

# EXPOSURE DRAFT



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## National Disability Insurance Scheme (Plan Administration) 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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## 1 Name

This instrument is the *National Disability Insurance Scheme (Plan Administration) 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Note: This table relates only to the provisions of this instrument as originally made.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 the Act, including the following:

- (a) grace period;
- (b) NDIS amount.

In this instrument:

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

*reserve force* means:

- (a) the Air Force Reserve (within the meaning of the *Defence Act 1903*); or
- (b) the Army Reserve (within the meaning of that Act); or
- (c) the Naval Reserve (within the meaning of that Act).

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## Section 5

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### 5 Funding to persons or entities

For the purposes of subsection 14(3) of the Act, the Agency must have regard to the following matters in deciding whether to provide funding under subsection 14(2) of the Act to a person or entity to assist a participant to receive supports:

- (a) the urgency with which the participant needs supports;
- (b) the extent to which the participant is able to exercise choice and control in sourcing supports;
- (c) whether providing funding to the person or entity would promote the diversity and sustainability of the NDIS market at the location where the participant lives;
- (d) if the participant has a particular cultural background—whether the person or entity takes a best-practice and evidence-based approach to assisting persons who have that cultural background;
- (e) if the participant lives at a regional or remote location—whether the person or entity takes a best-practice and evidence-based approach to assisting persons who live at such locations;
- (f) whether providing funding to the person or entity would provide the Agency with an opportunity to deliver improved outcomes for other participants.

### 6 Extension of grace period

For the purposes of paragraph 40(2)(b) of the Act, in deciding on a period for a temporary absence from Australia of a participant that is longer than 6 weeks, the CEO must have regard to the following matters:

- (a) the length of the temporary absence;
- (b) any previous decision by the CEO that it was appropriate for the grace period for another temporary absence of the participant to be longer than 6 weeks;
- (c) any supports, or classes of supports, that are specified in the statement of participant supports included in the participant's plan;
- (d) the participant's ability to access supports during the temporary absence;
- (e) the ability of the Agency to facilitate the provision of supports to, and maintain a relationship with, the participant during the temporary absence;
- (f) if the participant is undertaking a course (the *principal course*) at an Australian secondary or tertiary educational institution and leaves, or has left, Australia to undertake an exchange program or course of studies—whether that program or course of studies is:
  - (i) an element of the principal course; or
  - (ii) part of a program of international exchanges that is recognised by the institution;
- (g) whether the participant leaves, or has left, Australia because the participant, the participant's spouse or a family member of the participant is:
  - (i) temporarily employed outside of Australia; or
  - (ii) temporarily deployed outside of Australia, including as a member of a reserve force;

- (h) if the participant leaves, or has left, Australia to receive medical treatment or therapy—both of the following:
  - (i) whether that treatment or therapy is clinically appropriate;
  - (ii) whether that treatment or therapy is available in Australia;
- (i) if the participant has left Australia—whether the participant, the participant’s spouse or a family member of the participant, while outside of Australia:
  - (i) has been involved in a serious accident; or
  - (ii) has been seriously ill; or
  - (iii) has been hospitalised; or
  - (iv) has been the victim of a serious crime; or
  - (v) has been a party in custody proceedings; or
  - (vi) is required to remain outside of Australia because of criminal proceedings;
- (j) if the participant has left Australia—whether, while outside Australia, the participant has been affected by:
  - (i) a war, industrial action, or social or political unrest, in which the participant did not willingly take part; or
  - (ii) a natural disaster; or
  - (iii) an epidemic;
- (k) whether the participant leaves, or has left, Australia to compete in, or train for, an international sporting competition.

## **7 Manner of paying NDIS amounts**

For the purposes of subparagraph 45(1)(b)(i) of the Act, if an NDIS amount is payable to a person, the CEO:

- (a) may pay the amount to the person as a single amount or in instalments; and
- (b) must pay that single amount, or those instalments, to the credit of a bank account nominated and maintained by the person.

## **8 When NDIS amounts not payable**

For the purposes of subsection 45(3) of the Act, an amount payable under the National Disability Insurance Scheme in respect of a participant’s plan is not payable to a person determined by the CEO under paragraph 45(1)(a) of the Act until the person nominates a bank account into which the amount is to be paid.

## **9 Acquittal of NDIS amounts**

- (1) This section is made for the purposes of subsections 46(2) and (3) of the Act.
- (2) If a participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant, uses all or part of the NDIS amount to purchase goods or services:
  - (a) the purchaser; and
  - (b) if the purchase is from an NDIS provider—the NDIS provider;

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## Section 10

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must retain a record of each of those purchases for a period of 5 years beginning on:

- (c) if the purchase is of goods—the day on which the goods are delivered to the participant; or
  - (d) if the purchase is of services—the last day on which the services are provided to the participant.
- (3) A record retained in accordance with subsection (2) must include the following:
- (a) the name and ABN (if any) of the supplier;
  - (b) the day on which the record is made;
  - (c) if the purchase is of goods—the day on which the goods are delivered to the participant;
  - (d) if the purchase is of services—each day on which the services are provided to the participant;
  - (e) the purchase price inclusive of GST;
  - (f) the purchase price exclusive of GST;
  - (g) the kind of goods or services;
  - (h) the day of purchase.

### **10 Variation of participant’s plan on CEO’s own initiative**

- (1) For the purposes of paragraph 47A(6)(a) of the Act, the CEO must have regard to the matters set out in subsection (2) of this section in deciding whether to vary a participant’s plan on the CEO’s own initiative.
- (2) The matters are as follows:
  - (a) whether the variation is minor or technical;
  - (b) if the variation is to add a particular support to the statement of participant supports included in the participant’s plan—both of the following:
    - (i) how that support is to be delivered to the participant;
    - (ii) the cost of that support;
  - (c) whether the variation is of the reassessment date of the participant’s plan;
  - (d) whether the variation is to how a particular support covered by the statement of participant supports included in the participant’s plan is to be delivered to the participant;
  - (e) whether the variation relates to the cost of a particular support covered by the statement of participant supports included in the participant’s plan;
  - (f) whether the variation relates to compensation received, or to be received, by the participant;
  - (g) whether the variation relates to the management of any aspect of the participant’s plan, including the funding for supports under the plan;
  - (h) whether the variation increases the total funding for supports under the participant’s plan;
  - (i) whether the variation mitigates an immediate risk of harm to the participant or another person.

## 11 Variation etc. of participant's plan at participant's request

- (1) For the purposes of paragraph 47A(6)(b) of the Act, this section sets out the matters to which the CEO must have regard when making a decision under paragraph 47A(3)(a), (b) or (c) of the Act in relation to a participant's request for a variation of the participant's plan.

### *Decisions under paragraph 47A(3)(a) of the Act*

- (2) In making a decision under paragraph 47A(3)(a) of the Act that the plan needs to be varied, the CEO must have regard to the matters set out in subsection 10(2) of this instrument.

### *Decisions under paragraph 47A(3)(b) or (c) of the Act*

- (3) In making a decision:
  - (a) under paragraph 47A(3)(b) of the Act not to vary the plan and not to reassess the plan under section 48 of the Act; or
  - (b) under paragraph 47A(3)(c) of the Act not to vary the plan but to reassess the plan under subsection 48(1) of the Act instead;the CEO must have regard to:
  - (c) the matters set out in subsection 10(2) of this instrument; and
  - (d) the matters set out in subsection (4) of this section.
- (4) The matters are as follows:
  - (a) whether the participant has experienced, is experiencing or is likely to experience a significant change in circumstances;
  - (b) whether there has been a change in the participant's functional capacity to undertake one or more of the following activities:
    - (i) communication;
    - (ii) social interaction;
    - (iii) learning;
    - (iv) mobility;
    - (v) self-care;
    - (vi) self-management;
  - (c) if the participant has a degenerative condition—whether there has been a change in that condition;
  - (d) whether the participant has received, or is receiving, early intervention support.

## 12 Reassessment of participant's plan

For the purposes of subsection 48(2) of the Act, the CEO must have regard to the matters set out in subsections 10(2) and 11(4) of this instrument in deciding whether to conduct a reassessment of a participant's plan.