



**Australian Government**  
**Department of Social Services**

# Briefing session

Proposed legislative amendments to the National Disability  
Insurance Scheme Act 2013

September 2021

## Slide 3: Background to potential legislative changes

- NDIS Participant Service Guarantee (PSG)
- select recommendations of the 2019 Tune Review that are not captured by the PSG and are unrelated to independent assessments or section 34 reasonable and necessary requirements
- recognise the transition of the NDIS to a full scheme that is available across Australia

## Slide 4: NDIS Framework

The NDIS consists of:

- National Disability Insurance Scheme Act 2013
  - Establishes the scheme and contains overarching laws on how the NDIS operates
  - Can only be amended by Commonwealth Parliament
- National Disability Insurance Scheme Rules
  - Provides additional details about things in the Act
  - Power to make NDIS Rules must be contained in the Act and is limited
  - Made by the Minister to the NDIS but subject to certain requirements regarding agreement by states and territories
  - Must be tabled before Commonwealth Parliament to allow for Parliamentary scrutiny
- Operational Guidelines
  - developed by the NDIA and explain how the Act and Rules work in practice
  - developed by the NDIA but must be consistent with the Act and Rules

## Slide 5: The Bill – an overview

Three schedules:

- Schedule 1 – Participant Service Guarantee
- Schedule 2 – Flexibility measures
- Schedule 3 – Full scheme amendments

## Slide 6: Schedule 1 – Participant Service Guarantee

- Tune Recommendation 25
- Provides certainty on timeframes for decision-making
- Sets expectations about engaging with, and working alongside, participants in delivering the NDIS.

- Empowers participants to request reasons for decisions and receive and discuss a draft plan before it is approved.
- Creates new Commonwealth Ombudsman reporting powers

## Slide 7: Schedule 1 – Participant Service Guarantee related changes

### **Plan variations – Tune recommendation 21**

- allows a plan to be varied
- Quick adjustments
- Timely access to supports
- Faster access to funding for providers
- More dedicated resources to support quality planning and implementation processes

### **Clarification of AAT jurisdiction to vary a plan – Tune rec 23**

- Clarifies the NDIA can vary or review a plan while it is under AAT review – and the AAT will review the varied or new plan.
- Does not delay reasonable and necessary supports where other elements are subject of review

## Slide 8: Schedule 2 – Flexibility measures

Proposed measures to improve flexibility for participants and align with recommendations from the 2015 Independent Review of the Act, as endorsed by the Tune Review.

### **Improve eligibility criteria with respect to psychosocial disability – Tune recommendation 8**

People with psychosocial disability have experienced challenges accessing the NDIS due to the requirements of providing evidence of permanency leading to substantially reduced functional capacity.

#### ***How we have addressed the issue?***

- clarified that a psychosocial disability that is episodic or fluctuating may be taken to be permanent and that the person is likely to require support under the Scheme for their lifetime.

## Slide 9: Schedule 2 – Flexibility measures

### **People with lived experience with disability on the NDIA Board – 2015 review recommendation 26**

The disability sector has consistently highlighted the importance of having more individuals with lived experience on the NDIA Board.

#### ***How we have addressed the issue:***

- The amendments include lived experience of disability added as a standalone criteria of eligibility for appointment as a Board Member, but this does not mean each Board Member requires this experience. The Board collectively, not individually, needs to meet all the criteria.

### **Principal member of the Independent Advisory Council (IAC)**

At present, the legislation does not require the Principal member of the IAC to be a board member as having a board member be the principal member ensures direct communication between Board and IAC.

#### ***How we have addressed the issue:***

- Require the Principal Member of the IAC to be a Board member as well.

## **Slide 10: Schedule 2 – Flexibility measures**

### **Tune recommendation 27b (also 2015 review) - updating the principles of the Act**

The importance of co-designing the NDIS with people with disability is not reflected in the Act.

Terminology on the relationship between people with disability and their families and carers does not align with the Carers Act.

The Act needs to emphasise the importance of a diverse and sustainable NDIS market.

#### ***How we have addressed the issue:***

- reinforced people with disability are central to the NDIS and should be co-designers of changes to the scheme
- updated references to families and carers to align with the ‘recognise and respect’ terminology of the Carers Act
- reinforced the importance of a diverse, sustainable and well-developed NDIS market to enable people with disability to exercise their right to choice and control in obtaining disability supports

## Slide 11: Schedule 2 – Flexibility measures

### **Market intervention – Tune recommendation 17**

Thin markets are preventing some participants from exercising full choice and control over their NDIS supports.

The NDIA does not have a clear power to intervene to ensure a participant does not go without needed supports, where there is market failure.

Some children are waiting long periods of time to receive funded supports once a positive access decision is made, due to the planning process being delayed.

#### ***How we have addressed the issue:***

- Provided more defined powers for the NDIA to engage in market intervention to act quickly to fill service gaps and encourage positive market behaviour.
- Provided funding to some children under 7 for immediate early intervention supports pending planning outcomes, where the planning process would delay supports.

## Slide 12: Schedule 2 – Flexibility measures

### **Choice of plan management – Tune recommendation 19**

There are potential risks for participants engaging unregistered providers through a registered plan manager.

#### ***How we have addressed the issue:***

- Provided additional protections for participants by requiring the same risk assessment for plan managed participants as for self-managed participants.

### **Tune Recommendation 27b**

Inclusive language in the Bill – 2015 review recommendations 1, 2 & 3. Current language is not inclusive of all groups and is restrictive.

#### ***How we have addressed the issue:***

- Removed moderating language such as ‘to the extent of their ability’ and introduced references to LGBTQI+ status.

## Slide 13: Schedule 2 – Flexibility measures

### **Enable the NDIA to pay providers directly for all participants**

At the moment, self-managing participants are required to pay for supports up front and then seek reimbursement.

For many others, plan managers make payments to providers from a participant's funds.

#### ***How we have addressed the issue:***

- Enabled the NDIA to make direct payments to providers on behalf of participants.

## **Slide 14: Schedule 3 – Full scheme measures**

### **Tune recommendation 27a**

**Trial and transition provisions** – remove redundant provisions now the NDIS is available across Australia and the NDIS Commission is operational across Australia.

#### ***How we have addressed the issue:***

- Removed references to 'launch' and 'transition'
- Removed concept of participating jurisdictions
- Removed references to:
  - registered providers of supports (term required only if a jurisdiction was not under the NDIS Commission's remit)
  - rules allowing additional age and residence requirements
  - titles and naming conventions related to scheme transition

## **Slide 15: NDIS Rules – an overview**

### **New Rules:**

- Participant Service Guarantee Rules
- Plan Administration Rules

### **Amended Rules:**

- Children Rules
- Nominees Rules
- Becoming a Participant Rules
- Plan Management Rules
- Specialist Disability Accommodation Rules

Questions that arise about the amended Rules following today's session may be directed to: [NDISConsultations@dss.gov.au](mailto:NDISConsultations@dss.gov.au)

## **Slide 16: What next?**

**How to make a submission**

- DSS Engage: [engage.dss.gov.au](https://engage.dss.gov.au)
- Consultation will run for 4 weeks from 9 September to 7 October 2021

**How we will incorporate your feedback**

- We will make necessary amendments to the Bill before it is introduced to Parliament
- The Bill is proposed for introduction in the week commencing 25 October 2021
- A report will be released on the DSS website summarising the feedback we received through the consultation process