

Explanatory Statement

Issued by the authority of the Minister for the National Disability Insurance Scheme

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Variation and Reassessment of Participants' Plans) Rules 2025

Purpose

The *National Disability Insurance Scheme (Variation and Reassessment of Participants' Plans) Rules 2025* (the Instrument) is made for the purpose of sections 47A and 48 of the *National Disability Insurance Scheme Act 2013* (NDIS Act). It provides conditions that must be satisfied before the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA) can vary a participant's plan. It also provides a number of matters that the CEO must have regard to in deciding whether or not to conduct a reassessment of a participant's plan.

Specifically, the Instrument:

- includes conditions that must be satisfied for a variation of a participant's plan to provide crisis or emergency funding as a result of a significant change to their support needs,
- includes conditions that must be satisfied in order to conduct a minor variation of a participant's plan to include an increase to the funding of supports under the plan,
- prescribes that a variation of a plan reassessment date must not result in a plan being in effect for any more than 5 years without a reassessment, and
- sets out that the CEO must have regard to changes in the participant's functional capacity, informal supports, living arrangements, life stage or transition and other important circumstances when making a decision about whether to reassess the participant's plan.

Background

Participants in the National Disability Insurance Scheme (NDIS) receive funding for supports through a participant plan. The participant plan is developed by the CEO with the participant and includes the participant's statement of goals and aspirations and the statement of participant supports. Once a statement of participant supports has been approved, the CEO may vary or reassess a participant's plan upon request of the participant or of their own initiative. These are the main ways in which changes are made to a plan after it has come into effect. The other mechanism for changing a statement of participant supports is to request review of the decision to approve that statement.

Variation and reassessment of plans

Variation

Variation of a participant's plan on request of the participant or on the CEO's own initiative is captured under section 47A of the NDIS Act. For the CEO to vary a participant's plan, the variation must be a 'permitted' variation and any conditions specified in NDIS rules must also be satisfied. Each variation must be prepared with the participant (subsection 47A(1)).

Subsection 47A(1A) sets out permitted variations to old framework plans for a range of elements contained within the statement of participant supports. This includes:

- a variation of the plan's reassessment date or the circumstances in which the Agency must reassess the plan,
- a variation of a funding component amount, group of reasonable and necessary supports, total funding amount or funding period where those are specified in the statement of participant supports,
- a variation relating to management of funding for supports (known as 'plan management'),
- a variation of the statement of participant supports included in the plan, or of the funding of supports under the plan, if:
 - the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant's support needs; or
 - after the participant's plan comes into effect, the CEO receives information in response to a request that had been made under subsection 36(2) or 50(2) in relation to the plan (other than a request made under subsection 50(2) for the purposes of varying the plan on the CEO's own initiative), and the variation relates to that information; or
 - the variation is made for the purposes of dealing with a change to the reassessment date of the participant's plan; or
 - the variation is a minor variation that results in an increase to the funding of supports under the participant's plan.

Subsection 47A(2) clarifies that the CEO may vary a participant's plan either upon request of the participant or on the CEO's own initiative.

Subsection 47A(4) provides that if the participant requests a variation of the participant's plan, then within 21 days the CEO must do one of the following things:

- make a decision under subsection (1) varying the plan; or
- make a decision not to vary the plan; or

- inform the participant that the CEO requires further time to decide whether or not the plan needs to be varied.

If the CEO does not do a thing under subsection (4) within that 21-day period, subsection 47A(5) provides that the CEO is taken to have decided not to vary the plan.

If a participant's plan is varied, subsection 47A(11) provides that the Agency must provide a copy of the varied plan to the participant within 7 days of the variation taking effect.

It is important to note that a decision to vary, or not vary, a participant's plan is a reviewable decision under section 99 of the NDIS Act. Nothing in this instrument affects the review rights of participants in any way.

Reassessment

Every participant's plan contains a 'reassessment date'. This date is defined in section 9 of the NDIS Act to be:

- if the plan is a new framework plan—the day after the end of the maximum period of effect specified in the plan under paragraph 32D(2)(d); or
- if the plan is an old framework plan—the date specified in the plan under paragraph 33(2)(c) [which requires the CEO to specify the date by which a plan must be reassessed].

Under section 49 of the NDIS Act, the CEO must conduct a reassessment of the participant's plan before the reassessment date.

Additionally, the CEO may conduct a reassessment of a participant's plan at any time under section 48. A variation under section 48 may be conducted on request of the participant or on the CEO's own initiative.

If a participant requests a reassessment of the participant's plan, the CEO must do one of the following things within 21 days:

- make a decision that the plan needs to be varied under subsection 47A(1); or
- make a decision that the plan needs to be reassessed; or
- make a decision not to conduct a reassessment of the plan.

If the CEO does not make a decision under subsection (3) within that 21 day period, the CEO is taken to have decided not to conduct a reassessment of the plan.

If the CEO decides to conduct a reassessment on their own initiative, they must complete the reassessment and either:

- vary, under subsection 47A(1), the participant's plan as a result of that reassessment; or

- prepare a new plan with the participant and approve the statement of participant supports in the new plan.

Subsection 48(5) provides that NDIS rules may set out matters to which the CEO must have regard:

- in deciding whether to conduct a reassessment of a participant's plan on the CEO's own initiative; or
- in making a decision in response to a participant's request for a reassessment of their plan.

The CEO must provide a participant with notice of their decision to reassess, or not reassess, their plan. A decision not to conduct a reassessment is reviewable decision under section 99 of the NDIS Act. If the CEO decides to conduct a reassessment, this will either result in a variation of the plan under section 47A or a new plan being prepared and new statement of participant supports being approved under section 33 (for old framework plans) or section 32D (for new framework plans).

The only circumstance where a reassessment is not available is for a participant who has received a notice, in accordance with section 32B of the NDIS Act, that they are to receive their first new framework plan. For those participants, reassessment of their old framework plan will not be possible as they will be imminently receiving a new framework plan. However, a participant in this situation will be able to have their plan varied if there is a need for additional funding or other change to their plan required while they are waiting for their first new framework plan to be prepared and approved.

Power to make the Instrument

The Instrument is made under subsection 209(1) of the NDIS Act. That subsection relevantly provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed by NDIS rules. Specifically, the instrument is made for the purposes of paragraph 47A(1)(b) and subsection 48(5) of the NDIS Act.

Subsection 47A(1)(b) of the NDIS Act provides that NDIS rules may be made for the purposes of prescribing any conditions for the variation of a participant's plan.

In relation to plan reassessments, subsection 48(5) of the NDIS Act prescribes that NDIS rules may be made to set out matters to which the CEO must have regard to in deciding whether to conduct a plan reassessment of the CEO's own initiative, or when considering making a decision that the plan needs to be varied, reassessed or neither.

All NDIS rules and other instruments made under the NDIS Act are exempt from sunseting (see changes to the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR) made by item 123 of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Act 2024* (Back on Track Act). The Instrument is therefore exempt from sunseting, but is still subject to disallowance under section 42 of the *Legislation Act 2003* (Legislation Act).

The Legislation Act establishes a comprehensive regime for the publication of Commonwealth Acts and instruments. Section 62 of the Legislation Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Legislation Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Legislation Act.

Part 4 of Chapter 3 of the Legislation Act provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed 10 years after they are made unless steps are taken to preserve their operation, or the instruments are exempt from sunseting. As set out in section 49 of the Legislation Act, the purpose of sunseting is to ensure that legislative instruments continue to be fit-for-purpose and are kept up to date through regular review.

Section 54 of the Legislation Act provides for instruments to which the sunseting regime in Part 4 of Chapter 3 does not apply. Instruments that are prescribed by regulations made for the purposes of paragraph 54(2)(b) of the Legislation Act are exempt from sunseting.

The LEOMR prescribes instruments that are exempt from sunseting. The LEOMR prescribes classes of legislative instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Legislation Act. In this way, the LEOMR serves as a central source of sunseting exemptions, facilitating whole-of-government management and ensuring that accurate sunseting information can be readily provided to Australian Government agencies, the Parliament and the general public.

Section 12 of the LEOMR provides that NDIS rules and any other instrument made under the Act are exempt from sunseting. This includes the Instrument.

It is appropriate for the Instrument and other legislative instruments made under the NDIS Act to be exempt from sunseting as they form part of an intergovernmental scheme. This is consistent with the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*.

The Instrument is one of a number of legislative instruments made under the NDIS Act that operationalise the NDIS, which is an intergovernmental scheme involving the Commonwealth and all States and Territories. As a result, the Instrument forms an integral part of an intergovernmental scheme.

The Instrument is a Category A NDIS rule, which means it cannot be made without agreement from all states and territories. The Instrument can similarly not be varied or repealed without agreement from all states and territories, consistent with the requirements of section 209 of the NDIS Act.

This results in a situation where, if the Instrument was not exempt from sunseting, it could not be made, amended or repealed without direct involvement of States and Territories except in the case of sunseting where the instruments will be automatically repealed by operation of a Commonwealth law. This is inconsistent with the consultation and agreement requirements for NDIS rules specifically, and with the operation of the NDIS and the Act more broadly. A sunseting exemption is appropriate, and ensures the same consultation and agreement requirements apply

to an instrument being repealed as those that apply to the instrument being made, consistent with the intergovernmental nature of the NDIS.

Outline of instrument

Section 47A of the NDIS Act deals with when a participant's plan can be varied. For a variation to be possible, it must be a 'permitted variation' within the meaning of subsections 47A(1AA) and (1A), relating to new and old framework plans respectively, and any conditions prescribed in NDIS rules made for the purposes of paragraph 47A(1)(b) must be satisfied.

The Instrument prescribes conditions for the purpose of paragraph 47A(1)(b). These conditions only attach to specific types of variations, meaning that for any type of variation not mentioned in this instrument there are no additional conditions to be satisfied. The Instrument prescribes conditions only for variations of old framework plans, and specifically only the following types of variations:

- a variation of the plan's reassessment date – paragraph 47A(1A)(a),
- a variation of the statement of participant supports included in the plan, or of the funding of supports under the plan, because the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant's support needs – subparagraph 47A(1A)(d)(i), and
- a variation of the statement of participant supports included in the plan, or of the funding of supports under the plan, where the variation is a minor variation that results in an increase to the funding of supports under the participant's plan – subparagraph 47A(1A)(d)(iv).

The conditions that are prescribed in relation to these types of variations will clarify the circumstances in which a variation of this type is available to a participant that has an old framework plan. If the specified conditions are not met, that particular kind of variation cannot be done. However, this does not prevent the participant from accessing a variation of a different type, or requesting a reassessment of their plan under section 48 of the NDIS Act. The CEO may also choose to conduct a reassessment of the participant's plan and prepare a new plan for the participant if a variation is unavailable as a result of the conditions prescribed by this instrument.

Section 48 of the NDIS Act deals with reassessment of a participant's plan on the CEO's own initiative or on request by a participant. Subsection 48(5) provides that NDIS rules may set out matters to which the CEO must have regard in deciding whether to conduct a reassessment on their own initiative, or in making a decision in response to a request for reassessment made by a participant.

The Instrument prescribes a range of matters to which the CEO must have regard in making a decision about reassessment of a participant's plan. In making this decision, the CEO must give genuine consideration to each of the specified matters. However, the matters are not criteria to be applied or conditions to be satisfied, and are only matters that must be considered to guide the CEO's decision-making. Consideration of these matters will not necessarily lead to a particular outcome, as it will be a matter for the CEO to consider each matter and decide whether it weighs in favour or against a particular decision being made.

Commencement

The Instrument commences the day after it is registered on the Federal Register of Legislation.

Consultation

The design of the Back on Track Act has been a collaborative exercise, relying heavily on substantial contributions made by the disability community through the NDIS Review.

The NDIS Review found that NDIS processes should be fair and clear and easier for people with disability and their families to understand. Participants should know and understand how decisions about the funding in their NDIS plans will be made.

The Back on Track Act permits the CEO to approve permitted variations for both old framework and new framework plans. A number of circumstances in which the CEO may vary the amount of a participant's reasonable and necessary budget were prescribed directly in the NDIS Act. These were matters previously to be dealt with via NDIS rules. The changes will provide important clarity for participants and ensure that additional funding can be provided in circumstances that justify it including, where the CEO is satisfied a person requires emergency funding because the participant has experienced fraud or financial exploitation or is necessary to prevent or lessen a threat to the participant's life, health or safety.

Permitted variations that impact the plan budget are set out on the face of the NDIS Act. Utilising existing and new rule-making powers, rules will prescribe matters for delegates to consider when determining whether to vary a plan.

The rules for reassessment will outline matters to consider when deciding whether to reassess a plan. These may include that exhausting NDIS funds alone is generally not a valid reason for a plan reassessment. Valid reasons may include a significant change of circumstances such as declining or improving functional capacity, a significant change in informal supports, new living arrangements or a change in compensation entitlements.

The Variation and Reassessment rules are made for the purposes of the following:

- Plan variation conditions – paragraph 47A(1b); and
- Plan reassessment matters – subsection 48(5).

Across the period 11 to 25 November 2024 the department and NDIA facilitated consultation to consider the implementation of NDIS policy and rules regarding conditions and matters for plan variations and matters for plan reassessments. The sessions have focused on the intent of policy underpinning the proposed rules and how it will be operationalised.

Over ten sessions have been facilitated regarding variations and reassessment and have occurred with members of the below groups:

- Independent Advisory Council (IAC)

- Implementation Steering Committee
- Participant Safeguarding co-design Group
- Participant Reference Group
- National Mental Health Sector Reference Group
- Assessment and Budgeting Working Group
- First Nations stakeholders
- Integrity Working Group
- Joint Disability Representative and Carers Organisations (DRCOs)
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group.

In addition to direct engagement with the disability community, there has been consultation with States and Territories utilising established governance arrangements under the Disability Reform Ministerial Council.

All feedback has formed a key part of the input into the Variation and Reassessment Rules and how it will be implemented and operationalised by the NDIA.

In relation to variations in particular, stakeholders emphasised the importance of considering a participant's circumstances as a whole – for example, a change in social or health circumstances that may constitute a minor inconvenience for one person may be experienced by another as an emergency.

Participants were also concerned to ensure that matters that may reasonably be predicted – for example, deterioration in condition, or equipment failure – should be capable of being treated as an emergency.

In relation to reassessments, stakeholders identified the importance of key life stages and transitions to participants – including the death of loved ones and supporters, diagnosis of terminal illness and key life stages such as pregnancy, or transitioning to or from school as times where reassessments may be more appropriate than a simple variation.

Feedback was consistent with the rule intent to support setting out clearer conditions that must be met in respect of varying a participant plan, as well as matters the NDIA must consider when deciding whether to reassess a participant's plan. These rules codify existing practice and guidance into the rules to ensure an improved participant experience, promote transparency and allow participants to understand how decisions are made. They also help to address the risk of intra-plan inflation by clarifying when variations and reassessments can be undertaken – supporting sustainability initiatives pursued by government as a means of ensuring the NDIS is sustainable for generations of Australians into the future.

Feedback provided has also informed the way the NDIA will implement the Instrument including staff training and how the new rule will be communicated with the disability community.

Regulation Impact Analysis (RIA)

The Office of Impact Analysis has agreed to the use of the Final Report of the Independent Review of the NDIS delivered to Governments in December 2023 as an Impact Analysis Equivalent. A link to the report can be found on the NDIS Review website www.ndisreview.gov.au.

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

This instrument is the *National Disability Insurance Scheme (Variation and Reassessment of Participants' Plans) Rules 2025*.

Section 2 – Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This instrument is made under subsection 209(1) of the NDIS Act. That subsection relevantly provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed by NDIS rules.

Specifically, the Instrument is made for the purposes of paragraph 47A(1)(b) and subsection 48(5) of the NDIS Act.

Section 4 – Definitions

The Instrument provides definitions for terms used in the Instrument. This includes defining the NDIS Act, along with a note to advise the reader that a number of expressions used in this instrument are defined in the NDIS Act. Those expressions include the following:

- (a) CEO;
- (b) child;
- (c) compensation;
- (d) NDIS support;
- (e) participant;
- (f) plan;

- (g) reassessment date;
- (h) statement of participant supports;
- (i) supports.

Part 2 – Variations

Section 5 – Variation of a participant’s plan – conditions that must be satisfied

Subsection 5(1) sets out that this section is made for the purposes of paragraph 47A(1)(b) of the NDIS Act, relevantly applying to the variation of participant’s plans by the CEO. Paragraph 47A(1)(b) provides that NDIS rules may prescribe conditions that must be satisfied for the CEO to vary a participant’s plan.

Conditions to be satisfied – variation of a plan’s reassessment date

Subsection 5(2) applies to a variation captured by paragraph 47A(1A)(a) of the NDIS Act that is a variation of the reassessment date of the old framework plan.

Paragraph 47A(1A)(a) applies only to old framework plans, and provides that a variation of the plan’s reassessment date or the circumstances in which the Agency must reassess the plan is a permitted variation.

Subsection 5(2) attaches only to a variation of the plan’s reassessment date. It provides a condition that the variation must not result in the plan being in effect for more than 5 years without a reassessment.

This is an important timeframe to put in place, as it will ensure participants have the benefit of a full reassessment of their plan at least once every 5 years. While many participants have stable needs that do not change from year to year, every participant is an individual person who has a varied experience of life that may change over time. This condition ensures there is an appropriate check-in at least once every five years to make sure the participant’s plan is continuing to meet their needs.

Conditions to be satisfied – significant change requiring crisis or emergency funding

Subsection 5(3) provides a list of conditions that must be satisfied in order for the CEO to vary a participant’s plan under subparagraph 47A(1A)(d)(i) of the NDIS Act.

Subparagraph 47A(1A)(d)(i) applies to old framework plans and permits a variation of the participant’s plan if the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant’s support needs. A note at the end of subsection 5(3) advises the reader of this.

Paragraph (a) requires that the significant change to the participant’s support needs that requires crisis or emergency funding includes a significant change to the participant’s need for NDIS supports.

This is an important clarification, as NDIS funds can only be used on NDIS supports, even under an old framework plan. A participant may have a situation in their life that

they may consider to be a crisis or an emergency, however, if there is no change to the participant's need for NDIS supports then there would be no need to vary the participant's plan.

Paragraph (b) provides that the support needs of a participant must be significantly changed as a result of one or more of the following factors:

- (i) a change in the participant's functional capacity;
- (ii) a change in the participant's informal supports;
- (iii) a change in the participant's living arrangements.

Each of these provisions cover different potentially significant changes that a participant may experience and that may result in a need for crisis or emergency funding. A participant may require crisis or emergency funding as a result of one of the above factors or a combination, noting these are three key aspects of a participant's life and in many circumstances will be inextricably linked.

For example, a participant with a degenerative condition who experiences a sudden and significant decline in their functional capacity may urgently require a wheelchair for mobility while a reassessment is undertaken.

A change in informal supports would cover circumstances such as the sudden death or hospitalisation of a carer or family member, and a change in living arrangements may cover circumstances such as a sudden move into a new home or environment such as a shared living environment. If the change is permanent or long term, a plan reassessment and new plan may also be required for the longer term.

In the above example of the participant who requires a wheelchair, this participant may also be unable to live at home as a result of the significant change in their functional capacity. If the participant is required to move, this is likely to be a change in their informal supports as well as their living arrangements. However, any one of these three circumstances would be sufficient to meet this condition if it resulted in a significant change to the participant's support needs.

Paragraph (c) requires that the significant change in the participant's support needs requires an urgent change to their plan.

This condition requires that urgent action is necessary, which is consistent with this type of variation only being available to a participant in need of emergency or crisis funding (rather than just additional funding of a less urgent kind). Where the participant requires an increase in funding as a result of a change to their support needs, but this is not urgent (for example, because the participant is not at immediate risk or will not be negatively impacted by their plan not being changed immediately), the appropriate course is for NDIA to reassess the participant's plan and prepare an entirely new plan that meets their changed needs.

It is important to note that the CEO has discretion to reassess a participant's plan at any time. If a participant has requested a variation, but the CEO considers that a

reassessment and new plan would be more appropriate, this is a decision that the CEO is able to make.

For example, a participant may require crisis or emergency funding because their primary carer was in an accident and has been hospitalised. On the other hand, a participant's primary carer may be undergoing planned surgery in three months' time, which would allow time for alternative arrangements to be considered and put in place. This latter example is unlikely to be considered crisis or emergency funding that requires an urgent change to the participant's plan.

Paragraph (d) requires that crisis or emergency funding for the participant be required:

- (i) for a specific period of time, or
- (ii) for a support that will only be provided once only.

A specific period of time may be a length of time, such as one month, or it may be the period until a specific event occurs, such as until the participant's family member is home from hospital or until the participant's plan is reassessed.

The wheelchair required by the participant in the above example would be an example of funding for a support that will be provided once only.

Paragraph (e) requires that the crisis or emergency funding required by the participant is appropriately funded by the NDIS and not more appropriately funded by another Commonwealth program or law, or a State or Territory program or law.

For example, if a participant's home is significantly damaged by a natural disaster such as a storm, the crisis or emergency funding they require would be captured by natural disaster payments and possibly crisis accommodation funding, both of which are funded through programs other than the NDIS.

However, if the same participant requires a higher level of assistance with daily living while residing in alternative accommodation, due to a lack of accessibility or appropriate modifications in that accommodation, then the NDIS would fund additional support worker hours by way of a plan variation until the participant can return to their home.

Conditions to be satisfied – minor variation that results in an increase to the funding of supports under the plan

Inclusion of an additional reasonable and necessary support

Subsection 5(4) applies to variations covered by subparagraph 47A(1A)(d)(iv), which applies to old framework plans, of the NDIS Act, but only where that variation would specify an additional reasonable and necessary support in the participant's plan.

Subparagraph 47A(1A)(d)(iv) provides that the CEO may vary the statement of participant supports in an old framework plan, or for the funding of supports under

the plan, if the variation is a minor variation that results in an increase to the funding of supports under the participant's plan. A note to the end of subsection 5(4) advises the reader of this.

This subsection applies to a limited class of variations within those captured by subparagraph 47A(1A)(d)(iv), which is a variation to include an additional reasonable and necessary support in a participant's plan.

Subsection 5(5) provides conditions that must be satisfied for a variation that is covered by subsection 5(4). That is, subsection 5(5) prescribes conditions for a variation of the statement of participant supports in an old framework plan, where that variation is a minor variation that results in an increase to the funding under the plan and would specify an additional reasonable and necessary support in the participant's plan.

Paragraph (a) provides that one of the following must be applicable in relation to the additional reasonable and necessary support:

- (i) the support is required for only a specific period of time; or
- (ii) the support is only provided once.

A specific period of time may be a length of time, such as one month, or it may be the period until a specific event occurs, such as until the participant has adjusted to their new circumstances or until the participant's plan is reassessed.

For example, a family has decided that their child is going to start school one year earlier than anticipated when their plan was approved. To support the child in this transition, funding for capacity building must be provided for a period of 6 months prior to them starting school and to support the initial term.

Paragraph (b) provides that one or more of the below must apply to the additional reasonable and necessary support:

- (i) the support is a replacement, repair or maintenance of assistive technology that was provided in the current plan or a previous plan;
- (ii) the support is urgently required to support the participant's economic participation for a specified amount of time;
- (iii) the support is urgently required to support the participant's capacity building or a life transition for a specified amount of time.

Continuing the above example, including additional capacity building supports in the child's plan would support their capacity building and transition to school for a specified six-month period. Further, the additional reasonable and necessary support would be urgently required to support the child's life transition and capacity building as it must be in place in time to adequately support the child with preparation for and attendance at school.

Paragraph (c) provides that the additional reasonable and necessary support provided must not be substantially the same as, or provide substantially the same outcome, as any existing supports within the plan. This applies only to supports

covered by subparagraphs (b)(ii) and (iii), meaning it does not apply to a support that is a replacement, repair or maintenance of assistive technology that was provided in the current plan or a previous plan.

This will prevent supports being duplicated in a participant's plan, ensuring a variation is only able to be performed where the participant has a genuine need for an additional support that is above and beyond what is already in their plan.

If the same child from the above example was already receiving sufficient capacity building supports within their plan, it would be a duplication of supports to provide additional capacity building to achieve the same outcome. Alternatively, if an adult participant had capacity building behavioural supports in their plan but was requesting additional capacity building supports for speech pathology to support improved speech and communication, this would not be considered a duplication of supports because the purpose of the supports is different with each working towards a different outcome.

Increase in funding for specifically identified reasonable and necessary supports

Subsection 5(6) applies to variations covered by subparagraph 47A(1A)(d)(iv) of the NDIS Act, but only where:

- (a) that variation would increase the amount of funding available for a reasonable and necessary support that is specifically identified in the participant's plan, and
- (b) the specifically identified support is described as home modification design and constructions, vehicle modifications, or assistive technology.

As mentioned above, subparagraph 47A(1A)(d)(iv) provides that the CEO may vary the statement of participant supports in an old framework plan, or for the funding of supports under the plan, if the variation is a minor variation that results in an increase to the funding of supports under the participant's plan. A note to the end of subsection 5(6) advises the reader of this.

Similar to subsection 5(4) described above, subsection 5(6) applies to a subset of variations covered by subparagraph 47A(1A)(d)(iv) which is a variation to the amount of funding provided for a specifically identified support mentioned in paragraph 5(6)(b).

Subsection 5(7) prescribes conditions for a variation to which subsection (6) applies. That is, subsection 5(7) prescribes conditions for a variation of the statement of participant supports in an old framework plan, where that variation is a minor variation that results in an increase to the funding under the plan for home modifications, vehicle modifications or assistive technology.

Subsection (7) prescribes a condition that the participant requires additional funding for the identified support as a result of one or more of the following circumstances:

- (a) the support is no longer available to the participant within the amount of funding within the statement of participant supports;

For example, a participant has funding in their plan for vehicle modifications on the basis of an approved quote. When they contact the provider to arrange the modifications, they are advised that the cost of the modifications has increased due to the manufacturer raising the cost of one of the required parts. Additional funding is required to cover the increased cost.

- (b) the manner in which the support was meant to be provided is no longer reasonably available

For example, a participant was scheduled to have their assistive technology provided and fitted by a single provider who travelled to their region for regular clinics. That service has been withdrawn and the participant now needs to pay for delivery to site and for a local physiotherapist to assist with fitting the AT. These arrangements and costs are more than the quoted fees for the original provider.

- (c) the provision of the support requires additional information such as quotations or assessments, or services or materials that were not expected when the support was included in the statement of participant supports.

For example, a participant may have home modifications funded in their plan but after home modification work commenced it became apparent that there was a need to also repair the floor substructures damaged by rot or termites. As a result, additional services and funding is needed to safely complete the approved home modification.

Part 3 – Reassessments

Section 6 – Reassessment of participant’s plan—matters to which the CEO must have regard

Subsection 6(1) states that this section is made for the purposes of subsection 48(5) of the NDIS Act.

Subsection 48(5) of the NDIS Act provides that NDIS rules may set out matters to which the CEO must have regard in deciding whether to conduct a reassessment of a participant’s plan of the CEO’s own initiative, or making a decision on a request for reassessment made by a participant.

Subsection 6(2) provides that the CEO must have regard to matters outlined in subsection (3) when:

- (a) deciding whether to conduct a reassessment of the participant’s plan of the CEO’s own initiative, which they may do so at any time under subsection 48(1) of the NDIS Act, or
- (b) making a decision under subsection 48(3) on a request of a participant to reassess the participant’s plan.

A note to paragraph 6(2)(b) reminds the reader of subsection 48(3), which provides that if a participant requests a reassessment of the participant's plan, the CEO must do one of the following things within 21 days:

- (a) make a decision that the plan needs to be varied under subsection 47A(1); or
- (b) make a decision that the plan needs to be reassessed; or
- (c) make a decision not to conduct a reassessment of the plan.

Subsection 6(3) provides the matters to which the CEO must have regard when making a decision whether to conduct a reassessment of a participant's plan of the CEO's own initiative or upon request of the participant.

Each of the matters specified in subsection 6(3) must be considered by the CEO in making a decision under section 48 about reassessment of a participant's plan. In considering each of the listed matters, the CEO will only have regard to suitable information and evidence that is available to them at the time of their decision. Participants will have the opportunity to provide further information and evidence to the CEO in support of their request for a reassessment or if the CEO is considering reassessing the participant's plan on their own initiative.

Paragraph (a) provides that the CEO must consider whether the participant's need for NDIS supports has significantly changed as a result of:

- (i) a change in the participant's functional capacity

This includes where an existing impairment deteriorates, or the participant develops a new impairment. Depending on the circumstances, the participant may also seek to vary their 'notice of impairments' if they have received one under section 32BA.

For example, a participant who previously received supports only for a physical impairment has developed a permanent hearing impairment that causes a substantial reduction in functional capacity for communication. Once the participant is aware of this impairment and has evidence available to demonstrate that it meets the disability requirements, they may apply to the CEO for a reassessment of their plan to ensure they receive supports for all of their impairments that meet the disability or early intervention requirements. If the participant had previously received a notice of impairments, they may also apply to the CEO to vary that notice to recognise their new impairment.

A different participant may be receiving supports for a degenerative neurological condition such as multiple sclerosis. Their plan was initially prepared and approved on the basis of their functional capacity as it was at that time, but it is likely that over time their functional capacity will change due to the progressive nature of their condition. If the participant is no longer able to perform fine motor skills independently due to a deterioration in their functional capacity, they may apply to the CEO for a reassessment of their plan to ensure they have access to the supports they now require.

- (ii) a change in the participant's informal supports

This includes changes in availability and capacity of parents, siblings, extended family and other informal supports to provide support on an ongoing basis (noting a temporary change in their availability is likely to be covered by a variation).

This also includes changes in domestic circumstances such as the participant entering into, or ceasing, a marriage or domestic partnership.

- (iii) a change in the participant's living arrangements.

This includes where a participant has moved into, is at risk of moving into, or will move out of, a residential aged care facility, a justice or hospital setting, or another setting where supports such as supported independent living are required.

This also includes circumstances where a child participant is entering an out of home care arrangement (including where the family of a participant is at risk of not being able to continue with their caring role), or changes to out of home care arrangements.

- (iv) a major life stage change or transition, including starting or leaving school, tertiary education or employment.

This subparagraph is intentionally broad to allow consideration of the varied life stage changes and transitions that people experience in their life. The life stage changes and transitions included in the instrument are intended to provide an example of what kinds of changes are captured, but it is important to note that the provision is non-exhaustive and there are many other major life changes or transitions not mentioned. Other examples of a major life stage change or transition may include changing school or moving from primary to high school; starting work, changing jobs, or changing work hours; returning to Australia after an extended grace period or recommencing a plan that had been suspended; and pregnancy or parenthood. These life events may have an impact upon a participant's need for NDIS supports to prepare for these changes and be supported for their disability specific needs in undertaking these life transitions.

The CEO is not just required to consider whether one of the above circumstances exists, but also whether there has been a significant change to the participant's need for NDIS supports as a result of that circumstance. There may be many examples of a participant experiencing one of the above circumstances without a significant change in their support needs, and in that case it is unlikely to be necessary to reassess their plan. On the other hand, if the participant has experienced a significant change in one of the areas mentioned above and this has also impacted on their need for NDIS supports, this would weigh heavily in favour of the CEO deciding to reassess the participant's plan.

Paragraph (b) requires the CEO to consider whether there has been a change to a participant's entitlement to compensation, or a change in their entitlement to supports in respect of personal injury under a scheme of insurance, or another Commonwealth, State or Territory law.

For example, if a participant receives a personal injury amount under an insurance claim following a car accident or becomes entitled to additional medical treatment under a statutory insurance scheme, the CEO must consider this when deciding whether to reassess the participant's plan. If there has been a change to these entitlements, that is likely to be a factor weighing in favour of a reassessment being conducted. If a participant is no longer entitled to receive supports or compensation this may also be a reason to perform a reassessment of the participant's plan.

If the participant has no such entitlements, and has not ever had such entitlements, this consideration will not be relevant and the CEO will only need to consider whether information before them suggests that the person has become entitled to compensation or other entitlement they previously were not entitled to.

Paragraph (c) requires the CEO to consider when they would next be required to conduct a reassessment of the plan. For this purpose, the CEO must have regard to:

- (i) for an old framework plan, the date or circumstances in which the Agency must reassess the plan;
- (ii) for a new framework plan, the maximum period that the plan can be in effect.

It is relevant for the CEO to consider this, as this will impact on the practical utility in conducting an unscheduled reassessment. For example, if a participant's scheduled reassessment is in less than one month it is likely that a planning meeting has already been scheduled and it would be more efficient for the participant to continue with this process. On the other hand, if a participant's scheduled reassessment date is 6 months away it may be more appropriate to conduct an unscheduled reassessment.

Paragraph (d) requires the CEO to consider any other relevant matters raised by the participant. This enables the participant to raise specific issues that may affect a reassessment of their plan that are not captured by any subsections above and provide supporting evidence or information if they would like to do so. Matters that are raised will only be considered where they are relevant to the decision the CEO is making, which is whether to conduct a reassessment of the participant's plan. The CEO will consider and weigh any matters raised alongside those mentioned above and make a decision based on the individual personal circumstances of the participant.

Paragraph (e) requires the CEO to consider any other matters the CEO considers relevant. This ensures that all relevant matters to a participant's unique circumstances can be taken into account. Matters will only be considered where they are relevant to the decision the CEO is making, which is whether to conduct a reassessment of the participant's plan. The CEO will consider and weigh any matters raised alongside those mentioned above and make a decision based on the individual personal circumstances of the participant.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Disability Insurance Scheme (Variation and Reassessment of Participants' Plans) Rules 2025

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of legislative instrument

The *National Disability Insurance Scheme (Variation and Reassessment of Participants' Plans) Rules 2025* (the Instrument) is made for the purpose of sections 47A and 48 of the *National Disability Insurance Scheme Act 2013* (NDIS Act).

It provides conditions that must be satisfied before the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA) can vary a participant's plan (made for the purposes of paragraph 47A(1)(b)). It also includes matters that the CEO must have regard to in deciding whether or not to conduct a reassessment of a participant's plan (made for the purposes of subsection 48(5)).

The Instrument is made under subsection 209(1) of the NDIS Act. That subsection relevantly provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed by NDIS rules.

Participants in the National Disability Insurance Scheme (NDIS) receive funding for supports through a participant's plan. This is developed by the CEO and includes the participant's statement of goals and aspirations, and the statement of participant supports. Once the statement of participant supports has been approved, the CEO may vary or reassess a participant's plan upon request of the participant, or on their own initiative.

The Instrument :

- includes conditions that must be satisfied for a variation of a participant's plan to provide crisis or emergency funding as a result of a significant change to their support needs,
- includes conditions that must be satisfied in order to conduct a minor variation of a participant's plan to include an increase to the funding of supports under the plan,
- prescribes that a variation of a plan reassessment date must not result in a plan being in effect for any more than 5 years without a reassessment, and
- sets out that the CEO must have regard to changes in the participant's functional capacity, informal supports, living arrangements, life stage or

transition and other important circumstances when making a decision about whether to reassess the participant's plan.

The Instrument will complement recent changes made by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Getting the NDIS Back on Track Act), and will make the NDIS fairer, more transparent, sustainable and person-centred. This Instrument will provide participants clarity and transparency about NDIA decision-making and support consistent decision-making by the NDIA now and as the Scheme transitions to new framework plans.

Human rights implications

The Instrument engages the following human rights:

- Right of people with disability – Articles 3, 4, 5 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16, 24 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- Right for all people to self-determination and to freely pursue economic, social and cultural development – Article 1 of the ICCPR and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- Right for people with disability to live independently and be included in the community – Article 19 of the CRPD

Right to equality and non-discrimination – Articles 3, 4, 5, 12 of the CRPD and Articles 2, 16, 24 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for respect of the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference, acceptance of persons with disability, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disability including their right to preserve their identities.

These rights are reinforced by Article 2 of the ICCPR which states that all steps must be taken to respect and ensure that all individuals have their rights recognised free of distinction of any kind such as, race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status. This is enforced further by Article 12 of the CRPD and Article 26 of the ICCPR, ensuring that all persons are equal before the law without discrimination.

Article 4 of the CRPD outlines the need for ensuring the full realisation of all human rights and fundamental freedoms for persons with disability, free of discrimination of any kind on the basis of disability. Article 5 of the CRPD supports Article 2 of the ICCPR by acknowledging all persons as equal under the law and entitled, without discrimination to equal benefit of the law. However, Article 5 of the CRPD recognises the inherent vulnerability of people with disability stating they must be free of discrimination on this basis.

The Instrument ensures participants have a clearly identifiable list of conditions that must be satisfied when determining whether to conduct a variation and the considerations to which the CEO must have regard when deciding whether to

reassess a plan. These conditions and considerations aim to provide predictability and consistency in decision-making, supporting the effective functioning of the scheme and equality. The Instrument promotes the rights of participants by empowering participants to make informed choices and where appropriate support them to continue access reasonable and necessary disability supports.

Right for all people to self-determination and to freely pursue economic, social and cultural development – Article 1 ICESCR and ICCPR

Article 1 of the ICESCR and ICCPR, guarantees the right for all people to self-determination and to freely pursue their economic, social and cultural development. The Instrument will provide participants with improved clarity around NDIS decision-making now and into the future, ensuring that the rules elevate existing operational guidance and practice used to make decisions about variation and reassessment into NDIS rules. This will provide participants and their informal supports with clarity and transparency about how the NDIA makes decisions about plan variations and reassessments.

The Instrument promotes these rights by clearly setting out conditions which must be met for the CEO to vary a participant's plan. It further provides guidance around the types of considerations the CEO must consider when determining whether to reassess a plan. The CEO has a broad discretion to consider any other relevant matter when deciding to reassess a plan. Moreover, the Instrument ensures a participant's rights are protected by allowing the CEO to also consider any other matter raised by the participant, ensuring all relevant considerations unique to a participant's individual circumstances are considered.

To the extent that the Instrument may be seen as limiting the rights of people with disability by placing conditions which must be satisfied in determining whether to vary a plan, for instance following a significant change requiring crisis or emergency funding, it is reasonable and appropriate to ensure controls exist around the way participant plans are varied and reassessed. These controls work to protect participants ensuring where participants exhaust NDIS funding, they can in appropriate circumstances continue to have access to funding through their plan, and to ensure the long-term sustainability of the NDIS so it is available to support Australians with disability for many years to come.

Right for people with disability to live independently and be included in the community – Article 19 of the CRPD

Article 19 of the CRPD recognises the right of all persons with disabilities to live in the community with choices equal to others, ensuring that effective and appropriate measures promote the full inclusion and participation in the community by persons with disabilities.

The Instrument includes conditions and considerations that will remove obstacles and barriers to understanding how decisions are made. The conditions and considerations will ensure people with disability continue to have access to timely supports where they require an urgent variation to assist with unexpected needs due to a significant change, a crisis or emergency situation, or where a minor variation results in an

increased to the funding of supports under a participant's plan. They will also cover situations where a participant requires a more substantial change to their plan through a full reassessment and preparation of a new plan.

The Instrument will ensure that the NDIA can continue to provide funding to ensure people with disability, their families and carers are provided with appropriate choice and control access to disability supports to allow their full and equal participation in the community. To the extent the Instrument may be seen as limiting the rights of people by placing conditions which must be satisfied, it is reasonable and appropriate to ensure controls exist to determine when it is acceptable to vary and reassess participant plans.

Conclusion

This instrument is compatible with human rights as it advances the protection of the rights of people with disability in Australia.

To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the NDIS, for the benefit of all persons with disability who have access to the NDIS.