

EXPOSURE DRAFT



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National Disability Insurance Scheme (Becoming a Participant) Rules 2021

I, Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2021

Linda Reynolds CSC [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for the National Disability Insurance Scheme

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Schedule 1 Repeals etc.

Part 1—Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Becoming a Participant) Rules 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day the <i>National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2021</i> commences; and (b) the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 209 of the *National Disability Insurance Scheme Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Simplified outline of this instrument

This instrument provides rules about becoming a participant in the National Disability Insurance Scheme (NDIS).

A person, or someone who is able to act on their behalf, may make an access request to become a participant in the NDIS (see section 18 of the Act). A person becomes a participant if the CEO decides that the person meets the access criteria (see section 28 of the Act).

For when a person meets the access criteria, see section 21 of the Act.

Part 2 of this instrument contains provisions dealing with when a person meets the disability requirements (see subparagraph 21(1)(c)(i) and section 24 of the Act).

Part 3 of this instrument contains provisions dealing with when a person meets the early intervention requirements (see subparagraph 21(1)(c)(ii) and section 25 of the Act). The rules about substantially reduced functional capacity in Part 2 of this instrument do not apply if a person is assessed to meet the early intervention requirements.

Note: In addition, Part 7 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* contains provisions about the way in which a decision about whether a person meets the disability or early intervention requirements is to be made.

6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) access request;
- (b) Agency;
- (c) CEO;
- (d) child;
- (e) developmental delay;
- (f) National Disability Insurance Scheme;
- (g) participant.

In this instrument:

Act means the *National Disability Insurance Scheme Act 2013*.

NDIS means the National Disability Insurance Scheme.

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Part 2—Disability requirements

7 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—disabilities other than psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, a requirement that must be satisfied for a person’s impairment (other than an impairment to which a psychosocial disability is attributable) to be considered permanent, or likely to be permanent, for the purposes of paragraph 24(1)(b) of the Act.
- (2) The impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).

Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).

8 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, a requirement that must be satisfied for a person’s impairment to which a psychosocial disability is attributable to be considered permanent, or likely to be permanent, for the purposes of paragraph 24(1)(b) of the Act.
- (2) The impairment may be considered permanent, or likely to be permanent, only if:
 - (a) both:
 - (i) the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition; and
 - (ii) the treatment has not led to a substantial improvement in the person’s functional capacity, after a period of time that is reasonable considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates); or
 - (b) no appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition is reasonably available to the person.

Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).

Note 2: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 24(3) of the Act).

Note 3: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).

9 Substantially reduced functional capacity to undertake relevant activity— disabilities other than psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act, a requirement that must be satisfied for an impairment or impairments (other than an impairment or impairments to which a psychosocial disability is attributable) to be considered to result in substantially reduced functional capacity of a person to undertake an activity mentioned in a subparagraph of paragraph 24(1)(c) of the Act.
- (2) The impairment or impairments may be considered to result in substantially reduced functional capacity of a person to undertake the activity only if:
 - (a) as a result of the impairment or impairments:
 - (i) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or completely in the activity, without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or
 - (ii) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or
 - (iii) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person; and
 - (b) there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to lead to the impairment or impairments no longer having that result.

10 Substantially reduced functional capacity to undertake relevant activity— psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act, a requirement that must be satisfied for an impairment or impairments to which a psychosocial disability is attributable to be considered to result in substantially reduced functional capacity of a person to undertake an activity mentioned in in a subparagraph of paragraph 24(1)(c) of the Act.
- (2) The impairment or impairments may be considered to result in substantially reduced functional capacity of a person to undertake the activity only if, as a result of the impairment or impairments:
 - (a) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or
 - (b) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.

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- (3) Subsection (2) is to be applied with regard to the overall effect of the impairment or impairments over a period of time that is reasonable, considering the nature of the impairment or impairments (and in particular considering whether an impairment is episodic or fluctuates).

Part 3—Early intervention requirements

11 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—disabilities other than psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, circumstances in which a person’s impairment (other than an impairment to which a psychosocial disability is attributable) may be considered permanent, or likely to be permanent, for the purposes of subparagraph 25(1)(a)(i) of the Act.
- (2) The impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

Note: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).

12 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—psychosocial disabilities

- (1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, circumstances in which a person’s impairment to which a psychosocial disability is attributable may be considered permanent, or likely to be permanent, for the purposes of subparagraph 25(1)(a)(ii) of the Act.
- (2) The impairment may be considered permanent, or likely to be permanent, only if:
 - (a) both:
 - (i) the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition; and
 - (ii) the treatment has not led to a substantial improvement in the person’s functional capacity, after a period of time that is reasonable considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates); or
 - (b) no appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition is reasonably available to the person.

Note 1: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 25(1A) of the Act).

Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).

13 Provision of early intervention supports

- (1) For the purposes of paragraphs 27(1)(d), (e) and (f) of the Act, this section prescribes criteria to be applied in assessing whether provision of early intervention supports is likely to benefit a person by:

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- (a) reducing the person's future needs for supports in relation to disability for the purposes of paragraph 25(1)(b) of the Act; or
 - (b) mitigating, alleviating or preventing the deterioration of the person's functional capacity to undertake one or more of the activities for the purposes of subparagraph 25(1)(c)(i) or (ii) of the Act, or improving such functional capacity for the purposes of subparagraph 25(1)(c)(iii) of the Act; or
 - (c) strengthening the sustainability of the informal supports available to the person, including through building the capacity of the person's carer, for the purposes of subparagraph 25(1)(c)(iv) of the Act.
- (2) The CEO must have regard to the following:
- (a) the likely trajectory and impact of the person's impairment or impairments over time;
 - (b) the potential benefits of early intervention on the impact of the impairment or impairments on the person's functional capacity and in reducing their future needs for supports;
 - (c) any information provided by the person, or the person's family members or carers, that the CEO considers relevant;
 - (d) any expert opinion that the CEO considers relevant.

Note: See also subsection 25(1B) of the Act (reports requested under paragraph 26(1)(b)) in relation to an assessment of the matters in subparagraphs 25(1)(c)(i), (ii) and (iii) of the Act.

14 Prescribed impairments

For the purposes of subsection 25(2) of the Act, a person's impairment is prescribed (and the CEO is taken to be satisfied as mentioned in paragraphs 25(1)(b) and (c) of the Act) if:

- (a) the person is a child under the age of 6; and
- (b) the impairment is a physical impairment, or an impairment to which a psychosocial disability is attributable; and
- (c) the impairment, by itself or in combination with other physical impairments or impairments to which a psychosocial disability is attributable, results in developmental delay.

Schedule 1—Repeals etc.

National Disability Insurance Scheme (Becoming a Participant) Rules 2016

1 Parts 1 to 6

Repeal the Parts.

Note: Part 7 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* continues to apply. That Part contains provisions about the way in which a decision about whether a person meets the disability or early intervention requirements is to be made.

2 Paragraph 8.3

Omit the last sentence.

3 Paragraph 8.4

Repeal the paragraph.

4 Schedules A and B

Repeal the Schedules.