



Australian Government
Department of Social Services

Explanation of the National Disability Insurance Scheme (Nominees) Rules 2021

This document has been prepared for consultation on the proposed changes to the National Disability Insurance Scheme.



Purpose of this document

This document has been prepared to assist readers understand proposed changes to the *National Disability Insurance Scheme (Nominees) Rules 2013* ('the 2013 Nominees Rules') to assist with public consultation on the *National Disability Insurance Scheme (Nominees) Rules 2021* ('the 2021 Nominees Rules').

Changes to the 2013 Nominees Rules are being made as part of broader changes to the National Disability Insurance Scheme (NDIS), set out in the National Disability Insurance Scheme (Participant Service Guarantees and Other Measures) Bill 2021 ('the Bill'). The changes aim to improve participant experience by streamlining administrative processes and removing red tape. The changes also reflect the transition of the NDIS to a full scheme available across Australia.

Information on all of the proposed changes can be found on the DSS Engage website at <https://engage.dss.gov.au>.

Providing feedback on the Rules

If you have feedback on the 2021 Nominees Rules you can make a submission via email or through the post.

Some things you might want to think about in your submission:

- Is it clear how the new ideas in the Rules will work?
- Could the new ideas in the Rules cause problems?
- Any other general comments

You can email your submissions to: NDISConsultations@dss.gov.au

Hard copy responses can be sent to:

NDIS Act Review Consultations
GPO Box 9820
CANBERRA ACT 2610

If you have any questions please contact: NDISConsultations@dss.gov.au

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (NOMINEES) RULES 2021

The Nominees Rules prescribe matters relating to nominees, who are appointed to undertake certain acts on behalf of a participant under, or for the purposes of, the Act. The Nominees Rules prescribe matters relating to whether a nominee should be appointed, who should be appointed as a nominee, the duties of nominees and the cancellation and suspension of nominee appointments.

The 2013 Nominees Rules are being updated to reflect language used in the National Disability Insurance Scheme (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill), which amends the *National Disability Insurance Scheme Act 2013* ('the Act').

The 2021 Nominees Rules will prescribe the same matters as the 2013 Nominees Rules as well as application, saving and transitional provisions to ensure the smooth transition from the 2013 Nominees Rules.

Background

The Nominees Rules are part of broader legislative amendments proposed to the National Disability Insurance Scheme ('NDIS'), set out in the National Disability Insurance Scheme (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill).

The Bill amends the *National Disability Insurance Scheme Act 2013* (the Act) to legislate the Participant Service Guarantee, streamline administrative processes and remove red tape to improve the participant experience.

The Bill also amends the Act to reflect the availability of the National Disability Insurance Scheme (NDIS) across Australia by removing concepts related solely to launch and transition.

The proposed changes in the Bill implement several recommendations arising out of the 2019 independent review of the Act undertaken by Mr David Tune AO PSM ('the Tune review'). The Australian Government commissioned the Tune review to identify legislative barriers to improving participant and provider experiences of the NDIS.

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (NOMINEES) RULES 2021

As part of the Tune review, it was identified that NDIS processes could be made simpler and more straightforward, particularly in regard to ensuring supports in participant plans remained fit-for-purpose and improving the efficiency of the NDIA decision-making.

The Tune review recommended providing for streamlined plan reassessment processes and introducing the ability to vary a participant's existing plan in certain circumstances to ensure participants are able to access the benefits of funded supports as soon as possible (recommendations 20 and 21 of the Tune review).

The Tune review also recommended providing the NDIA with additional flexibility to facilitate service delivery responses in circumstances where participant choice and control is constrained, for example, because of a lack of market supply or capacity. The aim is to ensure every NDIS participant is supported to maximise the benefits of their NDIS plan (recommendation 17 of the Tune review).

To support the changes being made to the Act, changes to the NDIS Rules are also being made. There are seven sets of NDIS Rules, including two new sets of NDIS Rules, being updated as a result of the proposed changes to the Act. These rules are:

- *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*
- *National Disability Insurance Scheme (Plan Management) Rules 2013*
- *National Disability Insurance Scheme (Children) Rules 2013*
- *National Disability Insurance Scheme (Nominees) Rules 2013*
- *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*
- *National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021*
- *National Disability Insurance Scheme (Plan Administration) Rules 2021*

The 2013 Nominees Rules will be repealed and replaced by the 2021 Nominees Rules. This gives effect to recommendations within the Tune review, including recommendation 27(c) to amend the NDIS rules to reflect current best practice drafting standards. The updated 2021 Nominees Rules do not change the existing policy intent of the 2013 Nominees Rules.

Key changes to these Rules

First, the 2021 Nominees Rules have been restructured to be easier to navigate and remove restatements of provisions contained in the Act.

Secondly, a more comprehensive definition of the meaning of a conflict of interest has been included in section 7 of the 2021 Nominees Rules. This clarifies that a conflict of interest will arise between a nominee and a participant where the nominee is responsible for, or involved in, the provision of a service to the participant for a fee or other reward. This circumstance was captured under the 2013 Nominees Rules, but was not specifically identified. It has now been included for the avoidance of doubt.

A clarification has also been included at section 21 of the 2021 Nominees Rules specifying the matters to which the CEO must have regard in making certain decisions to cancel or suspend nominee appointments. For the avoidance of doubt, the 2021 Nominees Rules now specifically provides that the CEO must consider whether the nominee is, and will likely continue to be, able to perform their duties as a nominee when considering whether to cancel or suspend their appointment as nominee.

Finally, the 2021 Nominees Rules include amended wording at paragraph 21(e) to reflect the shift in language from 'plan review' to 'variation or reassessment' of a plan because of new section 47A and amendments to section 48 in the Bill.

These Rules are made pursuant to sections 80, 88 and 93 of the Act.