



Australian Government
Department of Social Services

Explanation of the National Disability Insurance Scheme (Becoming a Participant) 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 *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (the 2016 Becoming a Participant Rules) to assist with public consultation on the *National Disability Insurance Scheme (Becoming a Participant) Rules 2021* (the Becoming a Participant Rules).

Changes to these 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 (BECOMING A PARTICIPANT) RULES 2021

The *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* ('the 2016 Rules') set out requirements relating to access, such as when an impairment or impairments are, or are likely to be, permanent for the purposes of the disability and early intervention requirements.

The purpose of the Rules is to repeal and replace the 2016 Rules with the *Becoming a Participant Rules*.

Background

The changes made to the *Becoming a Participant Rules* are a result 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 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.

As part of the Tune review, it was identified that NDIS processes could be made simpler and more straight-forward, 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:

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (BECOMING A PARTICIPANT) RULES 2021

- *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 Becoming a Participant Rules support the implementation of recommendations 8 and 27 of the Tune review.

Recommendation 8 of the Tune Review recommended amending the Act and the NDIS Rules to provide clearer guidance for the NDIA in considering whether a psychosocial impairment is permanent, recognising that some conditions may be episodic or fluctuating. Recommendation 8 also recommended updating the language by replacing references to 'psychiatric conditions' with 'psychosocial disability' when determining references.

Recommendation 27 of the Tune Review recommended updating the Act and NDIS Rules to remove trial and transition provisions, reflect agreed recommendations arising from the 2015 Review of the NDIS Act, and reflect current best practice drafting standards.

Key changes to the Rules

Firstly, the Becoming a Participant Rules have been restructured to be easier to navigate and remove restatements of provisions contained in the Act. The wording of all the provisions in these rules has also been updated to make the rules easier for people to understand.

Secondly, section 8 of these Rules sets out amended factors for determining whether a person's psychosocial impairment is considered permanent for the purposes of the NDIS eligibility criteria.

Thirdly, section 10 of these Rules set out a varied set of factors for assessing a prospective participant's ability to undertake relevant activities for the purpose of access into the NDIS. These new factors consider the effect that fluctuating and episodic psychosocial impairments can have on a person's ability to perform tasks.

Importantly, a person's ability to undertake activities can be holistically considered with regard to the overall effect of a person's impairment over a period of time that is reasonable, considering the nature of the impairment.

A prospective participant is given a greater opportunity under these rules to explain and demonstrate the broader impact on their functional capacity when going through the process of NDIS access.

Fourthly, section 12 mirrors the changes made at section 8 for determining whether a person's psychosocial impairment is considered permanent but applies them to the NDIS early intervention criteria. Early intervention is a means of accessing the NDIS for children and adults, including children with developmental delay, who would benefit from intervention supports to improve their functional capacity.

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

Section 1 provide that the name of the instrument is the *National Disability Insurance Scheme (Becoming a Participant) Rules 2021*.

Section 2 – Commencement

Section 2 sets out a table providing for the commencement of the Becoming a Participant Rules. These Rules commence on the later of the commencement of the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2021*, and the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the authority to make the Becoming a Participant Rules is section 209 of 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 Becoming a Participant 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. There is one Schedule to these Rules, which repeals the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

Section 5 – Simplified outline of this instrument

Section 5 provides a simplified outline of the Becoming a Participant Rules to assist the reader.

Section 6 – Definitions

Section 6 provides definitions of various expressions used in the Becoming a Participant Rules, and identifies a number of relevant expressions used in the Rules which are defined in the Act.

Part 2 – Disability requirements

Part 2 contains provisions that set out how to determine whether a person meets the disability requirements to become a participant in the NDIS. This includes how to determine whether an impairment is, or is likely to be, permanent and whether that impairment may be considered to result in substantially reduced functional capacity to undertake activities.

This Part sets out different requirements for people with a psychosocial disability and people with a disability other than a psychosocial disability. Part 2 does not apply if a person meets the early intervention requirements.

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

This section is based on a provision that currently exists in the 2016 Rules at paragraph 5.4. The 2016 Rules have been updated to reflect best drafting practice. The intent of paragraphs 5.6 and 5.7 are reflected as notes to help explain the section.

Section 7 is made for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act. Paragraph 27(1)(a) provides that the NDIS rules may prescribe circumstances in which impairments are, or are likely to be, permanent. Subsection 27(2) is a new subsection that will be inserted into the Act by the Bill and will provide that the NDIS rules may specify requirements that must be satisfied for an impairment to be considered permanent or likely to be permanent.

Section 7 of the Becoming a Participant Rules provides a requirement that must be satisfied for a person's impairment to be considered permanent, or likely to be permanent, for the purposes of paragraph 24(1)(b) of the Act. Paragraph 24(1)(b) of the Act provides a person meets the disability requirements if (amongst other things) the impairment or impairments are, or are likely to be, permanent.

Section 7 applies to impairments other than an impairment to which a psychosocial disability is attributable, such as impairments to which a physical or intellectual disability is attributable, which impact a person's daily living and functional capacity. Psychosocial disabilities are dealt with in section 8 of the Becoming a Participant Rules.

Subsection 7(2) provides that 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 to subsection 7(2) alerts the reader that under subsection 24(2) of the Act, an impairment or impairments that vary in intensity may be permanent despite the variation.

Note 2 to subsection 7(2) clarifies that an impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection 7(2). Examples of impairments which are of a degenerative nature include conditions such as Alzheimer's disease, Alper's disease and Lewy body dementia.

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

This section is a new section that relates to changes being made to section 24 contained in the Bill.

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (BECOMING A PARTICIPANT) RULES 2021

The changes to section 24 enable independent consideration of psychosocial impairments as meeting the disability access requirements for the NDIS, with particular focus on the potentially fluctuating and episodic nature of these impairments.

The 2016 Rules provide that an impairment, including a psychosocial impairment, is, or is 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.

These new rules broaden the eligibility criteria for permanency to focus on whether the person has been unable to find a substantial improvement to their condition through appropriate treatments, or whether there are no appropriate treatments available to the person to manage the condition. This places attention on the person's subjective experience of receiving treatment and provides flexibility for the wide variety of psychosocial conditions.

This addresses concerns raised by prospective participants such as people with mental health conditions who may have limited or sporadic engagement with mental health services, making it difficult to provide adequate evidence of treatment history. In addition, the outcomes of clinical treatments on functional capacity for these people are sometimes unpredictable and not well-supported by a significant body of evidence, making it difficult for them to meet the criteria in the 2016 Rules.

Section 8 is made for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act. This section provides for the requirements that must be satisfied for 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.

Subsection 8(2) provides that an impairment to which a psychosocial disability is attributable may be considered permanent, or likely to be permanent, only if:

(a) both:

- a. the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person's mental, behavioural or emotional condition and,
- b. 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), the treatment has not led to a substantial improvement in the person's functional capacity; or

(b) no appropriate treatment for the purpose of managing the person's mental, behavioural or emotional condition is reasonably available to the person.

For the purposes of subsection 8(2), appropriate treatment would include activities associated with stabilisation and management of the condition to which a psychosocial disability is attributable (including crisis, symptom and medication management) and establishment of pathways for longer-term recovery.

For example: Appropriate treatment for pharmacological and other treatment of mental condition should be reasonable and manageable for the person given their psychosocial disability and biological reactions, and their level of access to treatment services. The effects of this pharmacological treatment should be manageable for a person to allow them to reach a state of personal, social and emotional wellbeing.

The period of time which is reasonable for the purposes of paragraph 8(2)(a) will be guided by an appropriately qualified health professional and supported by medical evidence. It will be worked out taking into account the usual period over which the impairment recurs, and assessing the impact on the person's functional capacity over that period. A reasonable period of time should be established on a case-by-case basis, taking into consideration the episodes and fluctuations of a person's mental condition and based on advice from an appropriately qualified health professional.

Note 1 to subsection 8(2) alerts the reader that under subsection 24(2) of the Act, an impairment or impairments that vary in intensity may be permanent despite the variation.

Note 2 to subsection 8(2) alerts the reader that under subsection 24(3) of the Act, 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.

Note 3 clarifies that an impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent under subsection 8(2). People with psychosocial disability may also experience a range of physical and other impairments and some of these impairments may be degenerative, reinforcing the importance of the principle of an overall assessment when assessing the person's functional capacity.

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

This section is based on a provision that currently exists in the 2016 Rules at paragraph 5.8. The 2016 Rules has been updated to reflect best drafting practice and been added to allow consideration of whether there are no appropriate treatments that would result in the impact on a person's functional capacity being reduced.

Section 9 is made for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act, and provides for the circumstances in which an impairment other than an impairment to which a psychosocial disability is attributable results in substantially reduced functional capacity of a person in undertaking one or more activities for the purposes of paragraph 24(1)(c) of the Act. The activities mentioned in paragraph 24(1)(c) of the Act are communication, social interaction, learning, mobility, self-care and self-management.

Subsection 27(3) is a new provision being inserted into the Act by the Bill and provides the NDIS rules may specify requirements that must be satisfied for one or more impairments to be considered to result in substantial reduced functional capacity for the purposes of paragraph 27(1)(b).

Subsection 9(1) sets out what section 9 does, specifically, section 9 sets out 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.

Subsection 9(2) then provides that an 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.

Section 10 – Substantially reduced functional capacity to undertake relevant activity–psychosocial disabilities

This section is a new section and relates to changes being made to section 24 contained in the Bill.

The changes to section 24 mean that impairments to which a psychosocial disability is attributable that are episodic or fluctuating may be taken to be permanent, and as meaning the person is likely to require support under the NDIS for their lifetime, despite the episodic or fluctuating nature of the impairments, for the purposes of satisfying the disability requirements in section 24 of the Act.

Previously, the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*, in assessing a prospective participant's ability to undertake activities, did not consider the effect that fluctuating and episodic psychosocial impairments could have on a person's ability to perform tasks when considering whether a person's impairment results in substantially reduced functional capacity for the purposes of satisfying the disability requirements contained in section 24 of the Act.

To address this, these new rules have separated psychosocial impairments from other conditions, so that a varied set of factors are used to consider a person's reduced functional capacity. Importantly these factors can now be holistically considered with regard to the overall effect of a person's impairment over a period of time that is reasonable, considering the nature of the impairment. A prospective participant is given a greater opportunity under these rules to explain and demonstrate the broader impact on their functional capacity when going through the process of NDIS access.

This change has occurred because the previous rules did not appreciate that with psychosocial conditions functional capacity can be cumulative and variable, even with symptoms that do not appear to be ongoing or permanent. Further, the 2016 Rules did not consider the reasons why a person might be able or unable to do certain things, with these new rules now accommodating these points.

Section 10 is made for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act. This section prescribes the requirements 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 for the purposes of satisfying paragraph 24(1)(c) of the Act.

Section 24 of the Act contains the disability requirements which must be satisfied in order for a person to have access to the NDIS and paragraph 24(1)(c) requires the impairment or impairments a person has to result in substantially reduced functional capacity to undertake one or more of the following activities: communication, social interaction, learning, mobility, self-care and self-management.

Subsection 10(2) of the *Becoming a Participant Rules* provides that an impairment to which a psychosocial disability is attributable, 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.

Subsection 10(3) provides that subsection 10(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 and in particular whether the impairment is episodic or fluctuates is a relevant consideration when determining a period of time that is reasonable.

The period of time which is reasonable will be guided by an appropriately qualified health professional and supported by medical evidence. It will be worked out taking into account the usual period over which the impairment recurs, and assessing the impact on the person's functional capacity over that period. A reasonable period of time should be established on a case-by-case basis, taking into consideration the episodes and fluctuations of a person's mental condition and advice of a qualified health professional.

Part 3 – Early intervention requirements

Part 3 sets out the early intervention requirements a person must satisfy, as an alternative to satisfying the disability requirements, in order to become a participant in the NDIS. This Part prescribes the criteria for early intervention requirements that the CEO will apply and the circumstances in which the criteria are to be applied, including when assessing when a person's impairments are, or are likely to be, permanent.

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

This section is based on a provision that currently exists in the 2016 Rules at paragraph 6.4. The provisions has been updated to reflect best drafting practice the intent of paragraph 6.5 has been reconstituted as a note for the purpose of explaining the section.

Section 11 is made for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act.

Subsection 27(2) is being inserted into the Act by the Bill and enables the NDIS Rules to specify, for the purposes of paragraph 27(1)(a), requirements that must be satisfied for an impairment to be considered permanent or likely to be permanent.

Paragraph 27(1)(a) of the Act provides the NDIS rules may prescribe circumstances in which, or criteria to be applied, in assessing whether one or more impairments are, or are likely to be permanent for the purposes of subparagraph 25(1)(a)(i) or (ii) of the Act. Subparagraph 25(1)(a)(i) describes when a person meets the early intervention requirements, specifically if the person has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent.

Subsection 11(1) provides that section 11 of the Becoming a Participant Rules prescribes the 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.

Subsection 11(2) then provides that an 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. This is to ensure a consistent approach to determining permanency.

The note to subsection 11(2) clarifies that an impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent.

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

This section is a new section and relates to changes being made to section 25 contained in the Bill.

The changes to section 25 mean that impairments to which a psychosocial disability is attributable that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairments..

The 2016 Rules do not contain a separate set of factors to consider the permanency of psychosocial impairments in relation to young children and early intervention.

These new rules broaden the eligibility criteria for permanency to focus on whether the person has been unable to find a substantial improvement to their condition through appropriate treatments, or whether there are no appropriate treatments available to the person to manage the condition. This places attention on the person's subjective experience of receiving psychosocial treatment and provides flexibility for the wide variety psychosocial conditions.

This addresses concerns raised by prospective participants, for example that people with mental health conditions may have limited or sporadic engagement with mental health services, making it difficult to provide adequate evidence of treatment history and that the outcomes of clinical treatments on functional capacity are unpredictable and not well-supported by a significant body of evidence.

Section 12 is also made for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act. Paragraph 27(1)(a) of the Act will provide the NDIS rules may prescribe circumstances in which, or criteria to be applied, in assessing whether one or more impairments are, or are likely to be permanent for the purposes of subparagraph 25(1)(a)(i) or (ii) of the Act.

Subparagraph 25(1)(a)(ii), describes when a person meets the early intervention requirements, specifically if the person has one or more identified impairments to which a psychosocial disability is attributable and that are, or are likely to be, permanent.

Subsection 12(1) provides what section 12 of the Becoming a Participant Rules sets out, specifically, section 12 specifies circumstances in which a person's impairment to which a psychosocial disability is attributable may be considered permanent, or likely to be permanent.

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (BECOMING A PARTICIPANT) RULES 2021

Subsection 12(2) then specifies that an impairment may be considered permanent, or likely to be permanent, only if:

(a) both:

- a. the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person's mental, behavioural or emotional condition and,
- b. after a period of time that is reasonable considering the nature of the impairment, the treatment has not led to a substantial improvement in the person's functional capacity. For the purposes of paragraph 12(2)(a) of the Act, whether the impairment is episodic or fluctuates is a relevant consideration when determining a period of time that is reasonable; or

(b) no appropriate treatment for the purpose of managing the person's mental, behavioural or emotional condition is reasonably available to the person.

For the purposes of subsection 12(2), appropriate treatment are activities associated with stabilisation and management of the psychosocial disability (including crisis, symptom and medication management) and establishment of pathways for longer-term recovery.

For example: Appropriate treatment for pharmacological and other treatment of mental condition should be reasonable and manageable for the person given their mental health condition and biological reactions, and their level of access to treatment services. The effects of this pharmacological treatment should be manageable for a person to allow them to reach a state of personal, social and emotional wellbeing.

The period of time which is reasonable for the purposes of paragraph 12(2)(a) of the Act will be guided by an appropriately qualified health professional and supported by medical evidence. It will be worked out taking into account the usual period over which the impairment recurs, and assessing the impact on the person's functional capacity over that period. A reasonable period of time should be established on a case-by-case basis, taking into consideration the episodes and fluctuations of a person's psychosocial disability and based on advice from an appropriately qualified health professional.

Note 1 to subsection 12(2) alerts the reader to subsection 25(1A) of the Act, which will provide that 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.

Note 2 to subsection 12(2) clarifies that an impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, for the purposes of subsection 12(2).

Section 13 – Provision of early intervention supports

This section is based on provisions that currently exist in the 2016 Rules at paragraphs 6.2 and 6.9. These provisions have been updated and reordered to make them easier to use and reflect best drafting practice.

Section 13 is made for the purposes of paragraphs 27(1)(d), (e) and (f) of the Act, and prescribes criteria to be applied in assessing whether the provision of early intervention supports is likely to benefit by reducing their future needs for supports in relation to disability for the purposes of paragraph 25(1)(b) of the Act.

Section 25 of the Act sets out when a person meets the early intervention requirements, and paragraph 25(1)(b) provides one of the criteria is that the CEO is satisfied the provisions of early intervention supports for the person is likely to benefit the person by reducing their needs for future supports in relation to the disability.

Paragraph 27(1)(e) enables the NDIS rules to prescribe circumstances in which, or criteria to be applied in assessing whether the provision of early intervention supports is likely to benefit a person by mitigating, alleviating or preventing the deterioration of the person's functional capacity, or improving such functional capacity.

Paragraph 27(1)(f) enables the NDIS rules to prescribe circumstances in which, or criteria to be applied in assessing whether the provision of early intervention supports is likely to benefit a person by strengthening the sustainability of the informal supports available to the person.

Subsection 13(1) prescribes the criteria to be applied in assessing whether provision of early intervention supports is likely to benefit a person by:

- (a) reducing the person's future needs for supports in relation to a disability; or
- (b) mitigating, alleviating or preventing the deterioration of the person's functional capacity to undertake one or more of the activities listed in subparagraph 25(1)(c)(i) or (ii) of the Act, being communication, social interaction, learning, mobility, self-care or self-management, or improving such functional capacity; or
- (c) strengthening the sustainability of the informal supports available to the person, including through building the capacity of the person's carer.

Subsection 13(2) provides that, in assessing whether the provision of early intervention supports is likely to benefit a person, 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 need 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.

The note to subsection 13(2) alerts the reader to subsection 25(1B) of the Act, which provides that, in deciding whether the provision of early intervention supports is likely to benefit the person's functional capacity, the CEO must take into account, as the primary consideration, whichever reports the CEO receives from the prospective participant under paragraph 26(1)(b) of the Act as considered appropriate.

Section 14 – Prescribed impairments

This section is based on a provision that currently exists in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* at paragraph 6.10. This provision has been updated and reordered to make it easier to use and reflect best drafting practice.

Section 14 is made for the purposes of subsection 25(2) of the Act. Subsection 25(2) of the Act provides that the CEO is taken to be satisfied that early intervention supports are likely to benefit a person if one or more the person's impairments are prescribed in the NDIS rules.

Section 14 of the Becoming a Participant Rules prescribes the following impairments for the purposes of subsection 25(2) of the Act:

- (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.

A note alerts the reader that developmental delay is defined in section 9 of the Act. In section 9 of the Act this term is defined to mean a delay in the development of a child under six years of age that:

- (a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
- (b) results in substantial reduction in functional capacity in one or more of the following areas of major life activity: self-care; receptive and expressive language; cognitive development; and motor development; and
- (c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated.

Schedule 1 – Repeals

National Disability Insurance Scheme (Becoming a Participant) Rules 2016

Item 1 of Schedule 1 repeals parts 1 to 6 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

A note alerts the reader that part 7 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* is not being repealed and will continue 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.

Item 2 repeals the last sentence of paragraph 8.3 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

Item 3 repeals paragraph 8.4 of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

Item 4 repeals schedules A and B of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* which relate to the trial and transition phase of the NDIS and are now redundant.