



Australian Government
Department of Social Services

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

The 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 (PARTICIPANT SERVICE GUARANTEE) RULES 2021

These Rules, along with amendments to the *National Disability Insurance Scheme Act 2013*, create the 'Participant Service Guarantee' ('Guarantee') as a Category C rule for the purposes of:

- a. establishing administrative timeframes the National Disability Insurance Agency (Agency) will be expected to meet;
- b. setting engagement principles for how the Agency will be expected to work with and alongside participants and prospective participants;
- c. setting performance metrics and reporting requirements for the Agency Board's quarterly report to the Ministerial Council; and
- d. setting out the matters for inclusion in the Commonwealth Ombudsman's annual report to the Minister on the Agency's compliance.

Background

The Participant Service Guarantee 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 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 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.

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 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*

EXPLANATION OF THE NATIONAL DISABILITY INSURANCE SCHEME (PARTICIPANT SERVICE GUARANTEE) RULES 2021

- *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 Guarantee Rules are a new Category C rule that includes timeframes for decision-making and engagement principles. The primary purposes of the Guarantee Rules are to:

- a. enhance and strengthen the participant-centred focus of the Agency;
- b. enable participants to have a clear understanding of what they can expect at various stages of engagement with the Agency; and
- c. build a greater understanding of the service delivery expectations between the Agency, its partners, participants and the community.

The Guarantee Rules are intended to cover all interactions a prospective participant or participant has with the NDIS. It is envisaged that the Agency would use the metrics outlined in the Rules to inform its partner organisations, contractors and consultants on performance expectations and outcomes.

The timeframes to be set out in the Guarantee will include some flexibility, including, for some purposes, the ability to pause the applicable timeframe, where the circumstances of a participant's case are complex, the participant is unavailable, further information has been requested from the participant or it is otherwise appropriate.

Where the applicable timeframe is already set out in the Act, and is to remain unchanged, the Guarantee Rule notes this. This is to ensure that all relevant timeframes are in one place (this Rule), and easily identified by participants.

Explanation of the provisions

Part 1 - Preliminary

Section 1 – Name

This section provides how the proposed instrument is to be cited, that is, as the *National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021*.

Section 2 - Commencement

Section 2 sets out a table providing for the commencement of the Participant Service Guarantee Rules, being the later of (a) the day the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2021* commences, and (b) the day after the Participant Service Guarantee Rules are registered.

Section 3 – Authority

Section 3 provides that the Participant Service Guarantee Rules are made under the *National Disability Insurance Scheme Act 2013* (the Act).

Section 4 - Definitions

Section 4 provides definitions of various expressions used in the Participant Service Guarantee Rules, and identifies a number of relevant definitions in the Act.

A key term that is defined in section 4 is that of ‘responsible person’ which is used throughout Part 2 of the Participant Service Guarantee Rules. ‘Responsible person’ is defined to mean:

- the Agency,
- the CEO,
- an Agency officer,
- a consultant or contractor engaged by the Agency to assist in the performance of the Agency’s functions, or
- a person provided funding under subsection 14(1) of the Act for the purposes of enabling the person to perform as an NDIS partner in the community role.

Part 2 - Engagement principles and service standards

Part 2 of the Participant Service Guarantee Rules set out engagement principles and service standards for the Agency, the CEO and other ‘responsible persons’. Section 5 and section 6 prescribe rules for the purposes of paragraphs 209(2A)(c) and (d) of the Act, as amended by the Bill. These paragraphs enable the NDIS rules to provide for matters relating to how the Agency, CEO and other specified persons engage with participants and prospective participants, and matters relating to how participants or prospective participants are to engage with the Agency, the CEO and other specified persons.

Section 5 – Engagement principles and service standards – Agency, CEO and other responsible persons

Section 5 sets out, for the purposes of paragraph 209(2A)(c) of the Act, the relevant engagement principles and service standards that apply to how responsible persons are to engage with participants or prospective participants in the NDIS. ‘Responsible persons’ are defined in section 4 of the Participant Service Guarantee Rules.

The engagement principles are categorised as transparency, responsiveness, respect, empowerment and connectedness. Each of the engagement principles require responsible persons to adhere to service standards to comply with that engagement principle. To that end, the service standards require the responsible person to do things, or take actions, such as provide reasons for decisions, or a draft plan prior to give effect to a participant’s plan finally being approved, if so requested by the participant.

The engagement principles and service standards ensure that responsible persons, including the Agency, have clear delivery standards for the ways in which it engages with and works alongside people with disability in delivering the NDIS.

These principles are a fundamental part of the Guarantee in recognition that a Guarantee based solely around timeframes for decision-making is likely to result in rigid outcomes which do not consider a participant’s overall engagement with the scheme, and risks compromising the quality of the NDIS participant experience.

For example, adherence to timeframes for a participant’s plan development would be undermined if the participant did not have a quality planning experience, and if that process did not equip them with the confidence and tools to exercise informed choice and control.

Section 6 – Engagement principles and service standards - participants

Section 6 sets out, for the purposes of paragraph 209(2A)(d) of the Act, engagement principles and service standards for how participants or prospective participants are to engage with responsible persons, including the Agency, Agency staff and the CEO. This is intended to guide participants and prospective participants as to how to interact with responsible persons, including the Agency, in order to maximise the Agency’s ability to be responsive to them. These include requiring participants and prospective participants to provide timely and accurate information to support decision-making, and keeping the Agency informed of any changes in their circumstances.

Part 3 – Timeframes and related obligations

Section 7 – Simplified outline of this Part

Section 7 sets out a simplified outline of Part 3 of the Participant Service Guarantee Rules, specifically that the Part sets out timeframes for certain decisions or dealings of the CEO or Agency under the Act, and other related obligations on the CEO.

A note to section 7 alerts the reader to various examples of timeframes for the CEO which are set out in the Act, and which are not changed by the Guarantee Rule.

Section 8 – Plans – approving a statement of participant supports in a plan

Section 8 provides, for the purposes of paragraph 33(4)(a) of the Act, as amended by the Bill, timeframes for the CEO's decision to approve a statement of participant supports for a participant's plan, which becomes the participant's plan once combined with the participant's statement of goals and aspirations. Paragraph 33(4)(a) requires the CEO to decide whether or not to approve the statement of participant supports within the period worked out in accordance with the NDIS rules.

The timeframes for approval of the statement of participant supports differ depending on various situations. The periods start on the participant's access decision day and the number of days is determined in accordance with subsection 8(1), unless the period is adjusted under subsection 8(2).

'Access decision day' is defined at section 4, to be the day the CEO decides that the participant meets the access criteria.

Where a person or entity has received funding to assist a participant as a child under the age of 7 requiring early intervention under new paragraph 14(2)(b) of the Act as amended by the Bill, the prescribed timeframe for approving a statement of participant supports is 90 days. A longer time period is prescribed for this decision as the family already has access to funding to meet the child's disability support needs.

Where a person or entity has not received funding to assist a participant under new paragraph 14(2)(b) funding, the timeframe is 56 days.

Subsection 8(2) pauses the timeframes in subsection 8(1) if the CEO requires the participant under subsection 36(2) of the Act to provide either further information, an assessment or report. The timeframe remains paused until the CEO's requirement is complied with. When the CEO's request is complied with, either the initial period resumes, or if less than 14 days remains on the initial period, the initial period is extended to give the CEO 14 days to make the decision.

Example 1 for subsection 8(2): Emilie became a participant in the Scheme on 1 July 2021. The CEO has 56 days to work with Emilie to develop and approve her plan. This means her plan must be approved by 26 August 2021.

Emilie meets with her Local Area Coordinator (LAC) to start to develop her plan on 10 July 2021. On that day, the LAC identifies that Emilie needs to provide more information for them to make a reasonable decision about her statement of supports. The timeframe for the CEO to approve her plan pauses until Emilie returns the required information that is sufficient to support the Agency to make the decision. Emilie returns the additional requested information to the LAC on 26 July 2021.

When the information is received, the CEO must still approve her plan no later than 26 August 2021. This is because there is more than 14 days between 26 July 2021 and 26 August 2021.

Example 2 for subsection 8(2): Taylor became a participant in the Scheme on 1 July 2021. The CEO has 56 days to work with Taylor to develop and approve his plan. This means his plan must be approved by 26 August 2021.

Due to a range of circumstances, Taylor could not meet with his LAC to start to develop his plan until 13 August 2021. On that day, the LAC identifies that Taylor needs to provide more information for them to make a reasonable decision about his statement of supports.

The timeframe for the CEO to approve his plan pauses until Taylor returns the required information that is sufficient to support the Agency to make the decision. Taylor returns this information on 24 August 2021.

When the information is received, the CEO has 14 days from the date it was received to approve his plan. This means that it must be approved by 7 September 2021.

Section 9 – Plans – assistance to implement a plan

Section 9 specifies timeframes in which the CEO must provide assistance to implement a participant's plan pursuant to section 50J of the Act. Section 50J will enable the NDIS rules to prescribe requirements with which the CEO must comply in relation to the preparation of plans for participants, plans that have come into effect, and giving effect to decisions of the Administrative Appeals Tribunal (AAT) in relation to participants or prospective participants.

Paragraph 9(a) requires the CEO to offer to hold a plan implementation meeting for the participant as soon as reasonably practicable after a participant's plan comes into effect. Paragraph 9(b) then requires the CEO, if the participant accepts the offer to hold a plan implementation meeting, to seek to hold the meeting with 28 days after the acceptance of the offer.

A note to section 9 reminds the reader that subsection 37(1) of the Act provides for when a participant's plan comes into effect, with a second note explaining a copy of the plan must be provided to the participant within 7 days after the plan comes into effect (as per section 38 of the Act).

Section 10 – Plans – reassessments and variations

Section 10 sets timeframes for the reassessment and variation of participant plans. Plan variations are a new concept in the NDIS and replace the existing plan 'review' provisions.

A CEO initiated reassessment, for the purposes of paragraph 48(1) of the Act, must be finalised within 28 days. This timeframe may be extended under subsection 10(4).

A participant's plan will generally include a reassessment date or the circumstances in which a plan will be reassessed (see paragraph 33(2)(c) of the Act). Where the plan includes a reassessment date, for the purposes of subsection 48(6) of the Act, the CEO must commence the reassessment of the plan, under subsection 48(5) of the Act, 56 days prior to the plan's reassessment date.

Subsection 10(1) provides that where the plan includes a reassessment date, for the purposes of subsection 48(6) of the Act the CEO must commence the reassessment of the plan under subsection 48(5) of the Act in the period of 56 days ending on the plan's reassessment date.

Subsection 10(2) deals with timeframes applicable to reassessments initiated by the CEO under section 48(1) of the Act as amended by the Bill. Subsection 10(2) provides that the period starts on the day the CEO decides to conduct the reassessment and the reassessment, must be finalised within 28 days. This timeframe may be extended under subsection 10(4).

Subsection 10(3) deals with timeframes applicable to the varying of a plan after the CEO decides to do so in response to a participant's request. For participant requested plan variations, for the purposes of paragraph 47A(3)(a) of the Act, the timeframe starts on the day the decision is made (paragraph 10(3)(a)) and then varies depending upon the nature of the variation. If the request relates to complex needs or raises complex risks, or relates to complex assistive technology or home modifications, then 50 days is allowed (subparagraph 10(3)(b)(i)). If not, the timeframe is 28 days (subparagraph 10(3)(b)(ii)). This timeframe may be adjusted in certain circumstances in accordance with subsection 10(4).

The timeframes prescribed in subsections 10(2) and 10(3) may also be adjusted under subsection 10(4)). In practice, this provision provides important clarity for participants that their requests and any information they provide to the Agency to assist with decision-making will be considered in a timely manner. Subsection 10(4) pauses these timeframes if the CEO asks for further information in accordance with subsection 50(2) of the Act, until the CEO's requirement is complied with. If the CEO makes the requirement within 14 days of the end of the original timeframe or after the end of the original timeframe, the timeframe is extended so that the CEO still has 14 days to make the decision once the requirement is complied with.

Section 11 – Access and plans – giving effect to certain AAT decisions

Section 11 prescribes requirements, for the purposes of section 50J, as amended by the Bill, the CEO must comply with in relation to give effect to certain Administrative Appeals Tribunal (AAT) decisions.

Subsection 11(1) provides the timeframe in which the CEO must give effect to an internal review decision that has been varied or substituted by the AAT. For the purposes of section 50J of the Act, if the AAT makes a decision that involves approving a statement of participant supports in a plan, or varying the participant's plan, then the CEO must take measures to give effect to that variation or substitution within 28 days after being notified of the AAT's decision.

Subsection 11(2) provides the timeframe in which the CEO must reconsider a matter that is remitted by the AAT back to the CEO for reconsideration. The CEO must take measures to reconsider the matter within 28 days after being notified of the AAT's decision.

Subsection 11(3) provides that where subsection 11(2) applies, the 28-day timeframe for the CEO to reconsider the matter is subject to any directions or recommendations of the AAT.

Section 12 – Periods for cancelling appointments of nominees

Section 12 sets timeframes for the CEO cancelling appointments of nominees.

Subsection 12(1) provides that for the purposes of paragraphs 89(1)(c) and 89(3)(c) of the Act the period for cancelling an appointment in response to a request made under paragraph 89(1)(b) of the Act is 14 days after the day the request is made. A request under paragraph 89(1)(b) of the Act is a request made by the participant to the CEO to cancel the appointment of a nominee.

Subsection 12(2) provides that for the purposes of paragraph 89(3)(c) of the Act as amended by the Bill, the period for cancelling an appointment in response to a request for cancellation from a nominee, is 14 days after the CEO is so informed. Paragraph 89(3)(c) provides that the CEO must cancel the appointment by written instruments within the period worked out in accordance with the NDIS rules.

Section 13 – Reviewing decisions – period for giving reasons for a reviewable decision

Section 13 sets the timeframes for providing reasons for reviewable decisions, for the purposes of paragraph 100(1C)(a) of the Act. If requested, the CEO must provide reasons for a decision within 28 days after the day the request being made.

Section 14 – Reviewing decisions – period for reviewing a reviewable decision

Section 14 sets the timeframe for a reviewer to complete a review of a reviewable decision.

Section 14 provides a reviewer has a period of 60 days in which to make a decision following a request for review. Section 14 is made for the purposes of subsection 100(6A) of the Act as amended by the Bill, which provides that the reviewer is to make the decision within the period worked out in accordance with the NDIS rules.

Part 4 – Reporting

Part 4 relates to reporting requirements for the Board members quarterly report to the Ministerial Council and the Commonwealth Ombudsman's report to the Minister.

Section 15 – Matters the Board members must report quarterly

Section 15 provides for the content of the Agency Board quarterly report to the Ministerial Council for the purposes of subsection 174(3) of the Act as amended by the Bill. Subsection 174(3) requires the report to include information about matters prescribed by the NDIS rules.

Section 15 requires that the report must include information relating to the Agency's performance against the Guarantee, including

- activities undertaken or improvements made in relation to each engagement principle and service standard set out in section 5 of the Participant Service Guarantee Rules (paragraph 15(1)(a));
- average response or decision times against each timeframe (paragraph 15(1)(b)), and the percentage of responses or decisions made after the end of the timeframe (paragraph 15(1)(c));
- the number of access decisions, reassessments, variations, internal reviews and applications to the AAT etc. that were completed or came into effect, expressed in proportion to total number of participants (paragraph 15(1)(d));
- the average plan duration for plans during a reporting period that have a reassessment date (paragraph 15(1)(e));
- the Agency's strategies and activities proposed to improve results (paragraph 15(1)(h)).

In relation to paragraph 15(1)(e), subsection 15(2) defines 'plan duration' as the period starting on the day the plan comes into effect and ending on the plan's reassessment date. A note alerts the reader that subsection 37(1) of the Act deals with when a participant's plan comes into effect.

Section 16 – Matters for the Commonwealth Ombudsman’s report to the Minister

Section 16 prescribes the matters the report by the Commonwealth Ombudsman must cover for the purposes of subsection 204A(1) of the Act as amended by the Bill. Section 204A requires the Commonwealth Ombudsman to prepare and give a report to the Minister about the matters prescribed in the NDIS rules. According to section 16 of the Participant Service Guarantee Rules, the report may include:

- the Agency’s performance on an individual or collective basis against one or more of the service standards, engagement principles and timeframes set out in section 5 of the Participant Service Guarantee Rules (paragraph 16(a)). This will not extend to the principles in section 6 applying to participants or prospective participants.
- the performance of the CEO or Agency against one or more timeframes set in either the Act or in the Participant Service Guarantee Rules (paragraph 16(b)), and
- other matters relating to the experience of participants or prospective participants relating to decisions by the CEO or Agency under the Act or the Participant Service Guarantee Rules (paragraph 16(c)).

The report is expected, but is not required, to include statistical information about the Agency’s performance, and qualitative descriptions of the experience of participants, or prospective participants (without including any personal information). This will provide meaningful qualitative information that will aid the Ministerial Council in understanding how the Agency is meeting the intent and promises of the Guarantee.

Part 5 – Application and transitional provisions

Section 17

Section 17 provides for the application of plans with reassessment dates, such that subsection 10(1) of the Participant Service Guarantee Rules only applies where the reassessment date in the plan is at least 56 days after this instrument commences.