

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Disability and the National Disability Insurance Scheme

*National Disability Insurance Scheme Act 2013*

*National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1)  
(Miscellaneous Provisions) Transitional Amendment Rules 2025*

### **Purpose**

The *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Amendment Rules 2025* (the Instrument) amends the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (the Primary Instrument).

The Primary Instrument provided for a number of transitional arrangements to support the implementation of amendments to the *National Disability Insurance Scheme Act 2013* (NDIS Act) made by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

This Instrument extends one of these transitional arrangements by:

- ensuring that participants receiving recurring transport payments up to the existing cap on those payments do not need to lodge a claim for the payments in their new framework plans pending longer term changes to the ways that transport funding is managed in new framework plans.

### **Background**

The Amending Act addressed priority recommendations of the Independent Review into the NDIS and represented the first tranche of amendments to the NDIS Act to improve participant experience. It followed agreement by National Cabinet that the Commonwealth would work with state and territory governments to implement legislative and other changes to return the NDIS to its original intent of supporting people with permanent and significant disability, within a broader ecosystem of supports.

#### *Recurring transport payments*

The Amending Act established a legislative claims and payments framework that sets out how people, including participants and providers, may make ‘claims’ for NDIS amounts and how and when the Agency must ‘pay’ relevant amounts. This framework was consistent with the Agency’s established operational practice up to that point.

The NDIS funds different types of transport supports, one of which is currently described as ‘recurring transport’ which is used primarily where a participant requires frequent use of transportation such as taxi services.

Funding for this support is paid directly to participants without the need to submit a claim, largely due to the frequency with which this kind of support is used. This was historically

possible due to the claims and payments framework being operational rather than specified in the NDIS Act. However, the Amending Act established a legislative requirement for a claim to be lodged before any payment can be made for a support. The outcome was that participants would have been required to lodge a claim to be able to receive their recurring transport support funding.

The Primary Instrument created a transitional arrangement to ‘switch off’ the requirement to lodge a claim in respect of recurring transport in old framework plans. This Instrument extends these transitional arrangements to new framework plans while they are being rolled out. For new framework plans, recurrent transport payments will fall under a support called ‘private vehicle transport’. This instrument recognises this change and ‘switches off’ the requirement to lodge a claim for a private vehicle transport support up to the existing cap on recurrent transport payments, which is \$132.58 in respect of each fortnight after a relevant participant’s plan commences. This will provide consistency and certainty for affected participants in how recurring transport funding is handled during the roll out of new framework plans.

### **Consultation**

The policy underlying the Primary Instrument was the result of extensive consultation, including targeted engagements with stakeholders and ongoing consultation with the States and Territories. Details of that consultation process is outlined in the Explanatory Statement to the Primary Instrument.

Consultations with stakeholders about the transition to new framework highlighted the need for consistency in the payment of recurring transport payments during transition to new framework plans. States and territories were also consulted about the proposal to extend the arrangements to new framework planning pending the longer-term resolution of transport payment policy.

### **Regulation Impact Analysis**

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 - <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>.

### **Authority to make instrument**

The Instrument is made under item 138 of Schedule 1 to the Amending Act.

Subitem 138(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Bill.

Subitem 138(2) confirms that without limiting subitem (1), rules made under this item before the end of the period of 12 months starting on the day this Schedule commences may provide that provisions of this Schedule, or any other Act or instrument, have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Instrument are set out in the Attachment A.

**Details of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions – Extension) Transitional Rules 2025***

**Part 1 – Preliminary**

**Section 1 – Name**

Section 1 provides that this instrument is the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions – Extension) Transitional Rules 2025* (Instrument).

**Section 2 – Commencement**

Section 2 provides that this instrument commences on the day after it is registered.

**Section 3 – Authority**

Section 3 provides that this instrument is made under item 138 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (the Amending Act).

**Section 4 – Schedules**

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

This schedule amends the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (the Primary Instrument).

**Item 1 – After subsection 6(1)**

Item 1 inserts a new subsection 6(1A) into section 6 of the Primary Instrument, which provides an exception to section 45A of the NDIS Act. Section 45A provides for a legislative claims and payments framework, requiring a valid claim to be lodged before a payment can be made in relation to a participant's plan.

New subsection 6(1A) inserted by this item, together with the amendment made by item 2 to subsection 6(2) of the Primary Instrument, will ensure that participants can continue to receive recurring transport funding, up to the existing cap on that funding, under a new framework plan without having to submit a claim in the same way as they have under an old framework plan.

While the original intent of the Primary Instrument was that this exception from claiming requirements would only apply to old framework plans, this extension to new framework plans will provide for consistency in how certain transport supports are handled while new framework plans are rolled out.

### Item 2 – Subsection 6(2)

Item 2 amends subsection 6(2) of the Primary Instrument so that it refers to new subsection 6(1A) in addition to existing subsection 6(1) of that instrument. This will ensure that item 132A in Schedule 1 to the Amending Act, which provides for the application of s 45A, has effect with a modification reflecting the ‘switching off’ of s 45A contained in the terms of new subsection 6(1A).

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
*National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1)*  
*(Miscellaneous Provisions – Extension) Transitional 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 the legislative instrument

The *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions – Extension) Transitional Rules 2025* (the Amending Instrument) amends the *National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024* (the Primary Instrument).

The Primary Instrument provided for a number of transitional arrangements to support the implementation of amendments to the *National Disability Insurance Scheme Act 2013* (NDIS Act) made by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Amending Act).

The Amending Instrument extends one of these transitional arrangements by:

- ensuring that participants with recurring transport payments do not need to lodge a claim for these payments in their new framework plans pending longer term changes to the ways that transport funding is managed in new framework plans.

### Human rights implications

The Instrument engages the following human rights:

- Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- Rights of people with disability – Article 4(3) of the CRPD

Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16 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 and acceptance of persons with disabilities, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 of the CRPD outlines the need to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5(2) of the CRPD seeks to prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds. Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards. The Article also provides that persons with disability should be given equal rights to, among other things, control their financial affairs and not be arbitrarily deprived of their property.

The Instrument promotes these rights by extending the exemption from making a claim for recurring transport funding to participants with new framework plans. Participants in receipt of funding for this support under new framework plans will not have to lodge a claim in order for the funding to be paid. This exemption will be in effect while new framework plans are rolled out.

This promotes the rights of people, and in particular advances the inherent dignity and individual autonomy of participants by allowing access to funding for this particular support in a simple manner consistent with longstanding practice.

#### Rights of people with disability – Article 4(3) of the CRPD

Article 4(3) of the CRPD seeks to ensure necessary consultation with, and active involvement of, persons with disabilities in the development and implementation of legislation and policies.

Although the Primary Instrument was not consulted on publicly, the changes made by the Primary Instrument were, for the most part, to address concerns and questions raised by people with disability and the broader disability community about provisions of the Amending Act and how they will be implemented. This Instrument extends the operation of one of the original transitional arrangements. This is consistent with Article 4(3) of the CRPD.

#### **Conclusion**

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