same or next business day) letting us know how long the process will take. I also want them to make any decisions within a month."

Ali* - Participant



1.2 Engagement principles

The engagement principles and service standards will help people engage with the NDIA.

Participants, decision-supporters and their representatives will be expected to provide timely and accurate information to the NDIA. This will help support quick decision-making and keep the NDIA informed of any changes in circumstance.

The engagement principles consist of:

- a. Transparency** – The NDIA must provide clear, accurate, consistent and up-to-date information about:
 - i. the NDIS
 - ii. participants' plans
 - iii. the funding allocated for their plans and supports
- b. Responsiveness** – Participants' individual circumstances and needs must be addressed to maximise their independence
- c. Respect** – Participants are valued, listened to and respected
- d. Empowerment** – Participants are empowered to make access requests, navigate the NDIS system, participate in the planning process and purchase supports under their plans
- e. Connectedness** – Barriers are removed so participants are connected to the services and supports they need. Information must be provided in participants' preferred formats.



1.3 Reporting performance

The Commonwealth Ombudsman will write a report every year on the performance of the NDIS and the NDIA. It will show how the NDIS is living up to the standards of the PSG. Ideally, the report should:

- a. Be made available to the public
- b. Allow participants, close others and organisations an opportunity for regular consultation with the Ombudsman



"[Reports] might tell them the period of time it took to resolve a request for a review, but not the experience and possible anguish of the person who was waiting for that review request to be resolved. Or it may not tell them about the number of people who have given up on making complaints because it is so difficult."

Rachel* - Participant



"[People with disability] should be involved since we are the ones receiving support and dealing directly with the NDIS."

Claire* - Participant



Section 2: Plan Administration Rules

The Admin Rules outline how participants can get funding to better cover needs, including changing situations that require more supports and funding.

Simple funding requests should be quick, but more complex ones may take longer as the NDIA reviews the evidence you have provided.



"[NDIA] should [get participant agreement to plans] so participants have more control over their own plan and therefore their own lives."

Daniella* - Participant

These Admin Rules:

- Set out circumstances for varying a plan without requiring a review or creating a new plan (see **reassessments** and **variations** below)
- Set out circumstances for the NDIA to conduct a participant or CEO-initiated plan review
- Describe when the NDIA may intervene in the market to help a participant access their NDIS supports
- Set record keeping expectations for people receiving NDIS funding

2.1 Plan variation

There is new, less confusing terminology around plan “reassessments” and “variations”.

Reassessments involve the collection of evidence that informs the creation of a *new plan*.

Reassessments can happen when people:

- Experience significant changes in circumstance
- Have changes in the level of support they need
- Require additional funding to achieve a new goal

Plan variations are a new concept, replacing the existing ‘review’ and allowing people to request minor changes that will *update*, rather than replace, their current plan.

Plan variations consist of:

- Changes to a participant’s goals
- Crisis or emergency funding due to significant changes in supports
- Changes to plan management type after risk assessment, applying or adjusting a compensation reduction amount
- Implementation of an Administrative Appeals Tribunal decision

Note: This will be especially useful for people needing simple home modifications or Assistive Technology.

The legislation makes it clear when participants can initiate a plan variation or reassessment. There are 2 options for plan changes for relatively simple or larger changes:

1. The NDIA can **vary** a plan without a reassessment or creation of a new plan
2. The NDIA can require a **reassessment** of a participant’s plan

Note: With the NDIA being able to initiate a plan variation, it is good to speak up about your goals and the types of support you will need funded to achieve those goals.



“Earlier this year my whole plan was reviewed and a new one put in its place. My plan manager was informed before I was. Some of the plan was okay, but it didn’t include many of the things that I needed – for example it didn’t even include the level of support that I had been previously receiving.”

Rachel* – Participant

2.2 Fit-for-purpose

The NDIA has told Australians with disability that participants have a right to choose where they live and who they live with.

This means that NDIS planning decisions must not force people into shared living arrangements with people or providers they have not chosen. This is consistent with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and with an ordinary life.



“You spend so much time preparing for the plan, so you’d like to be able to discuss changes if the plan is going to be changed.”

Daniella* – Participant

2.3 Market intervention

The NDIA may intervene in the market to help a participant access their NDIS supports.

This may happen in “thin markets”, where there aren’t a lot of providers to choose from. The NDIA has the power to act quickly to fill service gaps and:

- a. Assist one or more participants to access supports
- b. Assist a participant who is a child under 7 to access support before the child’s plan comes into effect in relation to the child’s disability support needs



Section 3: Amendments

3.1 Conflicts of interest

Participants must be protected from providers' conflicts of interest. The updates to the NDIS Plan Management Rules provide clarification around conflicts of interest, such as the separation of housing and supports.

The legislation helps reduce conflicts of interest. Supports are not to be provided by particular providers if:

- a. The NDIA determines supports are not likely to substantially improve outcomes for the participant or won't benefit the participant in the long term
- b. Another person or provider could provide support, and are likely to provide better outcomes
- c. If the participant has particular cultural safety needs and supplying a support creates a risk to the participant's long-term wellbeing
- d. Supplying a support is likely to negatively affect the participant's inclusion in their community and ability to exercise choice and control around other supports
- e. If there is a risk that the person may inappropriately influence participants' choices of other providers of supports
- f. There is a risk that supplying a support may cause harm (including financial harm)
- g. If providers refuse to supply a support or refuse to provide a support in the way described within the participant's plan

The best way to avoid conflicts of interest is to ensure all your housing and supports are provided by completely separate providers.

Make sure your support coordinator is independent of any other service provider. They will help you to navigate the rest.

3.2 Funding

The legislation sets out criteria to protect participants from unintended harm. This is meant to ensure that NDIS participants will not be exploited and that people who self-manage will not be at greater risk of being taken advantage of.

Participants will need to demonstrate their ability to self-manage, including their ability to manage finances.

If you would like to self-manage your plan, ask the NDIA to provide funding to build your capacity around self-management and to enable you to access supporters (family or paid) that will assist you to make the best decisions.

The changes mean that participants will now have the option to have funds withdrawn from their plan to pay providers immediately at the point of sale, allowing for faster and easier payment.



3.3 Becoming a participant

There is now more clarity around when psychosocial disabilities, including ones that are episodic or fluctuate, are to be considered as permanent and life-long disabilities.

The NDIS terminology has been updated from 'psychiatric condition' to 'psychosocial disability' as this is far more accurate.

A psychosocial disability is more likely to be considered permanent or likely to be permanent if:

1. Both

- a. The person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person's mental, behavioural, or emotional condition

and

- b. The treatment has not led to a substantial improvement in the person's functional capacity, after a period of time that is reasonable considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates)

or

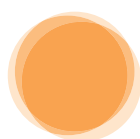
2. No appropriate treatment for the purpose of managing the person's mental, behavioural, or emotional condition is reasonably available to the person

While it's great to see further clarification around psychosocial disability, more support needs to be provided so individuals can access 'appropriate treatments' to meet these NDIS eligibility requirements. There are various economic, social and geographical reasons why people may not yet have access to these.

3.4 Changes in the legislation

For more information on these changes, as well as some of the new timeframes, please see

 [NDIS Legislation: A resource for understanding changing timelines.](#)



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