



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

# The NDIS Participant Service Guarantee and Other Measures Bill 2021 and the NDIS Rules

Summary of the Bill and changes to NDIS Rules

DSS September 2021



# Summary of the 2021 Bill and changes to the NDIS Rules

This document describes the changes the Government is proposing to the NDIS Act and NDIS Rules as a result of the 2019 Review of the NDIS Act.

For more information, please read:

- the 2019 review of the NDIS Act (the Tune review)
  - Terms of Reference
  - NDIS Act review report
  - Plain English summary of the report
- the Government's response to the NDIS Act review report
- Easy Read summary of the NDIS Act review report and the Government's response
- the consultation process for the NDIS Act review including discussion paper and public submissions.

All of this information is available on either the [DSS website](#) or the [DSS Engage website](#).

## Providing feedback on the Bill or Rules

If you have feedback on the Bill or 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 the Bill or Rules will work?
- Could the new ideas in the Bill or 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)

## The National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

The National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill) will bring the new NDIS Participant Service Guarantee into law. It also makes other changes to deliver better outcomes for NDIS participants and makes NDIS processes simpler. It does not change what the NDIS is or who can access it.

## Parts of the Bill

The Bill is split into **three parts**, called **Schedules**.

### Schedule 1

The **first Schedule** is about the Participant Service Guarantee (the Guarantee).

The Guarantee will mean that the National Disability Insurance Agency (NDIA) must make decisions about a person's access to the scheme and their plans within certain timeframes.

The Guarantee will also require the NDIA to meet specific service standards when working with people with disability and their families and carers.

The NDIA will need to report on how well it is delivering each part of the Participant Service Guarantee.

The NDIA will have more flexibility to make quick changes to plans without needing to go through a full plan review. This will make it easier and faster for participants to get their NDIS supports. It will be particularly helpful when a quote is needed for a support, and will mean adding the quoted amount to the plan will not result in a full plan review.

The Commonwealth Ombudsman will have powers to independently monitor and report to the Government on how well the NDIA is improving the participant experience.

### Schedule 2

The **second Schedule** is about making the NDIS work better for people with disability.

It introduces changes that were agreed in a review of the *National Disability Insurance Scheme Act 2013* (NDIS Act) that was done in 2015. Some of these changes are about people with disability helping to design the NDIS and the role of carers and families in supporting people with disability.

It gives the NDIA more flexibility to support participants to access NDIS supports, and help children with disability get supports early.

It makes it clearer when someone with a psychosocial disability (for example, a mental health condition) may be eligible for the NDIS.

It gives more protection to participants who want to use a registered plan management provider.

It also makes it possible for people with lived experience with disability to become board members if they do not have other skills, experience or knowledge in particular fields, strengthening the importance of lived experience with disability.

It also clarifies how payments are made under the NDIS, enabling the NDIA to make direct payments on behalf of participants.

### Schedule 3

The **third Schedule** tidies up the legislation and makes sure the law is up-to-date.

It deletes references to things that have already happened, like the trial and transition phases of the NDIS rollout.

It deletes things that were about the transition period and are no longer relevant because the NDIS is available across all of Australia.

The changes in this part of the Bill will not impact people with disability.

## Changes to the NDIS Rules

The current NDIS legislative framework is made up of the *National Disability Insurance Scheme Act 2013* (the NDIS Act) and the NDIS Rules. The NDIS Rules provide more detail on aspects of the NDIS and must be read together with the NDIS Act.

As the Bill changes the existing NDIS Act to make the NDIS more flexible and responsive, the Government is proposing to update the NDIS Rules to give further effect to these proposals.

The Government is proposing:

- to create two new NDIS Rules:
  - for the Participant Service Guarantee
  - for Plan Administration, including the new plan variation powers
  
- amend two NDIS Rules:
  - National Disability Insurance Scheme (Becoming a Participant) Rules 2016
  - National Disability Insurance Scheme (Plan Management) Rules 2013
  
- update three NDIS Rules:
  - National Disability Insurance Scheme (Children) Rules 2013
  - National Disability Insurance Scheme (Nominees) Rules 2013
  - National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020

All of these Rules will be open for public consultation.

Each NDIS Rule will be considered by states, territories and the Australian Government, in line with their joint responsibility for managing and funding the NDIS.

The NDIS Act sets out the conditions under which NDIS Rules can be made, including the level of agreement by state and territory governments. The section below provides information on the new and updated rules, including what agreement is required.

### National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021 (New)

*Creating this new Rule will require the majority of state, territory and the Commonwealth governments to agree to the proposed Rule.*

#### Overview of the Rule

- Sets timeframes for key NDIS processes, including access decisions, plan approvals and plan reassessments.
  
- Sets service standards and engagement principles for how the NDIA works alongside people with disabilities.

- Sets details for the reporting and monitoring of the Participant Service Guarantee.

*Gives effect to recommendation 25 of the 2019 review of the NDIS Act.*

## National Disability Insurance Scheme (Plan Administration) Rules 2021 (New)

*Creating this new Rule does not require state and territory governments to agree to the Rule, but the Commonwealth Government must consult with them on the draft Plan Administration Rule.*

### Overview of the Rule

- Outlines when the NDIA can vary a plan without requiring a full plan reassessment or the creation of a new plan (*recommendation 21 of the 2019 review of the NDIS Act*).
- Outlines when the NDIA will complete a plan reassessment (*recommendation 20*).
- Outlines when the NDIA can enter into alternative funding arrangements to help participants access their supports (*recommendation 17*).
- Sets out participants' and NDIS providers' record keeping requirements for their NDIS funding.
- Sets out when a participant may leave Australia without impacting their NDIS funding, like taking a holiday. This is currently included in the National Disability Insurance Scheme (Plan Management) Rules 2016.

## National Disability Insurance Scheme (Plan Management) Rules 2021 (Updated)

*Updating this Rule requires unanimous agreement from all state and territory governments.*

### Overview of the Rule

- About the management of a participant's plan.
- Covers things like how the NDIA will assess whether it would pose an unreasonable risk for a participant to manage funding in their own plan, how and when NDIS funding is paid, and how the NDIA will specify the supports in a participant's plan.

### Changes to the Rule

- Sets out when a support in a plan must be specifically identified (*recommendation 15 of the 2019 review of the NDIS Act*).
- Expands the things the NDIA needs to consider when deciding if a support should be provided by a particular provider or in a particular way. This includes situations when a support should not be provided by a particular provider, or in a particular way. (*recommendation 16b*).
- The Rules outline when it would be an unreasonable risk for a participant to manage their own NDIS plan. These changes to this Rule will give the same protections to participants who want to use a registered plan management provider

## National Disability Insurance Scheme (Becoming a Participant) Rule 2021 (Updated)

*Updating this Rule requires unanimous agreement from all state and territory governments.*

### Overview of the Rule

- Sets out other matters relating to a person becoming an NDIS participant, such as when a person meets the disability or early intervention requirements.

### Changes to the Rule

- Sets out when a psychosocial disability may be regarded as permanent when someone is applying for the NDIS (*recommendation 8 of the 2019 review of the NDIS Act*).
- Removes information relating solely to the trial and transition period, including arrangements for each state and territory.

## National Disability Insurance Scheme (Children) Rules 2021 (Updated)

*Updating this Rule requires unanimous agreement from all state and territory governments.*

### Overview of the Rule

- Sets out matters relating to persons who are responsible for undertaking acts and making decisions on behalf of a child.

### Changes to the Rule

- Updates to reflect best-practice drafting standards, remove unnecessary repetition and correct drafting errors.
- The updates to the Rule do not give effect to any changes in existing policy in relation to when a person may be responsible for undertaking acts and making decisions on behalf of a child participant.

*Gives effect to recommendation 27c of the 2019 review of the NDIS Act.*

## National Disability Insurance Scheme (Nominees) Rules 2021 (Updated)

*Updating this Rule requires unanimous agreement from all state and territory governments.*

### Overview of the Rule

- Sets out matters relating to nominees, including whether a nominee should be appointed, who should be appointed as a nominee, duties of nominees, and cancellation and suspension of nominees.

### Changes to the Rule

- Updates to reflect best practice drafting standards, remove unnecessary repetition and correct drafting errors.

- The updates to the Rule do not give effect to any changes in existing policy in relation to when a person may be appointed to undertake acts and make decisions on behalf of a NDIS participant.

*Gives effect to recommendation 27c of the 2019 review of the NDIS Act.*

## **National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020**

*Updating this Rule requires unanimous agreement from all state and territory governments.*

### **Overview of the Rule**

- Sets out matters relating to the funding of Specialist Disability Accommodation (SDA) for participants under the NDIS and the requirements with which NDIS providers who provide SDA must comply.

### **Changes to the Rule**

- Inserts a definition for 'in-kind supports'.
- The updates to the Rule do not give effect to any changes in existing policy in relation to when a person may be appointed to undertake acts and make decisions on behalf of a NDIS participant.