



The NDIS Participant Service Guarantee and Other Measures Bill 2021 and the NDIS Rules

Frequently Asked Questions

Plan variations and reassessments

Q: What is the difference between a plan variation and a plan reassessment?

A: Plan reassessment is the new term and is identical to the current system of plan review – reassessments occur at the end of a plan’s duration or are used to action significant changes to a plan and require participants to undergo the usual planning processes with a NDIS planner. At the end of a reassessment, the plan is replaced with a new plan that reflects the participant’s current goals and support needs. Plan variations make minor changes to a participant’s plan, typically where it does not require a change to the level of NDIS funding.

Q: Can a participant request a reassessment?

A: A participant can request a change to their plan at any time and the CEO (or his delegate) can then decide, based on the nature of the participant’s request, to undertake a plan reassessment instead of a variation. Separate requests for participants weren’t included for reassessments and variations so as not to create an expectation that a participant would need to know the difference between the two requests – they would simply need to request a change to their plan. Both variations to a plan and reassessment of a plan are reviewable decisions.

The department has heard the concerns raised around the current drafting which may not be clear that a participant’s request for a change to their plan, includes a plan reassessment. The feedback on these provisions is appreciated will be addressed in finalising the Bill for introduction.

Q: Can you explain more about the variation of the plan without a full review?

A: Participants have given feedback that needing to do a full review of their plan whenever a small change is required is stressful, time-consuming and difficult.

Plan variation is a new option available to both participants and the NDIA can help with this.

Plan variations make minor changes to a participant’s plan, typically where it does not require a major change to the level of NDIS funding. This could include situations where there is a clerical error on the face of the plan, where the participant wants to change a goal, where the participant wants to change their plan management type, or where the participant needs to make a minor adjustment between their allocated supports.

This will give participants the flexibility to have minor changes made on the face of their plan without needing to go through the approvals process for a whole new plan.

Plan variations will also make it easier to include approved quoted amounts for example; assistive technology and home modifications in plans which should reduce delays in accessing those supports.



Q: Will the CEO (or delegate) be able to vary a participant's plan without a request from the participant?

A: Consistent with requests for plan review at present, a participant will be able to request a variation or the NDIA CEO (or his delegate) will be able to vary a plan even where it hasn't been requested.

However, there is no intention to enable the NDIA to vary a plan without the participant being notified. The department has heard the concerns raised around the current drafting. The feedback on these provisions is appreciated will be addressed in finalising the Bill for introduction.

The Plan Administration Rules set out matters which the NDIA must have regard to in deciding whether to vary a plan. By allowing the NDIA to vary a plan, NDIA planners can act quickly to fix minor issues in a plan that a participant might not have noticed or realised needed amending.

Under the Participant Service Guarantee's requirement for transparency, the NDIA is required to keep participants and prospective participants informed about the progress of decision-making processes under the Act that affect them – including any CEO initiated variation.

Q: Can a variation change the total funding in a plan?

A: The intention of plan variations is to assist participants with minor changes that can be made on the face of their plan. Generally variations would not be used where additional supports are required, and in most circumstances a plan variation will not result in changes to the overall funding to a plan.

However, there may be circumstances where a participant is in a crisis or emergency and a plan variation can be used to allow for further funding to be added to the participants plan to assist them in the short term.

Q: Why are changes being made to the current system of plan reviews?

A: The Tune review recommended changes to the NDIS Act and NDIS Rules to cut red tape including the ability to vary a plan to ensure participants are able to access the benefits of funded supports as soon as possible. The ability to vary a plan will allow for quick and timely changes to a participant's plan in limited circumstances to ensure participants have timely access to the supports they need.

The changes in this Bill allow participants to request a plan variation whenever they need a change made to their plan. If the change being requested will result in significant changes to the participants plan, the CEO (or his delegate) may instead conduct a plan reassessment.

This gives participants flexibility in how they use their supports and will minimise some of the stress involved with communicating all of their needs whenever a small change is required.



Plan management

Q: What are the changes to plan management? Is it being removed?

A: The option to have a registered plan manager to manage NDIS funding is not being removed. Participants are still able to have their plan managed in this way if they make a request.

When a participant requests to use a registered plan manager, the CEO (or his delegate) **must** give effect to that request unless the management of NDIS funds by a registered plan management provider would present an unreasonable risk of harm to the participant.

Q: What does it mean to have a risk assessment for plan-managed participants?

A: The NDIA will undertake a risk assessment on a request for a registered plan management provider to manage a participant's funding. The NDIA will consider whether using a plan management provider will present an unreasonable risk to the participant. This risk assessment will consider possible risks arising from the participant using unregistered providers and whether any potential risks can be mitigated by other safeguards or strategies in the participant's plan.

These changes are based on a recommendation from the Tune review and are designed to protect participants using registered plan managers from exploitation, violence or abuse.

The CEO (or his delegate) must be guided by the objects and principles of the NDIS Act when assessing whether the use of a registered plan manager presents an unreasonable risk to participant. This includes:

- enabling and supporting participants to exercise choice and control including taking reasonable risks to pursue their goals and the delivery of their supports; and
- recognising participants have the same rights as other people in Australian society to determine their own best interests, including exercising choice and control and engaging as equal partners in decisions that affect their life.

Risk assessments are already in place for people who request to self-manage their plans.

NDIA Board

Q: What changes have been made to the list of criteria for NDIA Board members?

A: Having lived experience of disability has been added to the list of criteria the Minister must take into consideration when deciding on Board appointments. The NDIS Act already establishes a list of criteria the Minister must take into consideration when making appointments and this new criteria is intended to bring personal experience of disability to the Board.



Q: How is ‘lived experience of disability’ defined?

A: Lived experience of disability is not currently defined in the legislation. Concerns have been raised that this will not necessarily mean there will be people with disability on the Board, as the term also applies to family and carers. The Government is considering submissions on this issue.

New payment platform

Q: How will the NDIA’s new payment platform work?

A: Amendments to the Act will enable the NDIA to use new technology and improve how it makes payments. They also have the potential to reduce the administrative burden of dealing with invoices for many participants.

The platform will allow the NDIA to pay providers directly (on behalf of participants or their nominees) for claims made against all plan management types, including for self-managed, plan-managed and Agency-managed participants.

These changes can reduce the administrative burden for participants and providers in organising and managing payments.

The changes could mean self-managed participants no longer need to claim a reimbursement from the NDIS after using their own funds to purchase NDIS supports if they use the new payments system.

Q: Does the change to allow the NDIA to pay providers directly mean a participant’s choice and control is removed?

A: No, all the existing mechanisms for paying providers remain, this is just another option to give further flexibility to the NDIA. The new payment platform does not affect how a participant allocates and chooses their supports. Use of the plan remains in the hands of the participant or their nominee or their registered plan manager.

Under the new platform, if point of sale technology is introduced, the participant will be able to have the funds withdrawn from their plan and the provider paid immediately at the point of sale by using their phone. Participants retain the ability to choose their supports and control over the use of their NDIS funding within the terms of their plan.

Q: Will the change allowing the NDIA to directly pay providers for self-managed participants mean that funds can’t be deposited into self-managing participant’s bank accounts?

A: The change to enable NDIA to pay providers does not change the existing mechanism where the NDIA pays funds into the participant’s bank account. It would not prevent the use of unregistered providers by self-managed participants.



Other

Q: Are there any penalties if the Agency fails to meet the Participant Service Guarantee?

A: The Participant Service Guarantee (PSG) requires the NDIA to offer NDIS participants a service that is transparent, responsive, respectful, empowering and connected. While there are no penalties if the NDIA fails to meet the requirements of the PSG, the NDIA's performance in delivering on these commitments is publicly reported and published on the NDIA website and by reports from the Commonwealth Ombudsman. This transparency will also ensure where the NDIA fails to meet its commitments, it will be able to identify and address specific points for improvement.

Q: What changes are being made to choice and control?

A: None. Choice and control is one of the founding principles of the NDIS, which places participants at the centre of any decision-making about their supports and needs. None of the changes made in this Bill or the associated NDIS rules seek to alter this crucial principle.

The Participant Service Guarantee is a positive step forward for the NDIS, as it will ensure participants have greater certainty in their engagement with the NDIA and feel more in control over their plan and any changes made to it.

Q: Why is consultation being undertaken over a four week period?

A: Consultation is being undertaken over a four-week period as the proposed changes to the NDIS Act build on recommendations from the Tune Review. The Tune Review was underpinned by an extensive consultation process in 2019. The proposed changes to the NDIS Act incorporate most of the legislative changes recommended by the Tune Review. **A four-week consultation period allows legislation to be introduced later this year to give effect to the Participant Service Guarantee, and the other improvements if the bill is passed.**

Q: Does the clarification around episodic and fluctuating conditions being considered permanent only apply to psychosocial disabilities?

A: The new provisions around permanency recognising episodic or fluctuating conditions only apply to psychosocial conditions.

However, the NDIS Act allows disabilities, other than a psychosocial disabilities, to be considered permanent where they are degenerative in nature or vary in intensity. This allows for people with a disability other than a psychosocial disability to explain their condition may worsen or improve from time to time when making an access request to the NDIS. The department will clarify in the Explanatory Memorandum to the Bill that recognition of permanency of an episodic or fluctuating psychosocial disability does not mean that other fluctuating conditions may not also be considered permanent.



Q: We have heard the Minister talking about fraud – why hasn't this been included in the proposed Bill and Rules?

A: The unscrupulous practices of some providers is of great concern and this remains under active consideration. However, as there has not been any significant engagement with the disability sector on whether amendments to the NDIS Act are required to address fraud, the Government wants to take more time to consider this issue in depth, so it is not included in this round of amendments. There may be further consultation on this issue in the future.

Q: How will the new thin markets intervention powers operate? Will the NDIA source providers when multiple participants identify a support is lacking in their area?

A: The proposed amendments in the Bill and rules clarify and define how the NDIA may intervene in the market through contracting directly with organisations for services to be delivered for participants in areas where supports or services are otherwise not readily available.

The amendments to the Act and Rules provide principles-based guidance to the NDIA around when such intervention may be used. The NDIA will consider how these provisions will be operationalised in practice and provide guidance.

The NDIA will consider how these provisions will be operationalised in practice; however, there are examples in recent thin markets work, such as use of coordinated funding, which show how this flexibility has been used in the past. For example, the NDIA, working with support coordinators, used a coordinated funding proposal to attract a new start-up provider in Broome to successfully deliver orthotics and prosthetic supports for 24 participants. Such initiatives in the future would need to be agreed according to the principles being introduced in the legislation.

Q: Are there Tune recommendations not addressed in the Draft Bill?

A: Yes. There are elements of the Tune review not considered in this Legislative reform process that will need more time and consideration as part of co-design. Some changes to section 34 and reasonable and necessary supports is an example.

Q: What are the changed record keeping requirements for participants?

A: The changed record keeping requirements are included in section 9 of the Plan Administration Rules. If a person receives funding for managing a participant's funding, they need to retain a record of each of the purchases for a period of 5 years, and the record has to be retained in accordance with the Rules (e.g. includes name, date, purchase price etc.).

By making such requirements on NDIS providers, the scheme is able to be certain of an evidence base showing that NDIS funds are being delivered and used correctly. This also contributes to the broader set of provisions that ensure the financial sustainability and integrity of the scheme.