

Detailed comparison of existing and proposed NDIS Rules

Becoming a participant Rules

The proposed 2021 Rules will replace the majority of the 2016 Rules.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes									
<p>Part 1 What these Rules are about</p> <p>1.1 The NDIS is being implemented nationally, to enable persons seeking to become participants to be transitioned into the scheme, in accordance with the additional access requirements set out in in this Instrument.</p> <p>1.2 This Instrument provides rules about becoming a participant in the NDIS, which is part of the process towards developing a personal goal-based plan, which may provide for supports for participants in the NDIS.</p> <p>1.3 The Act sets out a number of objects and principles for the NDIS. The following are particularly relevant to this Instrument:</p> <p><i>Objects</i></p> <p>(a) to provide reasonable and necessary supports, including early intervention supports, for participants in the NDIS;</p> <p>(b) to facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability;</p> <p><i>Principles</i></p> <p>(c) people with disability should be supported to participate in and contribute to social and economic life to the extent of their ability;</p> <p>(d) people with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime;</p> <p>(e) people with disability should be supported to receive reasonable and necessary supports, including early intervention supports.</p>	<p>Part 1—Preliminary</p> <p>1 Name</p> <p>This instrument is the <i>National Disability Insurance Scheme (Becoming a Participant) Rules 2021</i>.</p> <p>2 Commencement</p> <p>(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.</p> <hr/> <p>Commencement information</p> <table border="1"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> <th>Column 3</th> </tr> <tr> <th>Provisions</th> <th>Commencement</th> <th>Date/Details</th> </tr> </thead> <tbody> <tr> <td>1. The whole of this instrument</td> <td>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.</td> <td></td> </tr> </tbody> </table> <hr/> <p>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.</p> <p>(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.</p>	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.		Replaced – drafting standards	<ul style="list-style-type: none"> Reflects best drafting practice to remove information summarised from the NDIS Act and remove text boxes. Part 1 of the 2021 Rules includes: <ol style="list-style-type: none"> The name of the instrument (formerly section 8.1 of the 2016 Rules) Commencement (no equivalent provision in 2016 Rules) Authority (no equivalent provision in 2016 Rules) Schedules (no equivalent provision in 2016 Rules) Simplified outline of this instrument (formerly Part 2 of the 2016 Rules)
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Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	<p>3 Authority</p> <p>This instrument is made under section 209 of the <i>National Disability Insurance Scheme Act 2013</i>.</p> <p>4 Schedules</p> <p>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.</p>		
<p>Part 2 Outline of these Rules</p> <p>2.1 A person, or someone who is able to act on their behalf, may make a request under the Act to become a participant in the NDIS (an access request). Once a person becomes a participant, they can develop a personal goal-based plan which may provide for supports for the participant. A number of principles apply in relation to the preparation and management of a participant's plan, which are set out in section 31 of the Act.</p> <p>2.2 This Instrument assists the CEO to determine who becomes a participant. Separate rules determine reasonable and necessary supports that a person may get, including support in the nature of early intervention.</p> <p>2.3 A person becomes a participant in the NDIS on the day the CEO of the Agency decides they meet the access criteria.</p> <p>2.4 A person meets the access criteria if the CEO is satisfied that they meet each of the following, as they apply in the area in which the person resides:</p> <p>(a) the age requirements (see Part 3);</p> <p>(b) the residence requirements (see Part 4);</p> <p>(c) either the disability requirements or the early intervention requirements (see Parts 5 and 6).</p> <p>2.5 Generally speaking:</p> <p>(a) a person will meet the disability requirements if they have a disability that is attributable to an impairment that is permanent or likely to be permanent and that results in substantially reduced functional capacity;</p> <p>(b) alternatively, a person can access the NDIS through the early intervention requirements without having substantially reduced functional capacity. Instead, the early intervention requirements consider the likely trajectory and</p>	<p>5 Simplified outline of this instrument</p> <p>This instrument provides rules about becoming a participant in the National Disability Insurance Scheme (NDIS).</p> <p>A person, or someone who is able to act on their behalf, may make an access request to become a participant in the NDIS (see section 18 of the Act). A person becomes a participant if the CEO decides that the person meets the access criteria (see section 28 of the Act).</p> <p>For when a person meets the access criteria, see section 21 of the Act.</p> <p>Part 2 of this instrument contains provisions dealing with when a person meets the disability requirements (see subparagraph 21(1)(c)(i) and section 24 of the Act).</p> <p>Part 3 of this instrument contains provisions dealing with when a person meets the early intervention requirements (see subparagraph 21(1)(c)(ii) and section 25 of the Act). The rules about substantially reduced functional capacity in Part 2 of this instrument do not apply if a person is assessed to meet the early intervention requirements.</p> <p>Note: In addition, Part 7 of the <i>National Disability Insurance Scheme (Becoming a Participant) Rules 2016</i> contains provisions about the way in which a decision about whether a person meets the disability or early intervention requirements is to be made.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information duplicated from the NDIS Act • Simplifies the information provided at Part 2 of the 2016 Rules • Removes operational information from the Rules.

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<p>impact of a person's impairment over time and the potential benefits of early intervention on the impact of the impairment on the person's functional capacity. The CEO may consider a range of evidence in deciding the potential benefit of early intervention on a person's impairment. The CEO may consider existing evidence or information from an individual or their family or carer. Where a young child has an impairment resulting in developmental delay, or resulting from a condition on a list published by the CEO for which the benefits of early intervention have already been established, no further evidence of the benefit of early intervention supports to the child is required to meet the early intervention requirements. A young child or other person can still meet the early intervention requirements without having one of these conditions, provided there is evidence that the requirements are satisfied.</p> <p>2.6 Part 7 deals with the use of assessment tools in assessing whether a person meets the disability requirements or the early intervention requirements.</p> <p>2.7 Part 8 deals with other matters, including interpretation of this Instrument.</p> <div data-bbox="151 1041 863 1142" style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>The above summarises aspects of Part 1 of Chapter 3 of the Act.</i></p> </div> <p>What happens once a person has become a participant</p> <p>2.8 Once a person has become a participant, their plans will be prepared in accordance with the Act and relevant rules made under section 32A of the Act. The participant's supports, if any, will be determined in accordance with the Act and the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i>. Where necessary, decisions under the Act (e.g. about supports) will be made with a nominee or a child's representatives (see the <i>National Disability Insurance Scheme (Nominees) Rules 2013</i> and the <i>National Disability Insurance Scheme (Children) Rules 2013</i>).</p>			
<p>Part 3 When does a person meet the age requirements?</p> <p>3.1 Generally, a person meets the age requirements if the person was aged from birth up to 65 when the access request in relation to the person was made.</p>	No equivalent	Repealed – drafting standards	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information duplicated from the NDIS Act and remove text boxes. • Removes additional age requirements that were required for specific trial and transition sites.

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<p><i>This summarises paragraph 22(1)(a) of the Act.</i></p> <p>3.2 However, additional age requirements apply, as set out in Schedule A to this Instrument.</p> <p>3.3. Additional age requirements do not apply to a person who, on 1 July 2016, resides in Tasmania and is accessing Tasmanian funded Supported Accommodation.</p>			
<p>Part 4 When does a person meet the residence requirements?</p> <p>4.1 A person meets the residence requirements if they:</p> <p>(a) reside in Australia; and</p> <p>(b) are either an Australian citizen, the holder of a permanent visa, or a special category visa holder who is a protected SCV holder; and</p> <p>(c) meet the additional residence requirements—see paragraphs 4.3 to 4.6.</p> <p><i>Paragraphs 4.1(a) and (b) summarise paragraphs 23(1)(a) and (b) of the Act. (A range of factors are relevant to whether a person resides in Australia: see subsection 23(2) of the Act). Paragraph 4.1(c) is made for the purposes of paragraph 23(1)(c) of the Act.</i></p> <p>4.2 The residence requirements in paragraphs 4.1(a) and (b) apply when a person seeks to become a participant in the NDIS, and continue to apply after the person becomes a participant. If a person stops meeting these residence requirements, their status as a participant in the NDIS can be revoked.</p> <p><i>This summarises paragraph 30(1)(a) of the Act.</i></p> <p>The additional residence requirements – general</p> <p>4.3 Schedule A sets out when a person meets the additional residence requirements by virtue of residence.</p> <p>4.4 Despite paragraph 4.3, a child also meets the additional residence requirements if:</p> <p>(a) at least one of the child’s birth parents who cares for that child resides in an NDIS area set out in Schedule A on or after the relevant date specified in Schedule A; or</p>	<p>No equivalent</p>	<p>Repealed – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information duplicated from the NDIS Act and remove text boxes. • Removes additional residence requirements that were required for specific trial and transition sites.

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<p>(b) the child comes to be in the care of a person who has ongoing parental responsibility for that child and who resides in an NDIS area set out in Schedule A on or after the relevant date specified in Schedule A; or</p> <p>(c) in the case of a child whose parents are separated and who spends time with each parent, at least one of the child's parents resides in an NDIS area set out in Schedule A on or after the relevant date specified in Schedule A.</p> <p>4.5 Additional residence requirements do not apply to a person who on or after 1 July 2016 resides in Victoria and is on the list provided by the Victorian Government to the CEO that will comprise:</p> <p>(a) persons on the Victorian Disability Support Register who have been assessed by the Victorian Government as requiring an urgent need for support; or</p> <p>(b) children on the Early Childhood Intervention Service Waitlist administered by the Victorian Government.</p> <p>The additional residence requirements – Western Australia</p> <p>4.6 A person meets the additional residence requirements if, on or after 1 December 2017, they are an Existing WA NDIS Participant.</p> <p>Note: <i>Existing WA NDIS Participant</i> is defined in paragraph 8.4 of this Instrument.</p>			
<p>Part 5 When does a person meet the disability requirements?</p> <p>5.1 The Act sets out when a person <i>meets the disability requirements</i>. The requirements are met if:</p> <p>(a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or to one or more impairments attributable to a psychiatric condition; and</p> <p>(b) the person's impairment or impairments are, or are likely to be, permanent (see paragraphs 5.4 to 5.7); and</p> <p>(c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication, social interaction,</p>	No equivalent provision	Repealed – drafting standards	<ul style="list-style-type: none"> Section 5.1 – 5.3 have been repealed to reflect best practice drafting as they summarise provisions of the Act. Text boxes have been removed.

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<p>learning, mobility, self-care, self-management (see paragraph 5.8); and</p> <p>(d) the impairment or impairments affect the person's capacity for social and economic participation; and</p> <p>(e) the person is likely to require support under the NDIS for the person's lifetime.</p> <p>5.2 In relation to the above, an impairment that varies in intensity (for example because the impairment is of a chronic episodic nature) may be permanent, and the person is likely to require support under the NDIS for the person's lifetime, despite the variation.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Paragraphs 5.1 and 5.2 summarise section 24 of the Act.</i></p> </div> <p>5.3 This Part sets out rules relating to some of the elements in paragraph 5.1 above, however, in order to meet the disability requirements, all of the requirements in that paragraph need to be satisfied.</p>			
<p><i>When is an impairment permanent or likely to be permanent for the disability requirements?</i></p> <p>5.4 An impairment is, or is likely to be, permanent (see paragraph 5.1(b)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.</p>	<p>7 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—disabilities other than psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, a requirement that must be satisfied for a person's impairment (other than an impairment to which a psychosocial disability is attributable) to be considered permanent, or likely to be permanent, for the purposes of paragraph 24(1)(b) of the Act.</p> <p>(2) The impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.</p> <p>Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).</p> <p>Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p>	None	<ul style="list-style-type: none"> • Reflects best drafting practice and removes text boxes. • Both provisions use identical language to identify the circumstances in which an impairment may be considered permanent or likely to be permanent • This provision in the 2021 Rules applies to disabilities other than psychosocial disabilities.
<p>5.5 An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the</p>	No equivalent	Repealed – policy change	<ul style="list-style-type: none"> • This provision is no longer required in the Rules because it is addressed in the Act. • Section 24(2) of the NDIS Act ensures that an impairment that varies in intensity may be permanent.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>impairment on the person's functional capacity, including their psychosocial functioning, may improve.</p>			<ul style="list-style-type: none"> The NDIS Amendment (Participant Service Guarantee and Other Measures) Bill 2021 ensures that impairments to which psychosocial disability are attributable and are episodic or fluctuating nature (refer to schedule 2, item 16) may be taken to be permanent. Inclusion in the NDIS Act negates the need for this criterion to be specified in the Rules.
<p>5.6 An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).</p>	<p>No equivalent provision</p>	<p>Repealed</p>	<ul style="list-style-type: none"> This is captured by section 7(2) which requires that there is no known, available and appropriate evidence-based clinical, medical or other treatment that would likely to remedy the impairment.
<p>5.7 If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve the condition.</p>	<p>7 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—disabilities other than psychosocial disabilities</p> <p>[...]</p> <p>Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).</p> <p>Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p> <p>8 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—psychosocial disabilities</p> <p>[...]</p> <p>Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).</p> <p>Note 2: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 24(3) of the Act).</p> <p>Note 3: An impairment or impairments of a degenerative nature may be considered</p>	<p>No change</p>	<ul style="list-style-type: none"> Note 2 at section 7 and Note 3 at section 8 of the 2021 Rule confirm that impairments of a degenerative nature may be considered permanent if the criteria at section 7(2) or section 8(2) are met.

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	permanent, or likely to be permanent, under subsection (2).		
No equivalent provision	<p>8 When an impairment is permanent or likely to be permanent for the purposes of the disability requirements—psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, a requirement that must be satisfied for a person’s impairment to which a psychosocial disability is attributable to be considered permanent, or likely to be permanent, for the purposes of paragraph 24(1)(b) of the Act.</p> <p>(2) The impairment may be considered permanent, or likely to be permanent, only if:</p> <p>(a) both:</p> <p>(i) the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition; and</p> <p>(ii) the treatment has not led to a substantial improvement in the person’s functional capacity, after a period of time that is reasonable considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates); or</p> <p>(b) no appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition is reasonably available to the person.</p> <p>Note 1: An impairment or impairments that vary in intensity may be permanent despite the variation (see subsection 24(2) of the Act).</p> <p>Note 2: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 24(3) of the Act).</p> <p>Note 3: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p>	New – policy change	<ul style="list-style-type: none"> • This new provision sets out a requirement that must be satisfied for a person’s impairment to which a psychosocial disability is attributable to be considered permanent, or likely to be permanent to meet the disability criteria set out in section 24(2) of the NDIS Act. • This new provision has been included in response to recommendation 8 of the Tune Review. This recommendation recognised the challenges people with psychosocial disability face in accessing the NDIS. • This provision broadens the eligibility criteria for permanency to focus on whether the person has been unable to find a substantial improvement to their condition through appropriate treatments, or whether there are no appropriate treatments available to the person to manage the condition. This places attention on the person’s subjective experience of receiving treatment and provides flexibility for the wide variety psychosocial conditions. • For the purposes of subsection 8(2), appropriate treatment would include activities associated with stabilisation and management of the condition to which a psychosocial disability is attributable (including crisis, symptom and medication management) and establishment of pathways for longer-term recovery. • The period of time which is reasonable for the purposes of paragraph 8(2)(a) will be guided by an appropriately qualified health professional and supported by medical evidence.
<p><i>When does an impairment result in substantially reduced functional capacity to undertake relevant activities?</i></p> <p>5.8 An impairment results in substantially reduced functional capacity of a person to undertake one or more of the relevant activities—communication,</p>	<p>9 Substantially reduced functional capacity to undertake relevant activity—disabilities other than psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act, a requirement that must be satisfied for an</p>	Replaced – policy change	<ul style="list-style-type: none"> • Reflects best drafting practice and removes text boxes. • The 2021 Rules are largely based on the 2016 provisions but also allow consideration of whether there are appropriate treatments that would result in

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<p>social interaction, learning, mobility, self-care, self-management (see paragraph 5.1(c))—if its result is that:</p> <p>(a) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or completely in the activity, without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or</p> <p>(b) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or</p> <p>(c) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.</p> <div data-bbox="151 930 863 1026" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraph 5.8 is made for the purposes of paragraph 27(b) of the Act.</i></p> </div>	<p>impairment or impairments (other than an impairment or impairments to which a psychosocial disability is attributable) to be considered to result in substantially reduced functional capacity of a person to undertake an activity mentioned in a subparagraph of paragraph 24(1)(c) of the Act.</p> <p>(2) The impairment or impairments may be considered to result in substantially reduced functional capacity of a person to undertake the activity only if:</p> <p>(a) as a result of the impairment or impairments:</p> <p>(i) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or completely in the activity, without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or</p> <p>(ii) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or</p> <p>(iii) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person; and</p> <p>(b) there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to lead to the impairment or impairments no longer having that result.</p>		<p>the impact on a person’s functional capacity being reduced.</p> <ul style="list-style-type: none"> • The provisions at section 9(2)(a)(i) – 9(2)(a)(iii) of the 2021 Rules are identical to the provisions at 5.8 in the 2016 Rules.
<p>No equivalent provision</p>	<p>10 Substantially reduced functional capacity to undertake relevant activity—psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(b) and subsection 27(3) of the Act, a requirement that must be satisfied for an impairment or impairments to which a psychosocial disability is attributable to be considered to result in substantially reduced functional capacity of a person to undertake an activity mentioned in in a subparagraph of paragraph 24(1)(c) of the Act.</p>		<ul style="list-style-type: none"> • The 2016 Rules did not consider the effect that fluctuating and episodic psychosocial impairments could have on a person’s ability to perform tasks. • The 2021 Rules have psychosocial impairments from other conditions, so that a varied set of factors are used to consider a person’s reduced functional capacity. • This provision ensures these factors can be considered holistically with regard to the overall effect of a person’s impairment over a period of time that is reasonable, considering the nature of the impairment.

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	<p>(2) The impairment or impairments may be considered to result in substantially reduced functional capacity of a person to undertake the activity only if, as a result of the impairment or impairments:</p> <p>(a) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or</p> <p>(b) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.</p> <p>(3) Subsection (2) is to be applied with regard to the overall effect of the impairment or impairments over a period of time that is reasonable, considering the nature of the impairment or impairments (and in particular considering whether an impairment is episodic or fluctuates).</p>		<ul style="list-style-type: none"> Prospective participants are given greater opportunity to explain and demonstrate the broader impact on their functional capacity when applying for the NDIS.
<p>Part 6 When does a person meet the early intervention requirements?</p> <p>6.1 A person does not meet the early intervention requirements if the CEO is satisfied that early intervention support for the person is more appropriately funded or provided through another service system (service systems is defined in paragraph 8.4) rather than the NDIS.</p> <p>6.2 However, a person meets the early intervention requirements if:</p> <p>(a) the person:</p> <p>(i) has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or</p> <p>(ii) has one or more identified impairments that are attributable to a psychiatric condition and are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or</p> <p>(iii) is a child who has developmental delay; and</p> <p>(b) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by reducing the person's</p>	<p>No equivalent provisions</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Sections 6.1 – 6.3 have been repealed to reflect best practice drafting as they summarise provisions of the Act. Text boxes have been removed.

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<p>future needs for supports in relation to disability (see paragraphs 6.8 to 6.11); and</p> <p>(c) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by:</p> <p>(i) mitigating or alleviating the impact of the person's impairment upon the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management; or</p> <p>(ii) preventing the deterioration of such functional capacity; or</p> <p>(iii) improving such functional capacity; or</p> <p>(iv) strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer (see paragraphs 6.8 to 6.11).</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Paragraph 6.1 summarises subsection 25(3) of the Act. Paragraph 6.2 summarises subsection 25(1) of the Act.</i></p> </div> <p>6.3 This Part sets out rules relating to some of the elements in paragraph 6.2 above, however, in order to meet the early intervention requirements, all of the requirements in that paragraph need to be satisfied.</p>			
<p><i>When is an impairment permanent or likely to be permanent for the early intervention requirements?</i></p> <p>6.4 An impairment is, or is likely to be, permanent (see paragraphs 6.2(a)(i) and (ii)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.</p>	<p>11 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—disabilities other than psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, circumstances in which a person's impairment (other than an impairment to which a psychosocial disability is attributable) may be considered permanent, or likely to be permanent, for the purposes of subparagraph 25(1)(a)(i) of the Act.</p> <p>(2) The impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.</p> <p>Note: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Both provisions use identical language to identify the circumstances in which an impairment may be considered permanent or likely to be permanent This provision in the 2021 Rules applies to disabilities other than psychosocial disabilities.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>6.5 An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity may improve.</p>	<p>No equivalent provision</p>	<p>Repealed – drafting standards</p>	<ul style="list-style-type: none"> • This provision is no longer required in the Rules because it is addressed in the Act. • Section 24(2) of the NDIS Act ensures that an impairment that varies in intensity may be permanent. • The NDIS Amendment (Participant Service Guarantee and Other Measures) Bill 2021 ensures that impairments to which psychosocial disability are attributable and are episodic or fluctuating nature (refer to schedule 2, item 18) may be taken to be permanent. • Inclusion in the NDIS Act negates the need for this criterion to be specified in the Rules.
<p>6.6 An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).</p>	<p>No equivalent provision</p>	<p>Repealed</p>	<ul style="list-style-type: none"> • This is captured by 11(2) which provides that the impairment may be considered permanent, or likely to be permanent, only if there are no known, available and appropriate evidence-based, clinical, medical or other treatments that would be likely to remedy the impairment.
<p>6.7 If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve the condition.</p>	<p>11 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—disabilities other than psychosocial disabilities</p> <p>[...]</p> <p>Note: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p> <p>12 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—psychosocial disabilities</p> <p>[...]</p> <p>Note 1: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 25(1A) of the Act).</p> <p>Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p>	<p>No change</p>	<ul style="list-style-type: none"> • The note at section 11 and Note 2 at section 12 of the 2021 Rules confirm that impairments of a degenerative nature may be considered permanent if the criteria at section 11(2) or section 12(2) are met.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
No equivalent provision	<p>12 When an impairment is permanent or likely to be permanent for the purposes of the early intervention requirements—psychosocial disabilities</p> <p>(1) This section sets out, for the purposes of paragraph 27(1)(a) and subsection 27(2) of the Act, circumstances in which a person’s impairment to which a psychosocial disability is attributable may be considered permanent, or likely to be permanent, for the purposes of subparagraph 25(1)(a)(ii) of the Act.</p> <p>(2) The impairment may be considered permanent, or likely to be permanent, only if:</p> <p>(a) both:</p> <p>(i) the person is undergoing, or has undergone, appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition; and</p> <p>(ii) the treatment has not led to a substantial improvement in the person’s functional capacity, after a period of time that is reasonable considering the nature of the impairment (and in particular considering whether the impairment is episodic or fluctuates); or</p> <p>(b) no appropriate treatment for the purpose of managing the person’s mental, behavioural or emotional condition is reasonably available to the person.</p> <p>Note 1: An impairment or impairments to which a psychosocial disability is attributable and that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairment or impairments (see subsection 25(1A) of the Act).</p> <p>Note 2: An impairment or impairments of a degenerative nature may be considered permanent, or likely to be permanent, under subsection (2).</p>	New – policy change	<ul style="list-style-type: none"> • This new provision sets out a requirement that must be satisfied for a person’s impairment to which a psychosocial disability is attributable to be considered permanent, or likely to be permanent to meet the disability criteria set out in section 25(1A) of the NDIS Act. • This new provision has been included in response to recommendation 8 of the Tune Review. This recommendation recognised the challenges people with psychosocial disability face in accessing the NDIS. • This provision broadens the eligibility criteria for permanency to focus on whether the person has been unable to find a substantial improvement to their condition through appropriate treatments, or whether there are no appropriate treatments available to the person to manage the condition. This places attention on the person’s subjective experience of receiving treatment and provides flexibility for the wide variety psychosocial conditions. • For the purposes of subsection 12(2), appropriate treatment would include activities associated with stabilisation and management of the condition to which a psychosocial disability is attributable (including crisis, symptom and medication management) and establishment of pathways for longer-term recovery. • The period of time which is reasonable for the purposes of paragraph 12(2)(a) will be guided by an appropriately qualified health professional and supported by medical evidence.
<p><i>Deciding whether provision of early intervention supports is likely to benefit the person</i></p> <p>6.8 Where paragraph 6.2(a) applies to a person, the main way in which the CEO can determine whether the provision of early intervention supports is likely to benefit the person in the ways set out in paragraphs 6.2(b) and (c) above is to consider evidence going to those matters, as indicated in paragraph 6.9 below.</p>	No equivalent provision	Repealed – drafting standards	<ul style="list-style-type: none"> • repealed to reflect best practice drafting • Text boxes have been removed.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>However, young children who have an impairment resulting in developmental delay (see paragraph 6.10) or resulting from a particular condition (see paragraph 6.11) will not need to provide further evidence of the matters in paragraphs 6.2(b) and (c).</p> <p><i>Paragraph 6.8 is made for the purposes of paragraph 27(d) of the Act.</i></p>			
<p><i>Where evidence is required</i></p> <p>6.9 In deciding whether provision of early intervention supports is likely to benefit the person in the ways mentioned in paragraphs 6.2(b) and (c) above, it is expected that the CEO would consider:</p> <p>(a) the likely trajectory and impact of the person's impairment over time; and</p> <p>(b) the potential benefits of early intervention on the impact of the impairment on the person's functional capacity and in reducing their future needs for supports; and</p> <p>(c) evidence from a range of sources, such as information provided by the person with disability or their family members or carers. The CEO may also in some cases seek expert opinion.</p> <p><i>Paragraph 6.9 is made for the purposes of paragraph 27(d) of the Act. It does not compel the CEO to take the actions mentioned in that paragraph in any particular instance.</i></p>	<p>13 Provision of early intervention supports</p> <p>(1) For the purposes of paragraphs 27(1)(d), (e) and (f) of the Act, this section prescribes criteria to be applied in assessing whether provision of early intervention supports is likely to benefit a person by:</p> <p>(a) reducing the person's future needs for supports in relation to disability for the purposes of paragraph 25(1)(b) of the Act; or</p> <p>(b) mitigating, alleviating or preventing the deterioration of the person's functional capacity to undertake one or more of the activities for the purposes of subparagraph 25(1)(c)(i) or (ii) of the Act, or improving such functional capacity for the purposes of subparagraph 25(1)(c)(iii) of the Act; or</p> <p>(c) strengthening the sustainability of the informal supports available to the person, including through building the capacity of the person's carer, for the purposes of subparagraph 25(1)(c)(iv) of the Act.</p> <p>(2) The CEO must have regard to the following:</p> <p>(a) the likely trajectory and impact of the person's impairment or impairments over time;</p> <p>(b) the potential benefits of early intervention on the impact of the impairment or impairments on the person's functional capacity and in reducing their future needs for supports;</p> <p>(c) any information provided by the person, or the person's family members or carers, that the CEO considers relevant;</p> <p>(d) any expert opinion that the CEO considers relevant.</p> <p>Note: See also subsection 25(1B) of the Act (reports requested under paragraph 26(1)(b)) in relation to an assessment of the matters in subparagraphs 25(1)(c)(i), (ii) and (iii) of the Act.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Reflects best drafting practice and removes text boxes. The 2021 Rules are largely based on the 2016 provisions but these provisions have been updated and reordered to make them easier to use. The provisions at section 13(2)(a) – 13(2)(b) of the 2021 Rules are identical to the provisions at 6.9(a) to 6.9(b) in the 2016 Rules. The provisions at 13(2)(c) and 13(2)(d) are substantially the same as 6.9(c) in the 2016 Rules.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p><i>Early intervention in early childhood</i></p> <p>6.10 The CEO is taken to be satisfied that provision of early intervention supports for a child under the age of 6 is likely to benefit the child in the ways mentioned in paragraphs 6.2(b) and (c) above if one or more of the child's impairments is a mental or physical impairment which, by itself or in combination with other mental or physical impairments, results in developmental delay.</p> <p>Note: Developmental delay is defined in section 9 of the Act as a delay in the development of a child under 6 years of age that:</p> <p>(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and</p> <p>(b) results in substantial reduction in functional capacity in one or more of the following areas of major life activity:</p> <p>(i) self-care;</p> <p>(ii) receptive and expressive language;</p> <p>(iii) cognitive development;</p> <p>(iv) motor development; and</p> <p>(c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated.</p> <p>6.11 The provision of early intervention supports is likely to benefit a child aged 6 or under in the ways mentioned in paragraphs 6.2(b) and (c) above in the circumstance that one or more of the child's impairments results from a condition which is on a list of conditions published by the CEO for which evidence has established that early intervention supports will have these benefits.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraph 6.10 is made for the purposes of subsection 25(2) of the Act. Paragraph 6.11 is made for the purposes of paragraphs 27(d), (e) and (f) of the Act.</i></p> </div>	<p>14 Prescribed impairments</p> <p>For the purposes of subsection 25(2) of the Act, a person's impairment is prescribed (and the CEO is taken to be satisfied as mentioned in paragraphs 25(1)(b) and (c) of the Act) if:</p> <p>(a) the person is a child under the age of 6; and</p> <p>(b) the impairment is a physical impairment, or an impairment to which a psychosocial disability is attributable; and</p> <p>(c) the impairment, by itself or in combination with other physical impairments or impairments to which a psychosocial disability is attributable, results in developmental delay.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Reflects best drafting practice and removes text boxes. The 2021 Rules are largely based on the 2016 provisions but these provisions have been updated and reordered to make them easier to use. The language used in section 14 of the 2021 Rules replaces the words 'mental impairment' with 'psychosocial disability' to reflect the language used in the NDIS Amendment (Participant Service Guarantee and Other Measures) Bill 2021.
<p>Part 7 Assessing whether a person meets the disability or early intervention requirements</p> <p>7.1 In deciding whether a prospective participant meets the disability requirements or the early intervention</p>		<p>No change</p>	<ul style="list-style-type: none"> This Part of the 2016 Rules has not been repealed and will remain in effect.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>requirements, the CEO may, if the CEO considers it appropriate, conduct an assessment, which is to be done using an assessment tool specified in operational guidelines in accordance with this Part from time to time.</p> <p>Specification of assessment tools in guidelines</p> <p>7.2 The CEO may specify, in operational guidelines, assessment tools that may be used for the purposes of deciding whether a person meets the disability requirements or the early intervention requirements.</p> <p>7.3 A tool specified under paragraph 7.2 may be the same as a tool specified under paragraph 4.4 of the <i>National Disability Insurance Scheme (Supports for Participants) Rules 2013</i>.</p> <p>7.4 Without limitation, the CEO may specify:</p> <p>(a) different tools to be used for adults and children; and</p> <p>(b) tools that are specifically tailored to particular impairments.</p> <p>7.5 A tool must:</p> <p>(a) be designed to ensure the fair and transparent assessment of whether a person meets the disability requirements or the early intervention requirements; and</p> <p>(b) have reference to areas of activity and social and economic participation identified in the World Health Organisation International Classification of Functions, Disability and Health as in force from time to time.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>This Part is made for the purposes of subsection 209(2A) of the Act.</i></p> </div>			
<p>Citation</p> <p>8.1 This Instrument may be cited as the <i>National Disability Insurance Scheme (Becoming a Participant) Rules 2016</i>.</p>	<p>1 Name</p> <p>This instrument is the <i>National Disability Insurance Scheme (Becoming a Participant) Rules 2021</i>.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Reflects best drafting practice
<p>Interpretation</p> <p>8.2 This Instrument includes text that summarises provisions of the Act. The boxed notes identify such text, which does not form an operative part of this Instrument.</p> <p>8.3 Terms and expressions that are used in the Act have the same meaning in this Instrument unless this Instrument displays a contrary intention—see the <i>Acts Interpretation Act 1901</i> and the <i>Legislation</i></p>	<div style="background-color: #e0e0e0; height: 20px; width: 100%;"></div>	<p>Amended</p>	<ul style="list-style-type: none"> The last sentence of paragraph 8.3 of the 2016 Rules have been omitted.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p><i>Act 2003</i>, which include definitions and rules of interpretation that apply to all Commonwealth legislation. For convenience, the more important definitions from the Act are identified or reproduced in paragraph 8.4.</p>			
<p>8.4 In this Instrument:</p> <p>2013 NDIS launch area means:</p> <p>(a) South Australia;</p> <p>(b) Tasmania;</p> <p>(c) the areas that comprise the following municipal districts of Victoria as at 1 July 2013:</p> <p>(i) Colac-Otway Shire;</p> <p>(ii) City of Greater Geelong;</p> <p>(iii) Borough of Queenscliffe;</p> <p>(iv) Surf Coast Shire;</p> <p>(d) the areas that comprise the following areas of New South Wales constituted under the <i>Local Government Act 1993</i> (NSW) as at 1 July 2013:</p> <p>(i) Lake Macquarie City;</p> <p>(ii) Maitland City;</p> <p>(iii) Newcastle City.</p> <p>2014 NDIS launch area means:</p> <p>(a) the areas that comprise the following districts of Western Australia declared under section 2.1 of the <i>Local Government Act 1995</i> (WA) as at 1 July 2014 (those areas, together, are known for the purposes of this Instrument as Perth Hills):</p> <p>(i) Shire of Kalamunda;</p> <p>(ii) Shire of Mundaring;</p> <p>(iii) City of Swan;</p> <p>(b) the area that comprises the Barkly Region in the Northern Territory as defined under section 9 of the <i>Local Government Act</i> (NT) as at 1 July 2014 (that area is known for the purposes of this Instrument as the Barkly Region);</p> <p>(c) the Australian Capital Territory.</p> <p><i>Note: reference to the Australian Capital Territory in this Instrument does not include the Jervis Bay Territory.</i></p> <p>2015 NDIS early transition area means:</p>	<p>6 Definitions</p> <p>Note: A number of expressions used in this instrument are defined in the Act, including the following:</p> <p>(a) access request;</p> <p>(b) Agency;</p> <p>(c) CEO;</p> <p>(d) child;</p> <p>(e) developmental delay;</p> <p>(f) National Disability Insurance Scheme;</p> <p>(g) participant.</p> <p>In this instrument: Act means the National Disability Insurance Scheme Act 2013.</p> <p>NDIS means the National Disability Insurance Scheme.</p>	<p>Repealed</p>	<ul style="list-style-type: none"> Definitions required in 2021 Rules included at section 6 of 2021 Rules.

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>(a) the areas that comprise the following areas of New South Wales constituted under the <i>Local Government Act 1993</i> (NSW) as at 1 July 2015:</p> <ul style="list-style-type: none"> (i) City of Blue Mountains; (ii) City of Hawkesbury; (iii) City of Lithgow; (iv) City of Penrith. <p>Act means the <i>National Disability Insurance Scheme Act 2013</i>.</p> <p>Agency see section 9 of the Act.</p> <p>CEO see section 9 of the Act.</p> <p>child see section 9 of the Act.</p> <p>Existing WA NDIS Participant means a person who:</p> <ul style="list-style-type: none"> (a) is a participant of the WA NDIS Model (whether or not that participant already has a plan prepared in accordance with the Disability Services Commission’s requirements); and (b) resides, or resided at any time on or after 1 July 2014, in the area of Western Australia that comprises any of the following: <ul style="list-style-type: none"> (i) Kimberley-Pilbara service region; (ii) South Metro service region; (iii) Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Donnybrook-Balingup, Manjimup, and Nannup districts of the South West service region; (iv) Central South Metro service region; (v) Wheatbelt service region; or (vi) North East Metro service region. <p>Note: The Disability Services Commission is established under the <i>Disability Services Act 1993</i> (WA) and in the context of the WA NDIS Model, a ‘participant’ is a participant under that Act.</p> <p>Instrument (or Rules) means these <i>National Disability Insurance Scheme (Becoming a Participant) Rules 2016</i>.</p> <p>NDIS means the National Disability Insurance Scheme (see section 9 of the Act).</p> <p>NDIS areas means the NDIS launch areas, NDIS early transition areas and NDIS areas specified in Schedule A to this Instrument.</p>			

Existing provision (2016 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>NDIS launch area means the 2013 NDIS launch areas, together with the 2014 NDIS launch areas, and the 2015 NDIS launch areas.</p> <p>NDIS rules means the National Disability Insurance Scheme rules (see section 9 of the Act).</p> <p>parental responsibility see section 9 of the Act.</p> <p>participant see section 9 of the Act.</p> <p>service systems means general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:</p> <p style="padding-left: 40px;">(a) as part of a universal service obligation; or</p> <p style="padding-left: 40px;">(b) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.</p> <p>Victorian Government means the State of Victoria.</p> <p>WA NDIS Model means the disability supports and services model designed to mirror the NDIS, funded or administered by the Department of Communities representing the State of Western Australia.</p>			
<p>Schedule A – Additional age and residence requirements</p> <p>[...]</p> <p>Schedule B</p> <p>NDIS areas</p> <p>[...]</p>	<p>Schedule 1—Repeals etc.</p> <p><i>National Disability Insurance Scheme (Becoming a Participant) Rules 2016</i></p> <p>[...]</p> <p>4 Schedules A and B</p> <p>Repeal the Schedules.</p>	<p>Repealed – policy change</p>	<ul style="list-style-type: none"> • Schedules A and B of the 2016 Rules relate solely to the trial and transition phases of the NDIS. • As the NDIS has reached ‘full scheme’ and is available across Australia, these schedules are redundant.