



Australian Government
Department of Social Services

Explanation of the National Disability Insurance Scheme (Plan Management) 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 being made to the Plan Management Rules to assist with public consultation on the NDIS Rules.

Changes to the Plan Management Rules are being made as part of broader changes to the National Disability Insurance Scheme (NDIS). The changes aim to improve participant experience by streamlining administrative process 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 these 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

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 (PLAN MANAGEMENT) RULES 2021

The *National Disability Insurance Scheme (Plan Management) Rules 2021* ('the Plan Management Rules') are made under section 209 of the *National Disability Insurance Scheme Act 2013* ('the Act').

The purpose of the Plan Management Rules is to repeal and replace the *National Disability Insurance Scheme (Plan Management) Rules 2013* ('the 2013 Plan Management Rules') with the *National Disability Insurance Scheme (Plan Management) Rules 2021*.

The Plan Management Rules are made pursuant to sections 33, 35 and 44 of the Act and prescribe matters relating to the funding and provision of supports included in a participant's plan and the circumstances to which the Chief Executive Officer of the National Disability Insurance Agency (the CEO) must have regard when considering whether self-management poses an unreasonable risk to the participant.

Background

The 2013 Plan Management Rules are being updated 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 *National Disability Insurance Scheme Act 2013* (the Act) to legislate the Participant Service Guarantee, streamline administrative process 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).

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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*

Key Changes

The amendments made to the 2013 Plan Management Rules give effect to recommendations in the Tune review including:

- Recommendation 16b to outline circumstances in which it is not appropriate for providers of support coordination to provide other funded supports to protect participants from provider conflicts of interest (see section 8 of these Rules).
- Recommendation 19 to ensure participants who request to self-manage their plans are subject to the same considerations that apply when a participant seeks to self-manage their plans (see sections 9 and 10 of these Rules).
- Recommendation 27c to amend the NDIS Rules to reflect current best practice drafting standards.

Additionally, provisions equivalent to those contained in Parts 4 and 5 of the 2013 Plan Management Rules will be moved to the new *National Disability Insurance Agency (Plan Administration) Rules 2021*. These provisions relate to extending the grace period when a participant is temporarily absent from Australia, the manner of paying NDIS amount and when NDIS amounts are not payable.

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

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

Section 2 – Commencement

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

Section 3 – Authority

Section 3 provides that the authority to make the instrument is the *National Disability Insurance Scheme Act 2013* ('the Act').

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Plan Management Rules 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.

Section 5 – Definitions

Section 5 provides definitions of various expressions used in the Plan Management Rules, and identifies a number of relevant definitions in the Act.

Part 2 – General

Section 6 – Funding and provision of supports included in participant's plan

Section 6 sets out funding and provision of supports to be included in a participant's plan for the purpose of subsection 35(1) of the Act.

Section 35 of the Act allows Rules to be made about the funding or provision of reasonable and necessary supports or general supports. Section 33 of the Act requires any reasonable and necessary and any general supports to be included in a participants plan.

Subsection 6(2) of the Plan Management Rules provides that where the NDIA has entered into an agreement with a person or provider to provide supports to participants, and the CEO is satisfied that those supports would be most efficiently and effectively

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provided to the participant by that person or provider, then this must be specified in the participant's plan.

Subsection 6(3) provides that where specialist, evidence-informed support is provided by a particular person or provider, and the CEO is satisfied that a participant requires that support and the support would be most efficiently and effectively provided to the participant by that particular person or provider, then this must be specified in the statement of supports.

Subsection 6(4) provides that if supports can be provided in a particular manner, and the CEO is satisfied that providing them in that manner would be the most efficient and effective way to provide the supports to the participant, the statement of supports must specify this.

Subsection 6(5) provides that for any of the supports specified in the participant's plan, if the CEO is satisfied that it is not reasonably practicable for the participant to access the support or class of supports through the NDIS market, the statement of support may specify that during a particular period, the support is to be provided to the participant:

- in a specified manner,
- by a specified person or provider, or
- by a specified person or provider in a specified class of providers.

In deciding whether to specify any supports in a participant's plan for the purpose of subsection (5), subsection (6) requires the CEO to have regard to certain matters including any preference expressed by the participant.

Under section 14 of the Act the NDIA is empowered to provide funding to entities to support participants to access supports. This is particularly relevant in circumstance where the NDIS market is thin and poses barriers to the participant accessing supports in a safe and timely manner. The NDIS is also designed to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services.

This may include ensuring that supports and services that pose a risk to participants are delivered in safe manner by an appropriately qualified person. The provisions in section 6 state that in circumstances where the NDIA has intervened in the market to support participants to access supports, or a participant's choice and control in the delivery of their supports has been limited, it must be clearly identified in the participant's plan.

This provides transparency and clarity to the participant, which not only aligns to the Participant Service Guarantee, but also enhances the participant's ability to pursue any rights of review.

Subparagraph 6(6) also requires the CEO to consider the preferences of the participant when engaging in market intervention on their behalf under subparagraph 6(5). This balances the need for market intervention with the participant's right to exercise choice

and control and promotes the participant's right to engage as an equal partner in decisions that will affect them.

Section 7 – Reasons for market intervention to be included

Section 7 provides that where the CEO does decide to specify a support in a participant's plan where market intervention is required in accordance with subsection 6(5), then the plan must include the reason for specifying those matters. This supports the NDIA to deliver on the service standards aligned with transparency under the Participant Service Guarantee.

Section 8 – Supports not to be provided by particular providers

This section provides guidance to the CEO about circumstances in which it would be appropriate to specify that a support must not be provided by a particular person or provider. This is to ensure the participant has access to quality supports and services and is protected from harm, including where the participant may be at risk of exploitation due to conflict of interest.

Specifically, section 8 provides that the statement of participant supports included in a participant's plan may specify that a support must not be provided to the participant by a particular person if the CEO is satisfied of one or more of a number of specified matters, including whether:

- The provision of supports is not likely to substantially improve outcomes for the participant or benefit the participant in the long term
- The provision of the support is likely to adversely affect the participant's inclusion in the community, or ability to exercise choice and control in relation to other supports in the plan.

For example, Shaylea is 19 years old and lives with her mother in Tweed Heads. Shaylea likes fishing with her uncle on weekends, going to the movies and works part time at an ice cream store. Shaylea has multiple sclerosis and has just become an NDIS participant. As part of her plan Shaylea has requested physiotherapy be included to help improve mobility and manage her symptoms. During planning, Shaylea asked whether this means that a provider by the name of Ultra Care would deliver her physiotherapy. She explained that Ultra Care was a new company without much experience delivering physiotherapy to a people with multiple sclerosis and who were also offering a discount bundle of support coordination and physiotherapy together. Shaylea was concerned about the level of care she would receive if Ultra Care was her provider and that she might be influenced to agree to receive support coordination through the same company.

When her plan was finalised it was determined that the delivery of physiotherapy by Ultra Care would not likely improve outcomes for Shaylea and might adversely affect her ability to exercise choice and control, and so it was specified that Ultra Care must not

provide that support. Physiotherapy was still included in her plan to be delivered by another provider.

Part 3 – Unreasonable risk to participants

Section 9 – Unreasonable risk—registered plan management provider, plan nominee or child’s representative managing funding

Section 9 specifies matters for the purpose of subsection 44(3) of the Act. Section 44 of the Act, as proposed to be amended by the Bill, specifies the circumstances in which a participant must not manage their plan and includes, for example, where the participant is insolvent under administration. Subsection 44(2) provides that a participant must not manage their plan where the CEO is satisfied this would present an unreasonable risk to the participant or permit the participant to manage matters prescribed in the NDIS Rules as matters that must not be managed by a participant. Section 9 prescribes matters for the purpose of subsection 44(2) of the Act.

This section recognises that in some cases there may be unreasonable risk to the participant in giving effect to a request that a registered plan manager, nominee or child representative wholly or partly manage the funding for supports in a participant’s plan. This section outlines what the CEO is required to consider when considering whether the management request would pose an unreasonable risk to the participant. This includes considering safeguards and strategies to mitigate the risk. In doing so, this promotes the participant’s right to exercise choice and control.

Adding a registered plan manager to the existing risk assessment requirement for a nominee and child representative responds to a Tune review recommendation. The Tune review noted there are potential risks for participants engaging unregistered providers through registered plan managers without the same risk assessment that is currently required for self-managing participants. These concerns are on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers.

Section 10 – Unreasonable risk—adult participant managing funding

Section 10 also specifies matters the CEO is to have regard to for the purposes of subsection 44(3) of the Act, as proposed to be amended by the Bill, in considering whether the participant managing the funding for supports under the participant’s plan would present an unreasonable risk to the participant.

This section recognises that in some cases there may be unreasonable risk to the participant in giving effect to a request that they self-manage all or part of the funding for supports in their plan. This section outlines what the CEO is required to consider when

considering whether the management request would pose an unreasonable risk to the participant. This includes considering safeguards and strategies to mitigate the risk. In doing so, this promotes the participant's right to exercise choice and control.

Part 4 – Application and transitional provisions

Section 11 – Application

Section 11 is an application provision providing Part 3 of these Rules, being sections 9 and 10, apply in relation to plan management requests made on or after commencement of this instrument.