



Australian Government  
Department of Social Services

# Explanation of the National Disability Insurance Scheme (Plan Administration) 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 (Plan Administration) Rules 2013* (the Plan Administration Rules) to assist with public consultation on changes the National Disability Insurance Scheme Rules (NDIS Rules).

Changes to the NDIS Rules are part of broader changes to the National Disability Insurance Scheme (NDIS). 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 Plan Administration 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 these Rules will work?
- Could the new ideas in these Rules cause problems?
- Any other general comments

You can email your submissions to: [NDISConsultations@dss.gov.au](mailto: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](mailto:NDISConsultations@dss.gov.au)

# EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (PLAN ADMINISTRATION) RULES 2021

The purpose of the Plan Administration Rules is to consolidate all rules relating to plan administration matters made under the *National Disability Insurance Scheme Act 2013* ('the Act') into one set of rules.

## Background

The Plan Administration Rules are new rules made because of the amendments contained in the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill). The Bill amends 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 NDIS.

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 changed 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*

## EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (PLAN ADMINISTRATION) RULES 2021

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- *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 Plan Administration Rules provide participants with clarity on how NDIS amounts for reasonable and necessary supports will be paid. The Plan Administration Rules also clarify the acquittal and record keeping requirements with which persons receiving NDIS amounts must comply, including the responsibility to maintain appropriate records in relation to the expenditure of NDIS amounts.

The Plan Administration Rules also provide for the length of an extended grace period when a participant may be temporarily absent from Australia for a period longer than 6 weeks without impacting their NDIS plan. Such matters were previously dealt with by Part 5 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*. These provisions have been replicated in the Plan Administration Rules without changing their underlying policy intent.

## Explanation of the provisions

### **Section 1 – Name**

Section 1 provides that the name of the Plan Administration Rules is the *National Disability Insurance Scheme (Plan Administration) Rules 2021*.

### **Section 2 – Commencement**

Section 2 sets out a table providing for the commencement of the Plan Administration Rules. The Plan Administration Rules commence at the later of the day Schedule 2 to the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2021* commences and the day after the Plan Administration Rules is registered.

### **Section 3 – Authority**

Section 3 provides that the authority to make the Plan Administration Rules is the *National Disability Insurance Scheme Act 2013*.

### **Section 4 – Definitions**

Section 4 notes that a number of expressions used in the Plan Administration Rules are defined in the Act, and provides for a specific definition for:

- ‘Act’ being the *National Disability Insurance Scheme Act 2013*; and
- ‘reserve force’, which is used in section 6 of the Rules.

## **Section 5 – Funding to persons or entities**

This section is a new section and relates to changes being made to section 14 of the Act contained in the Bill.

Section 14 of the Act provides the NDIA may provide assistance in the form of funding for persons or entities. This section is being amended by the Bill to provide more flexibility for the NDIA to fund early intervention and ancillary supports.

New subsection 14(3) provides that NDIS rules may set out matters to which the NDIA must have regard in deciding whether to provide discretionary ancillary funding under section 14 of the Act. New subsection 14(2) of the Act will clarify that the NDIA may provide funding to assist participants to receive supports, or to assist a participant who is a child under 7 to receive early intervention supports.

Section 5 is made for the purposes of subsection 14(3) of the Act, and provides matters to which the NDIA must have regard in deciding whether to provide funding under subsection 14(2) of the Act to a person or entity to assist a participant to receive supports.

The matters to which the NDIA must have regard in deciding whether to provide funding under subsection 14(2) include the urgency with which the participant needs supports and the extent to which the participant is able to exercise choice and control in sourcing supports. The NDIA must also consider whether providing funding to the person or entity would promote the diversity and sustainability of the NDIS market at the location where the participant lives.

The matters prescribed by section 5 are not intended to limit the matters to which the NDIA may have regard in exercising discretion to provide funding under paragraph 14(2) of the Act.

## **Section 6 – Extension of grace period**

These provisions have been moved from Part 5 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*.

Section 6 is made for the purposes of paragraph 40(2)(b) of the Act. Section 6 prescribes the matters to which the CEO must have regard in deciding on a period of time to extend the grace period of six weeks for a participant who is temporarily absent from Australia. An extension of the grace period before their plan is suspended.

The matters to which the CEO must have regards are outlined in paragraphs 6(a) to (k) and include:

- (a) the length of the temporary absence;
- (b) any previous decision by the CEO that it was appropriate for the grace period for another temporary absence of the participant to be longer than 6 weeks;
- (c) any supports, or classes of supports, that are specified in the statement of participant supports included in the participant's plan;

## EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (PLAN ADMINISTRATION) RULES 2021

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- (d) the participant's ability to access supports during the temporary absence;
- (e) the ability of the NDIA to facilitate the provision of supports to, and maintain a relationship with, the participant during the temporary absence.

Paragraph 6(f) provides specific matters to which the CEO must have regard where the participant leaves, or has left, Australia to undertake an exchange program or course of studies. This includes whether that program or course of studies is an element of the principal course that the participant is undertaking at an Australian secondary or tertiary educational institution, or part of a program of internal exchange that is recognised by the institution.

For example, Fatima is 19 years old and is studying a Bachelor of Languages at university with a major in Spanish. The degree includes a 13-week period of study in Spain. Fatima is an NDIS participant who lives with an acquired brain injury. Fatima's NDIS supports include a support worker. Fatima contacts the NDIA through their local area coordinator to apply for a longer grace period for the 13-week period of study in Spain. Fatima would like to travel with their support worker, Meera, and has made arrangements with the university to accommodate this.

Fatima has provided the NDIA with information about how they can be contacted whilst overseas and has organised to check in with the NDIA while they are away. The CEO of the NDIA is satisfied that Fatima will be able to access their NDIS supports and that the NDIA can maintain a relationship with Fatima whilst absent from Australia and agrees to extend the grace period to 14 weeks.

Paragraph 6(g) provides that if the participant has left Australia, the CEO must have regard to whether the participant leaves, or has left, Australia because the participant, the participant's spouse or a family member of the participant is temporarily employed or deployed outside of Australia. For the purposes of this paragraph, deployment outside of Australia includes as a member of a reserve force, as defined by section 4 of the Rules.

Paragraph 6(h) provides specific matters to which the CEO must have regard where the participant leaves, or has left, Australia to receive medical treatment or therapy. This includes whether that treatment or therapy is clinically appropriate or available in Australia.

Paragraph 6(i) provides that if the participant has left Australia, the CEO must have regard to whether the participant, the participant's spouse or a family member of the participant has been involved in a serious accident, has been seriously injured or hospitalised, has been the victim of a serious crime or a party in custody proceedings, or is required to remain outside of Australia because of criminal proceedings.

For example, Jason travelled with their family overseas for four weeks. Jason had used their NDIS funds to hire a compact mobility aid that was better suited to travel than their usual aid. In the third week of the holiday, Jason was involved in a traffic accident. Jason suffered a serious break to their leg that required surgery and was not allowed to travel for a month.

This would mean Jason would be absent from Australia for longer than six weeks. Jason's parents contacted the NDIA to explain the circumstances, including the need to extend the length of time for which the mobility aid was hired. The CEO extends the six-week grace period for another three weeks.

Paragraph 6(j) further provides that, if the participant has left Australia, the CEO must have regard to whether the participant, while outside Australia, has been affected by a war, industrial action, or social or political unrest in which the participant did not willingly take part, a natural disaster or an epidemic.

Paragraph 6(k) provides that the CEO must also have regard to whether the participant leaves or has left Australia to compete in, or train for, an international sporting competition.

The provisions seek to provide clarity to participants about what the CEO will consider when considering an extension and acknowledge circumstances that may result in an extension of a grace period. It also provides clarity about what the CEO will consider when deciding whether or not to extend the grace period.

### **Section 7 – Manner of paying NDIS amounts**

Section 7 has been moved from part 4 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*.

Section 7 contains rules for the purpose of new subsection 45(1) of the Act, proposed to be amended by the Bill. Specifically, section 7 provides that, if the CEO determines that an NDIS amount is payable to a person, the CEO:

- (a) may pay the amount to the person as a single amount, or in instalments; and
- (b) must pay that single amount, or those instalments, to the credit of a bank account nominated and maintained by the person.

This provision ensures that the participant and the NDIA have clear expectations around how payments and where payments will be made. This provision also ensures that the NDIA can pay for supports periodically, for example for transport payments.

### **Section 8 – When NDIS amounts not payable**

Section 8 has also been moved from part 4 of the *National Disability Insurance Scheme (Plan Management) Rules 2013* (the 2013 Rules). Section 8 provides the circumstances in which an NDIS amount is not payable.

Section 8 provides that an amount is not payable to a person until the person nominates a bank account into which the amount is to be paid. This is consistent with paragraph 45(2)(b) of the Act.



Under the equivalent provisions in the 2013 Rules, an amount was not payable to a participant if the CEO required information or a document in relation to an instalment and that information had not been provided. This circumstance is no longer empowered by the Bill because of changes to section 45. If the CEO requires information or a document in relation to an instalment, they may request it pursuant to sections 53 and 55 of the Act.

### **Section 9 – Acquittal of NDIS amounts**

Section 9 is a new section which is being included as a result of changes to section 46 of the Act by the Bill.

Section 46 deals with the acquittal of NDIS amounts. The Bill makes changes to section 46 to clarify that a person who receives an NDIS amount on behalf of a participant must spend the money in accordance with both the participant's plan and the participant's requests.

Another change to section 46 contained in the Bill will allow the NDIS rules to prescribe requirements for NDIS providers that receive NDIS amounts on behalf of participants, to retain records including the retention of records for a specified period of time.

Section 9 prescribes the record keeping requirements for the purposes of the changes to section 46 of the Act.

Subsection 9(2) provides that where a participant, or a person on behalf of a participant, receives an NDIS amount and uses all or part of the NDIS amount to purchase goods or services, the purchaser must retain a record of each of those purchases for a period of 5 years. Paragraph 9(2)(b) specifies that, if the purchase is from an NDIS provider, the NDIS provider must also retain a record of each of those purchases for a period of 5 years.

This enables the NDIA to better support participants by ensuring that NDIS funding is being used in accordance with the participant's plan and the participant's requests.

Paragraph 9(2)(c) specifies that, if the purchase is of goods, the period of 5 years begins on the day on which the goods are delivered to the participant. Paragraph 9(2)(d) alternatively provides that, if the purchase is of services, the period of 5 years begins on the last day on which the services are provided to the participant.

Subsection 9(3) provides that a record retained in accordance with subsection 9(2) must include the name and ABN (if any) of the supplier, the day on which the record is made, the purchase price, both inclusive and exclusive of GST, the kind of goods or services and the day of purchase. Paragraph 9(3)(c) provides that, if the purchase is of goods, the record must also include the day on which the goods are delivered to the participant. Paragraph 9(3)(d) alternatively provides that, if the purchase is of services, the record must include each day on which the services are provided to the participant.

This ensures that participants and providers are provided clear guidance about their record keeping requirements and the minimum expectations that must be met.

## **Section 10 – Variation of participant’s plan on CEO’s own initiative**

This section is a new section and relates to new section 47A contained in the Bill.

The Bill will insert new section 47A into the Act which allows the CEO to vary a participant’s plan (excluding the participant’s statements of goals and aspirations), without requiring a plan reassessment to be undertaken, or a new plan to be created.

The CEO will be given the power to vary a participant’s plan either on the CEO’s own initiative or at the participant’s request. An example of a variation on the CEO’s own initiative would be to correct a technical mistake by the NDIA found after the plan had been agreed.

If a participant requests a variation of their plan, the CEO will be required to make a decision:

- (a) that the plan needs to be varied; or
- (b) not to vary the plan and not to reassess the plan under subsection 48(1); or
- (c) not to vary the plan but to reassess the plan under subsection 48(1) instead.

In deciding whether to vary a participant’s plan, the CEO will be required to have regard to matters that are set out in the NDIS rules. Section 10 sets out these matters to which the CEO is to have regard in deciding whether to vary a participant’s plan on the CEO’s own initiative.

This provision provides guidance to the CEO about the circumstances in which it would be appropriate for them to exercise their discretion to vary a plan in the absence of a request from a participant.

Subsection 10(2) prescribes the relevant matters as:

- (a) whether the variation is minor or technical;
- (b) if the variation is to add a particular support to the statement of participant supports included in the participant’s plan – both of the following:
  - (i) how that support is to be delivered to the participant;
  - (ii) the cost of that support;
- (c) whether the variation is of the reassessment date of the participant’s plan;
- (d) whether the variation is to how a particular support covered by the statement of participant supports included in the participant’s plan is to be delivered to the participant;
- (e) whether the variation relates to the cost of a particular support covered by the statement of participant supports included in the participant’s plan;
- (f) whether the variation relates to compensation received, or to be received, by the participant;
- (g) whether the variation relates to the management of any aspect of the participant’s plan, including the funding for supports under the plan;
- (h) whether the variation increases the total funding for supports under the participant’s plan;

- (i) whether the variation mitigates an immediate risk of harm to the participant or another person.

For example, Lin is 32 years old and is studying a Diploma of Electrical Engineering at TAFE. Lin enjoys playing music and lives with two roommates who are in Lin's band. Lin is an NDIS participant living with multiple sclerosis. At Lin's planning meeting in September, they spoke to their planner about needing an aid to improve their mobility reduce falls.

Lin's plan was approved in October and included an amount for an assessment by an occupational therapist. In the assessment, Lin's occupational therapist recommended a wheelchair and provided a quote to the NDIA. The CEO assessed the wheelchair as being a reasonable and necessary support, and on their own initiative, varied Lin's plan to include an amount for the quoted cost of the wheelchair.

### **Section 11 – Variation etc. of participant's plan at participant's request**

This section is also a new section and relates to new section 47A contained in the Bill.

Section 11 also relates to the amendments contained in the Bill to allow the CEO to vary a plan described at section 10, above. Section 11 sets out the matters to which the CEO must have regard when making a decision in relation to a participant's request for their plan to be varied. Subsection 47A(3) of the Act provides that, if a participant requests a variation of their plan, the CEO must make a decision:

- (a) that the plan needs to be varied; or
- (b) not to vary the plan and not to reassess the plan under section 48 of the Act; or
- (c) not to vary the plan but to reassess the plan under subsection 48(1) of the Act instead.

Subsection 11(2) provides that, in making a decision under paragraph 47A(3)(a) that the plan needs to be varied, the CEO must have regard to the matters set out in subsection 10(2) of these Rules. The matters set out in subsection 10(2) of the Rules are designed to assist in clarifying when a variation of a participant's plan should occur.

## EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (PLAN ADMINISTRATION) RULES 2021

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Subsection 11(3) provides the matters to which the CEO must have regard in making a decision:

- (a) under paragraph 47A(3)(b) of the Act to not vary the plan and not to reassess the plan under section 48 of the Act; or
- (b) under paragraph 47A(3)(c) of the Act not to vary the plan but to reassess the plan under subsection 48(1) of the Act instead.

The matters to which the CEO must have regard are those set out in subsection 10(2) of these Rules and the matters set out in subsection 11(4).

Subsection 11(4) prescribes the following matters:

- (a) whether the participant has experienced, is experiencing or is likely to experience a significant change in circumstances;
- (b) whether there has been a change in the participant's functional capacity to undertake one or more of the following activities:
  - (i) communication;
  - (ii) social interaction;
  - (iii) learning;
  - (iv) mobility;
  - (v) self care;
  - (vi) self management;
- (a) if the participant has a degenerative condition—whether there has been a change in that condition;
- (b) whether the participant has received, or is receiving, early intervention support.

For example, Joey is 18 years old and has lived with their uncle, Robert, since they were 10 years old. Joey is in year 12 and wants to study international relations at university next year. Joey is an NDIS participant and Robert provides Joey with support each day to get dressed for school, to prepare and cook meals and to get dressed for bed.

Robert gets sick and cannot provide this support anymore. Joey talks to their local area coordinator and asks for a plan variation to include more support to help cover the support that was being provided by Robert. The CEO considers Joey's request and decides not to vary the plan but to reassess the plan under section 48.

The reason the CEO decided not to vary the plan is because Joey is experiencing a significant change in their circumstances and a reassessment of their supports is more appropriate in the circumstances to ensure they have the necessary supports available.

## **Section 12 – Reassessment of participant’s plan**

This section is a new section and relates to changes made to section 48 of the Act contained in the Bill which will allow the CEO, on the CEO’s own initiative, to conduct a reassessment of a participant’s plan at any time. Subsection 48(2) of the Act provides the NDIS Rules may set out matters to which the CEO must have regard in deciding whether to conduct a reassessment of a participant’s plan rather than vary a plan.

Section 12 is made for the purposes of subsection 48(2) of the Act and requires the CEO to have regard to matters set out in subsections 10(2) and 11(4) of the Rules when deciding whether to conduct a reassessment of a participant’s plan. In this way, the matters that the CEO must consider when deciding to conduct a reassessment of a participant’s plan are identical to the matters considered when the CEO is deciding whether to vary a participant’s plan. This ensures consistency and that the CEO can make an informed decision on the level of adjustment required for the participant.

When deciding whether to conduct a reassessment it will be particularly relevant whether there has been a change in the participant’s circumstances or their functional capacity needs.

This provision provides guidance to the CEO about the circumstances in which it would be appropriate for them to exercise their discretion to reassess a participant’s plan in the absence of a request from a participant.