

# EXPOSURE DRAFT



EXPOSURE DRAFT

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

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I, Linda Reynolds CSC, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2021

Linda Reynolds CSC [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for the National Disability Insurance Scheme

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Preliminary **Part 1**

Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Participant Service Guarantee) Rules 2021*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day the <i>National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2021</i> commences; and (b) the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) Agency;
- (b) CEO;
- (c) National Disability Insurance Scheme;
- (d) participant;
- (e) prospective participant.

In this instrument:

**access decision** means a decision under paragraph 20(1)(a) or 26(2)(c) of the Act.

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## Part 1 Preliminary

### Section 4

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**access decision day**, for a participant, means the day the CEO decides under paragraph 20(1)(a) or 26(2)(c) of the Act that the participant meets the access criteria.

**Act** means the *National Disability Insurance Scheme Act 2013*.

**Indigenous person** means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**NDIS** has the same meaning as *National Disability Insurance Scheme*.

**plan duration** has the meaning given by subsection 15(2).

**responsible person** means each of the following:

- (a) the Agency;
- (b) the CEO;
- (c) an Agency officer;
- (d) a consultant (or contractor) engaged by the Agency to assist in the performance of the Agency's functions;
- (e) a person provided assistance in the form of funding under subsection 14(1) of the Act for the purposes of enabling the person to perform an NDIS partner in the community role.

## Part 2—Engagement principles and service standards

### 5 Engagement principles and service standards—Agency, CEO and other responsible persons

For the purposes of paragraph 209(2A)(c) of the Act, the following engagement principles and service standards apply to how responsible persons are to engage with participants or prospective participants:

#### Engagement principles and service standards for the Agency, the CEO and other responsible persons

Item	Engagement principle	Service standard
1	<p><b>Transparency</b></p> <p>Participants and prospective participants have access to clear, accurate, consistent and up-to-date information about:</p> <p>(a) the NDIS; and</p> <p>(b) their plans; and</p> <p>(c) the funding allocated for the purposes of their plans (including for their supports);</p> <p>that is easy to understand and available in formats that meet their needs.</p>	<p>The responsible persons must collectively (and individually where applicable):</p> <p>(a) ensure that all information, forms, instructions and guidelines are up to date and readily available:</p> <p>(i) in appropriate languages and accessible formats; and</p> <p>(ii) on the NDIS website; and</p> <p>(b) ensure that direct communication with a participant or prospective participant is in the participant’s, or prospective participant’s, preferred format to enable them to understand the information for themselves; and</p> <p>(c) provide clear, consistent, accurate and accessible guidance on the evidence required to enable the CEO to make:</p> <p>(i) access decisions; or</p> <p>(ii) decisions under the Act relating to making, varying or reassessing participants’ plans;</p> <p>including guidance on who is qualified to provide this evidence; and</p> <p>(d) keep participants and prospective participants informed about the progress of decision-making processes under the Act that affect them; and</p> <p>(e) assist the Board members to report on NDIS performance under sections 173 and 174 of the Act (see also Part 4 of this instrument) to ensure the NDIS remains transparent and accountable in its undertakings.</p>
2	<p><b>Responsiveness</b></p> <p>Participants and prospective participants are supported and their independence is maximised by addressing their individual circumstances and needs.</p>	<p>The responsible persons must collectively (and individually where applicable):</p> <p>(a) promptly acknowledge the concerns or queries of:</p> <p>(i) participants, their families and carers; or</p> <p>(ii) prospective participants, their families and carers; and</p> <p>(b) intervene early to support the best outcome for participants or prospective participants; and</p>

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## Part 2 Engagement principles and service standards

### Section 5

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**Engagement principles and service standards for the Agency, the CEO and other responsible persons**

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<b>Item</b>	<b>Engagement principle</b>	<b>Service standard</b>
		<ul style="list-style-type: none"><li>(c) assist participants or prospective participants to access supports that have the greatest positive impact; and</li><li>(d) address issues as they arise; and</li><li>(e) utilise planning approaches that respond flexibly to each participant's individual circumstances and needs; and</li><li>(f) examine their processes and systems regularly to ensure they are fit for purpose as the NDIS evolves and:<ul style="list-style-type: none"><li>(i) the needs of participants, their families and carers change; or</li><li>(ii) the needs of prospective participants, their families and carers change; and</li></ul></li><li>(g) provide an effective single point of contact so that:<ul style="list-style-type: none"><li>(i) participants, their families and carers; or</li><li>(ii) prospective participants, their families and carers; or</li><li>(iii) multiple participants or prospective participants in a family, and their carers; or</li><li>(iv) multiple participants or prospective participants in another kind of strongly connected group, their families and carers;</li></ul>only have to tell their story once and are able to build productive relationships under the NDIS, subject to any of them preferring a separate point of contact.</li></ul>
3	<b>Respect</b> Participants and prospective participants are valued, listened to and respected.	<p>The responsible persons must collectively (and individually where applicable):</p> <ul style="list-style-type: none"><li>(a) enshrine a participant-centred approach by treating:<ul style="list-style-type: none"><li>(i) participants, their families and carers; or</li><li>(ii) prospective participants, their families and carers;</li></ul>with empathy, dignity and respect for their diverse experiences, values and beliefs; and</li><li>(b) ensure staff have appropriate training relating to disability, including psychosocial disability and other complex conditions, and understand the impact of disability on people's lives; and</li><li>(c) ensure staff have appropriate training relating to diversity, including the cultures of Indigenous persons, culturally and linguistically diverse values and practices, LGBTQI+ and gender considerations; and</li><li>(d) recognise participants', or prospective participants', expertise about their disability and use the recommendations and evidence provided by qualified professionals to assess support needs; and</li><li>(e) demonstrate continuous improvement by inviting, considering and incorporating feedback from people</li></ul>

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**Engagement principles and service standards for the Agency, the CEO and other responsible persons**

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<b>Item</b>	<b>Engagement principle</b>	<b>Service standard</b>
		with disability and the wider community.
4	<b>Empowerment</b> Participants and prospective participants are empowered to make access requests, navigate the NDIS system, participate in the planning process and purchase supports under their plans.	<p>The responsible persons must collectively (and individually where applicable):</p> <ul style="list-style-type: none"><li>(a) actively and appropriately seek to engage with participants or prospective participants, including those:<ul style="list-style-type: none"><li>(i) from communities of Indigenous persons; or</li><li>(ii) from culturally and linguistically diverse backgrounds; or</li><li>(iii) from regional or remote areas; or</li><li>(iv) with psychosocial disabilities;</li></ul>to assist them to connect with the NDIS; and</li><li>(b) assist each participant or prospective participant to:<ul style="list-style-type: none"><li>(i) prepare for their access decisions and planning meetings; and</li><li>(ii) understand their plan when it comes into effect and how to use it;</li></ul>including supporting them to request and receive their plan in the format that best suits their needs; and</li><li>(c) inform participants or prospective participants of their right to bring anyone they choose to help support them through the process; and</li><li>(d) if requested, provide participants and prospective participants with a statement of reasons for all reviewable decisions about them; and</li><li>(e) empower participants to request to see a draft plan in advance of:<ul style="list-style-type: none"><li>(i) final planning discussions; and</li><li>(ii) the approval of the statement of participant supports to be included in the plan; and</li></ul></li><li>(f) inform participants or prospective participants about their right to appeal decisions and how to lodge an appeal.</li></ul>
5	<b>Connectedness</b> Barriers are removed so that participants and prospective participants are connected to the services and supports they need.	<p>The responsible persons must collectively (and individually where applicable):</p> <ul style="list-style-type: none"><li>(a) work constructively and collaboratively with Commonwealth, State and Territory government service systems, including through data sharing arrangements, to streamline and reinforce the participant-centred focus of the NDIS; and</li><li>(b) adapt their approaches to connect with:<ul style="list-style-type: none"><li>(i) participants, their families and carers; or</li><li>(ii) prospective participants, their families and carers;</li></ul>in different communities, particularly in communities of Indigenous persons, culturally and linguistically diverse communities, or communities in regional or</li></ul>

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## Part 2 Engagement principles and service standards

### Section 6

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#### Engagement principles and service standards for the Agency, the CEO and other responsible persons

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Item	Engagement principle	Service standard
		remote areas; and (c) ensure that the funding allocated for the purposes of a plan is not interrupted if a new plan is not in place by the plan's reassessment date, in order to provide continuity of support and to reduce the overall burden of NDIS-related out-of-pocket costs for participants where possible.

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#### 6 Engagement principles and service standards—participants etc.

- (1) For the purposes of paragraph 209(2A)(d) of the Act, this section sets out an engagement principle and service standard for how participants or prospective participants are to engage with responsible persons.
- (2) The engagement principle is that participants or prospective participants help responsible persons to deliver the best possible experience of the NDIS.
- (3) The service standard is that each participant or prospective participant, either personally or through a representative, must:
  - (a) provide accurate and up-to-date information to support effective decision-making by responsible persons under the Act or National Disability Insurance Scheme rules; and
  - (b) inform any applicable responsible person of any significant changes to the participant's or prospective participant's circumstances, needs, or goals and aspirations; and
  - (c) provide constructive feedback on their experience of the NDIS in order to support the continued improvement of the NDIS.

## Part 3—Timeframes and related obligations

### 7 Simplified outline of this Part

This Part sets out timeframes for certain decisions or dealings of the CEO or Agency under the Act.

Some related obligations on the CEO are also included.

- Note: Some timeframes are already set out in the Act, and are not changed by this Part. For example, the CEO has:
- (a) 21 days to make a decision under paragraph 20(1)(a) or (b) of the Act about an access request; and
  - (b) 14 days to make a decision under subsection 26(2) of the Act after receiving information or a report about an access request; and
  - (c) 7 days to provide a participant with a copy of their plan as required by section 38 or subsection 47(3) of the Act; and
  - (d) 21 days to make a decision under subsection 47A(3) of the Act whether or not to vary or reassess a plan; and
  - (e) 14 days to decide whether to cancel the appointment of a nominee (see paragraph 90(3)(a) of the Act).

### 8 Plans—approving a statement of participant supports in a plan

- (1) For the purposes of paragraph 33(4)(a) of the Act, the period for deciding whether or not to approve a statement of participant supports in a participant's plan:
  - (a) starts on the participant's access decision day; and
  - (b) is the following number of days:
    - (i) if paragraph 14(2)(b) of the Act (about participants aged under 7) applies for the participant—90 days;
    - (ii) otherwise—56 days;unless that period is adjusted under subsection (2) of this section.
- (2) That period, or the period from a previous application of this subsection, (the *initial period*) is adjusted as follows if, on a particular day, the CEO makes a request under subsection 36(2) of the Act relating to that statement of participant supports:
  - (a) the initial period is paused at the end of that day until the end of the day (the *compliance day*) on which the request is complied with;
  - (b) when the request is complied with:
    - (i) the initial period resumes after the compliance day; and
    - (ii) if the compliance day is later than the 14th day before the end of the initial period—the initial period is extended so that it ends on the 14th day after the compliance day.

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## Part 3 Timeframes and related obligations

### Section 9

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#### 9 Plans—assistance to implement a plan

For the purposes of section 50J of the Act, the CEO must:

- (a) as soon as reasonably practicable after a participant's plan comes into effect, offer to hold a plan implementation meeting for the participant; and
- (b) if the participant accepts that offer, seek to hold the plan implementation meeting within 28 days after the day of that acceptance.

Note 1: For when a participant's plan comes into effect, see subsection 37(1) of the Act.

Note 2: A copy of the plan must be provided to the participant within 7 days after the plan comes into effect (see section 38 of the Act).

#### 10 Plans—reassessments and variations

*Period before which a scheduled reassessment must start*

- (1) For the purposes of subsection 48(6) of the Act, the period before which a reassessment under subsection 48(5) of the Act of a participant's plan must start is the period of 56 days ending on the plan's reassessment date.

*Period for doing things relating to a CEO-initiated reassessment*

- (2) For the purposes of paragraph 48(4)(a) of the Act, the period for doing the things under paragraphs 48(3)(a) and (b) of the Act for a reassessment conducted under subsection 48(1) of the Act of a participant's plan is the period that:
  - (a) starts on the day the CEO decides to conduct the reassessment; and
  - (b) is 28 days;unless that period is adjusted under subsection (4) of this section.

*Period for varying a plan after the CEO decides to do so in response to a participant's request*

- (3) For the purposes of paragraph 47A(8)(a) of the Act, the period for varying a plan under subsection 47A(1) of the Act after a decision under paragraph 47A(3)(a) of the Act in response to a request for variation:
  - (a) starts on the day the decision is made; and
  - (b) is:
    - (i) if the request addresses complex needs or raises complex risks, or relates to complex assistive technology or complex home modifications—50 days; or
    - (ii) otherwise—28 days;unless that period is adjusted under subsection (4) of this section.

*Periods may be affected if CEO requests further information etc.*

- (4) The following period (the *initial period*):
  - (a) a period applying under subsection (2) for a reassessment;
  - (b) a period applying under subsection (3) for a requested variation;
  - (c) a period from a previous application of this subsection for such a reassessment or requested variation;

is adjusted as follows if, on a particular day, the CEO makes a request under subsection 50(2) of the Act relating to the reassessment or variation:

- (d) the initial period is paused at the end of that day until the end of the day (the **compliance day**) on which the request is complied with;
- (e) when the request is complied with:
  - (i) the initial period resumes after the compliance day; and
  - (ii) if the compliance day is later than the 14th day before the end of the initial period—the initial period is extended so that it ends on the 14th day after the compliance day.

## 11 Access and plans—giving effect to certain AAT decisions

*AAT decision varies or is in substitution for an internal review decision*

- (1) For the purposes of section 50J of the Act, if, on the review of a decision made under subsection 100(6) of the Act (the **internal review decision**):
    - (a) the Administrative Appeals Tribunal makes a decision:
      - (i) varying the internal review decision; or
      - (ii) in substitution for the internal review decision; and
    - (b) the varied decision or substituted decision (as applicable) is:
      - (i) an access decision that a prospective participant meets the access criteria; or
      - (ii) a decision to approve the statement of participant supports in a participant's plan under subsection 33(2) of the Act; or
      - (iii) a decision to vary a participant's plan under section 47A of the Act;
- the CEO must take measures to give effect to that varied decision or substituted decision (as applicable) within 28 days after the day the CEO is notified of the Tribunal's decision.

*AAT decision remits a matter to the CEO for reconsideration*

- (2) For the purposes of section 50J of the Act, if, on the review of a decision made under subsection 100(6) of the Act (the **internal review decision**):
  - (a) the Administrative Appeals Tribunal makes a decision:
    - (i) setting aside the internal review decision; and
    - (ii) remitting the matter for reconsideration by the CEO in accordance with any directions or recommendations of the Tribunal; and
  - (b) the matter is:
    - (i) an access decision; or
    - (ii) a decision whether to approve the statement of participant supports in a participant's plan under subsection 33(2) of the Act; or
    - (iii) a decision whether to vary a participant's plan under section 47A of the Act;

the CEO must take measures to reconsider the matter within 28 days after the day the CEO is notified of the Tribunal's remitting of the matter.

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## Part 3 Timeframes and related obligations

### Section 12

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- (3) However, the 28-day period in subsection (2) for the CEO to take measures to reconsider the matter is subject to any directions or recommendations of the Tribunal given when the Tribunal remits the matter.

#### **12 Periods for cancelling appointments of nominees**

- (1) For the purposes of paragraph 89(1)(c) of the Act, the period for cancelling an appointment in response to a request under paragraph 89(1)(b) of the Act is 14 days after the day the request is made.
- (2) For the purposes of paragraph 89(3)(c) of the Act, the period for cancelling an appointment in response to the CEO being informed under paragraph 89(3)(b) of the Act is 14 days after the day the CEO is so informed.

#### **13 Reviewing decisions—period for giving reasons for a reviewable decision**

For the purposes of paragraph 100(1C)(a) of the Act, the period for giving a person reasons in response to a request under subsection 100(1B) of the Act is 28 days after the day the request is made.

#### **14 Reviewing decisions—period for reviewing a reviewable decision**

For the purposes of paragraph 100(6A)(a) of the Act, the period for a reviewer to make a decision under subsection 100(6) of the Act in the course of a review is 60 days.

## Part 4—Reporting

### 15 Matters the Board members must report quarterly

- (1) For the purposes of subsection 174(3) of the Act, the matters about which information must be included in a report under subsection 174(1) of the Act for a period include the following:
  - (a) activities undertaken or improvements made in the period in relation to each engagement principle, and service standard, set out in section 5 of this instrument;
  - (b) the average response or decision time against each timeframe that:
    - (i) applies to the Agency or CEO under the Act or this instrument; and
    - (ii) ends in the period;
  - (c) for each of those timeframes, the percentage of responses or decisions made after the end of the timeframe;
  - (d) the number of each of the following matters that was completed or came into effect in the period, expressed as a proportion of total participants in the period:
    - (i) access decisions;
    - (ii) reassessments under subsection 48(1) of the Act;
    - (iii) reassessments under subsection 48(5) of the Act;
    - (iv) reassessments under subsection 48(7) of the Act;
    - (v) variations under subsection 47A(1) of the Act;
    - (vi) internal reviews under section 100 of the Act;
    - (vii) applications to the Administrative Appeals Tribunal made as described in section 103 of the Act (whether settled before a hearing of the Tribunal or otherwise);
    - (viii) plans that do not have a reassessment date;
    - (ix) plans that have a reassessment date;
  - (e) for the plans described in subparagraph (d)(ix) that came into effect in the period—the average plan duration for those plans;
  - (f) for each of the matters described in a subparagraph of paragraph (d), the number of those matters that was still outstanding at the end of the period expressed as a proportion of total participants in the period;
  - (g) for:
    - (i) each number of completed matters described in paragraph (d); and
    - (ii) each number of outstanding matters described in paragraph (f);how that number compared to the Agency’s business-as-usual targets and expectations held at the start of the period;
  - (h) the strategies and activities proposed by the Agency or CEO (as applicable) to improve the results of the comparisons described in paragraph (g).
- (2) The *plan duration*, for a participant’s plan that has a plan reassessment date, is the period:
  - (a) starting on the day the plan comes into effect; and

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## Part 4 Reporting

### Section 16

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(b) ending on the plan's reassessment date.

Note: For when a participant's plan comes into effect, see subsection 37(1) of the Act.

### **16 Matters for the Commonwealth Ombudsman's report to the Minister**

For the purposes of subsection 204A(1) of the Act, the matters for a financial year are as follows:

- (a) collective performance in the financial year against one or more of the engagement principles and service standards set out in section 5 of this instrument;
- (b) performance against one or more of the timeframes that:
  - (i) apply to the Agency or CEO under the Act or this instrument; and
  - (ii) end in the financial year;
- (c) other matters relating to the experience of participants, or prospective participants, relating to decisions by the Agency or CEO under the Act or this instrument in the financial year.

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Application and transitional provisions **Part 5**

Section 17

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## **Part 5—Application and transitional provisions**

### **17 Application—plans: period before which a scheduled reassessment must start**

Subsection 10(1) applies in relation to a participant’s plan for which the reassessment date is at least 56 days after the day this instrument commences.