

EXPOSURE DRAFT



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National Disability Insurance Scheme (Plan Management) Rules 2021

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

Part 1—Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Plan Management) 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Note: This table relates only to the provisions of this instrument as originally made.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 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

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

- (a) CEO;
- (b) child;
- (c) participant;
- (d) plan.

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Part 1 Preliminary

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In this instrument:

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

representative, of a child, means:

- (a) if a person is determined under paragraph 74(1)(b) of the Act in relation to the child—that person; or
- (b) otherwise—the person who has, or each of the persons who jointly have, parental responsibility for the child.

Part 2—General

6 Funding and provision of supports included in participant's plan

- (1) This section is made for the purposes of subsection 35(1) of the Act.

Supports or classes of supports provided under agreement with Agency

- (2) For each support or class of supports to be specified in the statement of participant supports to be included in a participant's plan, if:
- (a) the Agency has entered into an agreement with a person or provider in relation to the provision of the support or class of supports to other participants; and
 - (b) the CEO is satisfied that the support or class of supports would be most efficiently and effectively provided to the participant by that person or provider;

the statement of participant supports must specify that the support or class of supports is to be provided to the participant by that person or provider.

Supports or classes of supports provided by particular person or provider

- (3) If:
- (a) a specialist, evidence-informed support or class of supports is provided by a particular person or provider; and
 - (b) the CEO is satisfied that:
 - (i) a participant requires that support or class of supports; and
 - (ii) the support or class of supports would be most efficiently and effectively provided to the participant by that person or provider;

the statement of participant supports included in the participant's plan must specify that the support or class of supports is to be provided to the participant by that person or provider.

Supports or classes of supports provided in particular manner

- (4) If:
- (a) a support or class of supports can be provided in a particular manner; and
 - (b) the CEO is satisfied that:
 - (i) a participant requires that support or class of supports; and
 - (ii) the support or class of supports would be most efficiently and effectively provided to the participant in that manner;

the statement of participant supports included in the participant's plan must specify that the support or class of supports is to be provided to the participant in that manner.

Market intervention

- (5) For each support or class of supports to be specified in the statement of participant supports to be included in a participant's plan, if the CEO is satisfied

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Part 2 General

Section 7

that it is not reasonably practicable for the participant to access the support or class of supports through the NDIS market, the statement of participant supports may specify that, during a specified period, the support or class of supports is to be provided to the participant:

- (a) in a specified manner; or
 - (b) by a specified person or provider; or
 - (c) by a person or provider in a specified class of persons or providers.
- (6) In deciding whether or not the CEO is satisfied as mentioned in subsection (5) the CEO must have regard to the following matters:
- (a) any preference expressed by the participant, or by another participant in the participant's local community, in relation to the manner in which a support or class of supports is to be provided, or by whom a support or class of supports is to be provided, to the participant;
 - (b) the principle that any intervention in the NDIS market should be as limited as possible;
 - (c) any other circumstances relevant to the participant.

7 Reasons for market intervention to be included

For the purposes of subsection 33(7) of the Act, if the statement of participant supports to be included in a participant's plan is to specify matters under subsection 6(5) of this instrument for a support, the plan must include the reasons for specifying those matters.

8 Supports not to be provided by particular providers

- (1) For the purposes of subsection 35(1) of the Act, the statement of participant supports included in a participant's plan may specify that a support must not be provided to the participant by a particular person if the CEO is satisfied, having regard to the matters specified in subsection (2) of this instrument, of one or more of the following:
- (a) the provision of the support to the participant by that person is not likely to substantially improve outcomes for the participant or benefit the participant in the long term;
 - (b) both of the following:
 - (i) another person could provide the support to the participant;
 - (ii) that other person is likely to provide better outcomes for the participant than that person;
 - (c) both of the following:
 - (i) the participant has particular cultural safety needs;
 - (ii) the provision of the support to the participant by that person creates a risk to the participant's long-term wellbeing;
 - (d) the provision of the support to the participant by that person is likely to adversely affect the participant's:
 - (i) inclusion in the participant's community; or
 - (ii) ability to exercise choice and control in relation to the other supports specified in the statement of participant supports;

- (e) there is a risk that that person may inappropriately influence the participant's choice of providers of other supports specified in the statement of participant supports;
 - (f) there is a risk that the provision of the support to the participant by that person may cause harm (including financial harm) to the participant;
 - (g) that person will not:
 - (i) provide the support to the participant; or
 - (ii) provide the support to the participant in accordance with the participant's plan.
- (2) The following matters are specified:
- (a) that it is important for the participant's plan to be flexible in an undeveloped NDIS market;
 - (b) that it is desirable for the participant to receive essential supports;
 - (c) that it is desirable for the participant to be able to exercise choice and control in relation to:
 - (i) the supports specified in the statement of participant supports; and
 - (ii) the provider of those supports;
 - (d) that it is desirable to support and develop a range of other support providers, or potential support providers, in the participant's community;
 - (e) any other matter the CEO considers relevant.

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Part 3 Unreasonable risks to participants

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Part 3—Unreasonable risks to participants

9 Unreasonable risk—registered plan management provider, plan nominee or child’s representative managing funding

- (1) For the purposes of subsection 44(3) of the Act, the CEO is to have regard to the matters specified in subsection (2) of this section in considering whether any of the following would present an unreasonable risk to a participant:
 - (a) a registered plan management provider managing the funding for supports under the participant’s plan;
 - (b) a plan nominee managing the funding for supports under the participant’s plan;
 - (c) if the participant is a child—the representative of the child managing the funding for supports under the child’s plan.
- (2) The following matters are specified:
 - (a) whether, and the extent to which, the risk could be mitigated by the inclusion of particular safeguards or strategies in the participant’s plan;
 - (b) the possibility that the participant may receive supports from a person or entity that is not a registered provider of supports;
 - (c) for the circumstances mentioned in paragraph (1)(b)—whether the plan nominee has misapplied the funding for supports under:
 - (i) the participant’s plan; or
 - (ii) a previous plan for the participant; or
 - (iii) the plan of another participant;
 - (d) for the circumstances mentioned in paragraph (1)(b) or (c)—whether the plan nominee or the representative of the child, as the case may be, has an interest that could lead a reasonable person to consider that NDIS amounts within the nominee’s or representative’s control might be spent otherwise than in accordance with the participant’s or child’s plan;
 - (e) for the circumstances mentioned in paragraph (1)(b) or (c)—the capacity of the plan nominee or the representative of the child, as the case may be, to manage finances.

10 Unreasonable risk—adult participant managing funding

For the purposes of subsection 44(3) of the Act, if a participant is not a child, the CEO is to have regard to the following matters in considering whether the participant managing the funding for supports under the participant’s plan would present an unreasonable risk to the participant:

- (a) the nature of the supports included in the participant’s plan;
- (b) the vulnerability of the participant to:
 - (i) physical, mental or financial harm; or
 - (ii) exploitation; or
 - (iii) undue influence;
- (c) the ability of the participant to make decisions;

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- (d) the capacity of the participant to manage finances;
- (e) whether the participant has misapplied the funding for supports under the participant's plan or a previous plan for the participant;
- (f) whether a court or tribunal has ordered another person to manage, wholly or partly, the property or finances of the participant;
- (g) the possibility that the participant may receive supports from a person or entity that is not a registered provider of supports;
- (h) whether, and the extent to which, the risk could be mitigated by:
 - (i) the participant's informal community supports and other community supports; or
 - (ii) the inclusion of particular safeguards or strategies in the participant's plan;
- (i) whether the risk could be mitigated by the management of that funding instead being done by a registered plan management provider.

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Part 4 Application and transitional provisions

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Part 4—Application and transitional provisions

11 Application of Part 3

Part 3 applies in relation to a plan management request made on or after the commencement of this instrument.

Schedule 1—Repeals

National Disability Insurance Scheme (Plan Management) Rules 2013

1 The whole of the instrument

Repeal the instrument.