



**Australian Government**  
**Department of Social Services**

# Explanation of the National Disability Insurance Scheme (Children) 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 (Children) Rules 2013* ('the 2013 Children Rules') to assist with public consultation on the *National Disability Insurance Scheme (Children) Rules 2021* ('the 2021 Children Rules').

Changes to the 2013 Children 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 Guarantee and Other Measures) Bill 2021 ('the Bill'). 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 the 2021 Children 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 (CHILDREN) RULES 2021

The 2013 Children Rules prescribe matters relating to a child's representative, who is responsible for undertaking acts and making decisions in relation to the *National Disability Insurance Scheme Act 2013* ('the Act') for, and on behalf of, a child.

The 2013 Children Rules are being updated to reflect current best practice drafting standards, including updating language as a result of the proposed changes to the Act contained in the Bill.

The Bill will 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.

## Background

The 2021 Children 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 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 the 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).

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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 Children Rules will be repealed and replaced by the 2021 Children 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 2021 Children Rules do not change the existing policy intent of the 2013 Children Rules.

### Key changes to the Rules

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

Secondly, the 2021 Children Rules clarify the persons the CEO must consult when deciding:

- whether a child is capable of making their own decisions, and
- whether subsection 74(1) and (2) of the Act do not apply to a child.
  - Subsection 74(1) of the Act provides that if the Act requires or permits a thing to be done in relation to a child, the thing is to be done to or in relation to the persons who have parental responsibility for the child, or if the CEO is satisfied this is inappropriate, a person determined in writing.
  - Subsection 74(2) of the Act provides that if a person mentioned in subsection 74(1) makes a plan request for the child, the person may request that they manage the plan, or that the plan be managed by a registered plan management provider nominated by the person, or that the plan be managed by the Agency or a person specified by the Agency.

These changes have been added at sections 8 and 9 of the 2021 Children Rules.

In the 2013 Children Rules, when determining whether the child is capable of making decisions for themselves, the CEO was required to consult with the child and the child's representative. Section 8 of the 2021 Children Rules now clarifies that

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consultation must include a State or Territory Minister or the head of a Department of State of a State or Territory (however described) if they are a representative of the child.

In the 2013 Children Rules, when determining whether paragraphs 74(1) and 74(2) of the Act apply to a child, the CEO was required to consult with the child and the child's representative. Section 9 of the 2021 Children Rules now clarifies that consultation must include a State or Territory Minister or the head of a Department of State of a State or Territory (however described) if they are a representative of the child.

Finally, section 7 of the 2021 Children Rules requires the CEO to consider whether a person is the most suitable person to be the child's representative and section 10 requires the CEO to consider whether a person is more suitable than the child's guardian to have parental responsibility. This is in addition to a range of other matters that were also included in the 2013 Children Rules.

While the 2013 Children Rules did not explicitly require the CEO to consider the relative suitability of a person in these circumstances, these changes do not reflect a change in the policy intent. Rather, these changes strengthen the existing principle that where acts or things are done on behalf of a child, the best interests of the child are paramount.

The Rules are made pursuant to sections 74, 75 and 76 of the Act.