

National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

Public Hearing – 25 July 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

**Topic:** National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 [Provisions]

**Question reference number:** IQ24-000123

**Question asked by:** Linda Reynolds

**Type of Question:** Spoken.      **Hansard Page/s:** 17

**Date set by the Committee for the return of answer:** 31 July 2024

**Question:**

Senator REYNOLDS: can you take on notice the timeline and requirements for each of the 34 new rules. I'd like to know which ones will take effect from royal assent, and, of the 27 category (a) that require unanimous agreement, which ones are those and when will they go to states and territories for approval? I'd like the same with categories (b) and (c). I'd also like the timeline: what are the six allowable instruments and what is the timeline in what they actually do? It would be incredibly helpful if you could answer that.

Ms Shannon: Attachment (a) to the joint submission from the three agencies here goes to that, in relation to the bill prior to the amendments in the House. It doesn't capture the additional rules or rule-making powers that are part of the parliamentary amendments but a lot of that information is outlined there. So we can add to that table.

Senator REYNOLDS: Could you update that so it's completely up to date for all of us, so we can clearly see what this will do? We also need to understand, with the \$60 billion of savings, particularly over the forward estimates, which ones of these rules will impact on the ability to make those savings with these new measures and which ones will come into effect.

**Answer:**

The table at **Attachment A** provides the full list of rule-making powers and instruments in the National Disability Insurance Amendment (Getting the NDIS Back on Track No.1) Bill 2024. The table includes the category of rule/instrument, a description of each power, whether they are expected to have a financial impact on the Scheme, and when they are expected to come into effect.

## Attachment A – Table of NDIS rule and legislative instrument powers and financial prioritisation

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>NDIS supports</b>	New rule-making power to provide that specified supports are or are not NDIS supports for participants or prospective participants generally or specified classes of participants or prospective participants (i.e. what the NDIS will not pay for).	New subsections 10 (1) and (4)	A (requires unanimous state/territory agreement)	Transitional rule – upon commencement Category A rule – when agreed	<b>Yes</b>
<b>Access settings</b>	Replacement of rule-making power with expanded scope and flexibility to make rules for the purposes of disability requirements or early intervention requirements for Scheme access including methods or criteria to be applied and circumstances in which a matter relevant to disability requirements or early intervention requirements is taken to exist or not exist concerning a prospective participant.	New section 27	A	When agreed	<b>Yes</b>
<b>Access settings</b>	New rule-making power to expand scope to permit rules to be made for circumstances in which supports are taken to have been acquired or provided after the person ceases to be a participant	New subsection 29(3)	A	When agreed	<b>No</b>
<b>Access settings</b>	New rule-making power to prescribe circumstances in which the CEO must consider whether a participant continues to meet the early intervention requirements or the disability requirements. Rules may also prescribe requirements, criteria or certain matters that are relevant to the CEO's decision.	New subsections 30A (1) and (2)	A	When agreed	<b>Yes</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Access settings</b>	Power to specify details and information that must be included in the notice of decision to participants under section 30A	New subsection 30A (9)	D (requires consultation with states and territories)	When agreed	<b>No</b>
<b>Information-gathering PA112 REVISED</b>	New rule-making power to support newly proposed list of matters to which the CEO is to have regard to when determining whether it was reasonable for participant to not have complied with a request for information within a specified period. Relates to discretionary revocation.	Proposed paragraph 30(6A)(f)	A	When agreed	<b>No</b>
<b>Information-gathering – PA112 REVISED</b>	New rule-making power to support CEO in considering whether it was reasonable for a person to not have complied with a request for information made under section 30A within a specified period. Relates to mandatory revocation.	Proposed paragraph 30A(7A)(f)	A	When agreed	<b>No</b>
<b>Information-gathering – PA112 REVISED</b>	New rule-making power to support CEO in considering whether it was reasonable for a person not to have complied with a request for information made under section 36 within a specified period. Relates to information and reports requested for the purpose of preparing and approving a participant’s plan.	Proposed paragraph 36(3A)(f)	A	When agreed	<b>No</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Plan and budget setting – general</b>	New rule-making powers relating to the timeframes in which the CEO must begin the preparation of subsequent plans.	New paragraph 32(4)(b)	C (requires majority agreement of states/territories and the Commonwealth)	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New power to make a ministerial determination to determine classes of participants that are to receive a new framework plan and for each class, to determine the period within which the CEO must give notice to participants in that class.	New subsection 32B(1)	Disallowable legislative instrument	When developed	<b>Yes</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to specify details that must be included in a notice that a participant is to have a new framework plan.	New subsection 32B(3)	D	When developed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New power to make a ministerial determination to set a longer or shorter transition period than 5 years.	New subsection 32C(2)	Disallowable legislative instrument	Only if required	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making powers relating to the timeframes in which the CEO must make a decision about approving a participant's statement of supports in a new framework plan	New paragraph 32D(4)(a)	C	When agreed	<b>No</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Plan and budget setting – new framework plans</b>	Additional matters CEO must be satisfied of in deciding to approve general supports in a statement of participant supports.	New subparagraph 32D(6)(b)(ii)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	Matters the CEO must be satisfied of in approving a statement of participant supports.	New paragraph 32D(6)(f)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	Additional matters that may be included in a participant's plan	New subsection 32D(8)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe what must be a stated support for participants generally or specified classes of participants	New subsection 32E(4)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe circumstances in which the CEO may quarantine a portion of a flexible budget for a particular purpose	New paragraph 32F(7)(c)	A	When agreed	<b>Yes</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe stated supports that are not subject to a funding period (such as home modifications)	New subsection 32G(4)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe requirements relating to the provision or acquisition of supports (such as obtaining a quote)	New paragraph 32H(2)(d)	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe requirements, methods, criteria or matters to be taken into account by the CEO in making decisions relating to certain parts of a participant's plan and/or reasonable and necessary budget	New section 32J	A	When agreed	<b>No</b>
<b>Plan and budget setting – new framework plans</b>	New ministerial determination-making power to determine methods for working out total funding amounts for flexible funding and stated supports	New subsection 32K(2)	Disallowable legislative instrument	After stakeholder engagement	<b>Yes</b>
<b>Plan and budget setting – new framework plans</b>	New rule-making power to prescribe matters that the CEO must be satisfied of in deciding whether a replacement needs assessment should be undertaken	New paragraph 32L(7A)	A	When agreed	<b>Yes</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Plan and budget setting – new framework plans</b>	<p>New ministerial determination-making power to determine assessment tools to be used in undertaking a needs assessment, requirements for undertaking an assessment, information that must be included in a needs assessment report and requirements that a needs assessment report must meet.</p> <p>These assessment tools will be the basis for determining the participant's needs and therefore their reasonable and necessary budget.</p>	New subsection 32L(8)	Disallowable legislative instrument	After stakeholder engagement	<b>Yes</b>
<b>Plan and budget setting – old framework plans</b>	New ministerial determination-making power to prescribe how total funding amounts and total component amounts will be worked out and how funding periods will be set. The determination may also prescribe requirements, methods or criteria and matters to be taken into account by the CEO in making a decision on funding amounts and/or funding periods.	New subsection 33(2E)	Disallowable legislative instrument	After stakeholder engagement	<b>Yes</b>
<b>Plan and budget setting - general</b>	New rule-making power to specify circumstances in which supports are taken to be, or not taken to be provided or acquired during a period of suspension of a statement of participant supports.	New subsection 41(3)	A	When agreed	<b>No</b>
<b>Plan management</b>	New rule-making power to prescribe circumstances in which a new framework plan must be managed by the Agency or other relevant person or entity.	Paragraph 43(2C)(c)	A	When agreed	<b>Yes</b>

Topic	Rule amendment	Bill reference	Category of NDIS Rules	Timing	Financial Implications
<b>Plan management</b>	New rule-making power to prescribe requirements, methods or criteria and matters that are relevant to the CEO making a plan management decision for new framework plans	Subsection 43(2D)	A	When agreed	<b>No</b>
<b>Plan management</b>	New rule-making power to prescribe circumstances in which a person or entity managing funding for supports under a plan would present an unreasonable risk to the participant.	New subsection 44(4)	A	When agreed	<b>Yes</b>
<b>Plan management</b>	New rule-making power prescribing criteria to apply and matters to consider in considering the risk of non-compliance with section 46 (acquittal of NDIS amounts)	New subsection 44(5)	A	When agreed	<b>No</b>
<b>Payment of NDIS amounts</b>	New rule-making power to prescribe what constitutes exceptional circumstances for the purposes of making a payment that would be in excess of a total amount of funding allocated under a participant's old or new framework plan	New subsection 45(5)(e)	A	When agreed	<b>Yes</b>
<b>Plan variations</b>	New rule-making power prescribing circumstances in which the CEO may vary a participant's reasonable and necessary budget	New subparagraph 47A(1AB)(j)(iii)	A	When agreed	<b>Yes</b>
<b>Plan variations</b>	New rule-making power to prescribe matters that the CEO must be satisfied of when varying the statement of participant supports in a new framework plan	New paragraph 47A(2A)(f)	A	When agreed	<b>Yes</b>



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<b>Plan management – children</b>	New rule-making power to prescribe circumstances in which a person or entity managing funding for supports under a child’s plan would present an unreasonable risk to the child.	New paragraph 74(3C)(c)	A	When agreed	<b>Yes</b>
<b>Plan management – children</b>	Existing rule-making power to prescribe matters that must not be managed by a person (existing power replicated in replaced 74(4)(b))	Replacement subparagraph 74(4)(b)(ii)	A	When agreed	<b>Yes</b>
<b>Plan management – children</b>	Replacement of existing rule-making power with expanded scope and flexibility to make rules for the purposes of making decisions about the management of a child’s plan	Replacement subsection 74(6)	A	When agreed	<b>No</b>
<b>Quality and Safeguards</b>	New rule-making power to prescribe conditions relating to the appointment of approved quality auditors.	New subsection 73U(4A)	D	When completed	<b>No</b>
<b>Quality and Safeguards</b>	New rule-making power to prescribe requirements with which the Commissioner must comply, criteria or matters the Commissioner must or must not regard in deciding to appoint quality auditor	New subsection 73U(9A)	D	When completed	<b>No</b>
<b>Transitional rules</b>	New ministerial transitional rule-making power to permit Minister to make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions)	Item 138(1)	Disallowable Legislative Instrument (standard for transitional rules)	If required	<b>No</b>

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<b>Existing Rules</b>	<p>Consequential amendments to existing Rules to ensure they operate in line with new Rules, and in line with the recommendations from the review.</p> <p>Introduction of Participant Service Guarantee with updates to recommendations from the Review</p>	N/A	Various	When agreed	<b>Yes</b>