

Detailed comparison of existing and proposed NDIS Rules

Children Rules

The 2021 Children Rules repeal and replace the 2013 Children Rules.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes									
<p>Part 1 What these Rules are about</p> <p>1.1 These Rules are about persons who are responsible for undertaking acts and making decisions in relation to the Act on behalf of a child (referred to as child's representatives in these Rules).</p> <p>1.2 It is recognised (for example, in the <i>Convention on the Rights of the Child</i>) that a child's ability to undertake acts and make decisions on their own behalf increases as they develop. This principle is given effect by various provisions of the Act and these Rules that relate to child's representatives, including rules that require children to be consulted in relation to, and involved in, decision-making that affects them, and in the ability of the CEO to decide that a particular child does not need a child's representative (and to determine that the child will be able to undertake acts and make decisions on their own behalf).</p> <p>1.3 The existence of a child's representative for the purposes of the Act does not affect duties or responsibilities of other carers who are responsible for undertaking acts and making decisions on behalf of children.</p> <p>1.4 The Act sets out a number of principles for the NDIS. The following principles are particularly relevant to these Rules:</p> <p>(a) the role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected;</p> <p>(b) where acts or things are done on behalf of a child with disability, the best interests of the child are paramount, and full consideration should be given to the need to:</p> <p>(i) protect them from harm; and</p> <p>(ii) promote their development; and</p> <p>(iii) strengthen, preserve and promote positive relationships between them and their parents, family members and other people who are significant in their life;</p>	<p>Part 1—Preliminary</p> <p>1 Name</p> <p>This instrument is the <i>National Disability Insurance Scheme (Children) 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 paragraph 7.1 of the 2013 Rules) Commencement (no equivalent provision in 2013 Rules) Authority (no equivalent provision in 2013 Rules) Schedules (no equivalent provision in 2013 Rules) Definitions (formerly paragraphs 7.2 to 7.5 of the 2013 Rules)
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.											

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>(c) positive personal and social development of people with disability, including children and young people, is to be promoted;</p> <p>(d) where acts or things are done on behalf of a person with disability:</p> <p>(i) they should be involved in decision-making that affects them, including making decisions for themselves, to the extent possible; and</p> <p>(ii) they should be encouraged to engage in the life of the community; and</p> <p>(iii) the judgements and decisions they would have made for themselves should be taken into account; and</p> <p>(iv) their cultural and linguistic circumstances, and gender, should be taken into account; and</p> <p>(v) their supportive relationships, friendships and connections with others should be recognised.</p>	<p>3 Authority</p> <p>This instrument is made under 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 child's representative is usually a person with parental responsibility. Part 3 deals with determining whether a person other than a person with parental responsibility should be the child's representative.</p> <p>2.2 Part 4 deals with determining who has parental responsibility.</p> <p>2.3 In some cases, a child does not need a child's representative, and is able to make decisions for himself or herself for the purposes of the NDIS. Part 5 deals with determining whether a child does not need a child's representative.</p> <p>2.4 Part 6 deals with the duties of a child's representative.</p> <p>2.5 Part 7 deals with other matters, including interpretation of these Rules.</p>	<p>5 Simplified outline of this instrument</p> <p>This instrument prescribes matters relating to a child's representative, who is responsible for undertaking acts and making decisions in relation to the Act for, and on behalf of, the child.</p> <p>A child's representative is usually a person with parental responsibility for the child. Division 1 of Part 2 of this instrument prescribes matters related to determining that a person who does not have parental responsibility for a child is the child's representative.</p> <p>In some cases, a child does not need a representative and is able to make decisions for themselves in relation to the Act. Under the Act, the CEO may determine that a child does not need a representative. Division 2 of Part 2 of this instrument prescribes matters related to making such a determination.</p> <p>If a child has a guardian, under the Act the guardian is the child's representative unless the CEO determines otherwise. The Act also provides that if more than one person would have parental responsibility, the CEO may determine which of those persons has parental responsibility for the purposes of the Act. Part 3 of this instrument prescribes matters related to making such a determination.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Reflects best drafting practice

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	<div style="border: 1px solid black; padding: 5px;"> <p>A child's representative has a duty under the Act to ascertain the wishes of the child and to act in the best interests of the child. Part 4 of this instrument prescribes that a child's representative has an additional duty to consult certain other persons.</p> </div>		
<p>Part 3 Who is the child's representative?</p> <p>3.1 A child's representative need not be an individual, and could, for example, be a State or Territory government agency.</p> <p>3.2 The child's representative will normally be the person who has, or the persons who jointly have, parental responsibility for the child. (See section 75 of the Act and Part 4 of these Rules for how to determine who has parental responsibility.)</p> <p>3.3 However, in exceptional circumstances, the CEO might be satisfied that this is not appropriate. (For example, in a particular case, there might be a substantial degree of doubt as to what persons have parental responsibility under section 75 of the Act, and in view of this doubt, the CEO might be satisfied that it is not appropriate for the persons referred to in paragraph 3.2 to be the child's representative.) In such circumstances, the CEO may determine that the child's representative should be a different person, or a different group of persons. A person determined by the CEO in this way need not have parental responsibility.</p> <p>3.4 There is a special rule that applies in relation to such a determination when a State or Territory Minister, or the head of a Department of State of a State or Territory, has parental responsibility for the child. In such a case, the CEO is able to make this determination only with the written agreement of that person. A Minister or departmental head will normally delegate powers relating to parental responsibility. A delegation might include the power to make the agreement on that person's behalf.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraphs 3.1 to 3.4 summarise the effect of subsections 74(1) and (1A) of the Act.</i></p> </div>	<p>No equivalent provision</p>	<p>Repealed – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes
<p>3.5 In deciding whether to make such a determination, the CEO is to have regard to the following:</p> <p>(a) the preferences (if any) of the child;</p> <p>(b) the desirability of preserving family relationships and informal support networks of the child;</p>	<p>7 Deciding whether to make determination of child's representative</p> <p>For the purposes of paragraph 74(6)(a) of the Act, in deciding whether to make a determination under paragraph 74(1)(b) of the Act that a person (other than a person with parental responsibility for a child) is the child's</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • Provisions updated and reordered to make them easier to use and reflect best drafting practice. • Makes the Rules easier to understand by clearly identifying the section of the NDIS Act under which the determination is being made. • There is no change to the policy intent although there are slight variations in the language used. For example

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>(c) who is best placed to carry out the duties set out in section 76 of the Act and Part 6 of these Rules;</p> <p>(d) for a particular person that the CEO is considering appointing:</p> <p>(i) any existing arrangements that are in place between that person and the child; and</p> <p>(ii) whether that person has responsibility for day-to-day parenting decisions; and</p> <p>(iii) whether that person can act in conjunction with other representatives and supporters of the child in the best interests of the child; and</p> <p>(iv) where the CEO has asked the person to answer any questions or provide any information in relation to the possible appointment of that person as a child's representative (including requesting the person to consent to the release of information concerning their criminal history or suitability to work with children):</p> <p>(A) any answers or information that have been provided by the person; and</p> <p>(B) any refusal by the person to provide answers or information; and</p> <p>(v) any relevant conviction for an offence under Commonwealth, State or Territory law; and</p> <p>(vi) any relevant information relating to the suitability of the person to work with children.</p>	<p>representative, the CEO must have regard to the following matters:</p> <p>(a) the views (if any) of the child in relation to who should or should not be determined as the child's representative;</p> <p>(b) the impact the decision may have on the family relationships or informal support networks of the child;</p> <p>(c) whether there are any existing arrangements between the person and the child including living, decision-making and other arrangements that are relevant to the decision;</p> <p>(d) whether the person has responsibility for the child's long-term or day-to-day care, welfare and development;</p> <p>(e) whether the CEO is satisfied that the person can act, in conjunction with any other persons who represent or support the child, in the best interests of the child;</p> <p>(f) whether the information available to the CEO indicates that the person has been convicted of an offence against a law of the Commonwealth, a State or a Territory that is relevant to the decision;</p> <p>(g) whether, based on the information available to the CEO, the CEO considers the person is suitable to work with children;</p> <p>(h) if the CEO has requested that the person answer questions or provide information in relation to the proposed determination, or that the person consent to the release of information concerning the person's criminal history or suitability to work with children:</p> <p>(i) any answers or information provided by the person or released to the CEO; and</p> <p>(ii) any refusal or failure by the person to comply with the request;</p> <p>(i) whether the CEO considers the person to be the most suitable person to perform the duties to the child imposed by subsection 76(1) of the Act and section 12 of this instrument.</p>		<p>the word 'preferences' at paragraph 3.5(a) of the 2013 Rules has been replaced with 'view' at paragraph 7(a) of the 2021 Rules.</p> <ul style="list-style-type: none"> The phrasing at paragraphs 3.5(b) and (c) of the 2013 Rules have been updated at paragraphs 7(b) and (i) respectively to provide more clarity and specificity around what the CEO must have regard to in relation to family relationships, informal supports and the suitability of the appointed person to carry out the duties of a child representative. Paragraphs 3.5(d)(i) to (iii) of the 2013 Rules are reflected at paragraphs 7(c) to (e) of the 2021 Rules respectively Paragraphs 3.5(d)(v) and (vi) of the 2013 Rules are reflected at paragraphs 7(f) and (g) of the 2021 Rules respectively Paragraph 3.5(d)(iv) of the 2013 Rules is reflected at paragraph 7(h) of the 2021 Rules.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>Part 4 Who has parental responsibility?</p> <p>4.1 There are different rules for determining who has parental responsibility, depending on whether or not the child has a guardian. Under these rules, in each case, the person with parental responsibility will either be:</p> <p>(a) the child’s guardian; or</p> <p>(b) 1 or more of the persons who satisfy parental condition 1 or parental condition 2.</p> <p>4.2 The parental conditions are as follows:</p> <p>parental condition 1 is that the person:</p> <p>(a) is a parent of the child; and</p> <p>(b) has not ceased to have parental responsibility for the child because of an order made under the <i>Family Law Act 1975</i> or a law of a State or a Territory.</p> <p>parental condition 2 is that, under a parenting order (within the meaning of the <i>Family Law Act 1975</i>):</p> <p>(a) the child is to live with the person; or</p> <p>(b) the child is to spend time with the person; or</p> <p>(c) the person is responsible for the child’s long-term or day-to-day care, welfare and development.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Persons who satisfy parental condition 1 or parental condition 2 will also satisfy paragraph 75(1)(a) or (b) of the Act.</i></p> </div>	<p>No equivalent provision</p>	<p>Repealed – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes
<p>Children who have guardians</p> <p>4.3 If a child has a guardian, the guardian normally has parental responsibility for the child (and will therefore normally be the child’s representative—see paragraph 3.2).</p> <p>4.4 However, the CEO is able to determine instead that 1 or more of the persons who satisfy parental condition 1 or parental condition 2 have parental responsibility for the child.</p> <p>4.5 In some cases, a State or Territory Minister, or the head of a Department of State of a State or Territory, will have guardianship of the child. If so, the CEO is able to make this determination only with the written agreement of that person.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraphs 4.1 to 4.5 summarise the operation of subsections 75(1) to (3A) of the Act.</i></p> </div>	<p>10 Deciding whether to determine person other than guardian to have parental responsibility</p> <p>For the purposes of subsection 75(4) of the Act, in deciding whether to make a determination under subsection 75(2) of the Act that one or more persons referred to in subsection 75(1) of the Act (the relevant persons) have parental responsibility for a child instead of the guardian of the child:</p> <p>(a) the CEO must consult, in writing, with the guardian of the child; and</p> <p>(b) the CEO must have regard to the following matters:</p> <p style="padding-left: 20px;">(i) the views (if any) of the child in relation to who should or should not have parental responsibility for the child for the purposes of the Act;</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes • Provisions updated and reordered to make them easier to use. • Makes the Rules easier to understand by clearly identifying the section of the NDIS Act under which the determination is being made. • There is no change to the policy intent • Paragraph 4.6(a) of the 2013 Rules is reflected at paragraph 10(a) of the 2021 Rules • Paragraphs 4.6(b)(i), (ii), (iv) and (v) of the 2013 Rules are reflected at paragraphs 10(b)(i), (iii), (iv) and (v) of the 2021 Rules respectively. • The intent of paragraph 4.6(b)(iii) of the 2013 Rules is reflected at paragraph 10(b)(ii) however the language

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>4.6 When deciding whether to make such a determination, the CEO is to:</p> <p>(a) consult, in writing, with the child’s guardian; and</p> <p>(b) have regard to the following:</p> <p>(i) the preferences (if any) of the child;</p> <p>(ii) the principle that the child’s guardian should be the child’s representative unless the CEO is satisfied that this is not appropriate;</p> <p>(iii) whether the child’s guardian recommends that another person should be the child’s representative;</p> <p>(iv) the extent to which the child’s guardian is willing and able to perform the functions of child’s representative set out in section 76 of the Act and Part 6 of these Rules;</p> <p>(v) whether a person who satisfies parental condition 1 or parental condition 2 is more willing and able to carry out the duties to children set out in section 76 of the Act and Part 6 of these Rules.</p>	<p>(ii) any views of the guardian of the child that are relevant to the decision;</p> <p>(iii) the principle that the guardian of the child should have parental responsibility unless the CEO is satisfied that this is not appropriate for the purposes of the Act;</p> <p>(iv) whether, based on the information available to the CEO, the CEO is satisfied that the guardian of the child is willing and able to perform the duties imposed by subsection 76(1) of the Act and section 12 of this instrument;</p> <p>(v) whether, based on the information available to the CEO, the CEO is satisfied that the relevant persons are more suitable and able than the guardian of the child to perform those duties.</p> <p>Note: If the guardian of a child is a State or Territory Minister or the head (however described) of a Department of State of a State or Territory, the CEO must not make a determination under subsection 75(2) of the Act in relation to the child unless the Minister or head of the Department, as the case may be, has agreed in writing to the making of the determination: see subsection 75(3A) of the Act.</p>		<p>has been slightly amended. The intent of paragraph 4.6(b)(iii) in the 2013 Rules is to ensure guardians have an opportunity to be heard and included in the decisions affecting the children for whom they have legal responsibility. The language used at paragraph 10(b)(ii) ensures this continues and the right to be heard and included in the decision is not restricted to a guardian’s recommendation.</p>
<p>Children who do not have guardians</p> <p>4.7 If a child does not have a guardian, then any person who satisfies parental condition 1 or parental condition 2 has parental responsibility for the child.</p> <p>4.8 Where this results in more than 1 person having parental responsibility for a child, the CEO is able to determine that 1 or more of those persons have parental responsibility for the child for the purposes of the Act. This is discretionary; the CEO does not need to make this determination.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Paragraphs 4.7 and 4.8 summarise subsections 75(1) and (3) of the Act.</i></p> </div> <p>4.9 When deciding whether to make a determination referred to in paragraph 4.8, the CEO is to have regard to the following:</p> <p>(a) the preferences (if any) of the child;</p> <p>(b) the views of any person who has parental responsibility for the child;</p> <p>(c) whether 1 or more of those persons are best placed to carry out the duties to children set</p>	<p>11 Deciding whether to limit parental responsibility to certain persons</p> <p>For the purposes of subsection 75(4) of the Act, in deciding whether to make a determination under subsection 75(3) of the Act that one or more persons (the relevant persons) have parental responsibility for a child for the purposes of the Act, the CEO must have regard to the following matters:</p> <p>(a) the views (if any) of the child in relation to who should or should not have parental responsibility for the child for the purposes of the Act;</p> <p>(b) any views of the persons who have parental responsibility for the child in accordance with subsection 75(1) of the Act that are relevant to the decision;</p> <p>(c) whether, based on the information available to the CEO, the CEO is satisfied that the relevant persons are the most suitable persons to perform the duties imposed by subsection 76(1) of the Act and section 12 of this instrument;</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes • Provisions updated and reordered to make them easier to use. • Makes the Rules easier to understand by clearly identifying the section of the NDIS Act under which the determination is being made. • There is no change to the policy intent • Paragraphs 4.9(a) and (b) of the 2013 Rules are reflected at paragraphs 11(a) and (b) of the 2021 Rules respectively. • The 2013 Rules did not explicitly require the CEO to consider whether the relevant persons are the most suitable to be child representatives however the inclusion of this consideration at paragraph 11(c) of the 2021 Rules does not represent a change in policy intent. Rather, it strengthens the existing principle that the best interests of the child are paramount when acts or things are done on behalf of a child.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>out in section 76 of the Act and Part 6 of these Rules, taking into account:</p> <p>(i) existing arrangements that are in place between those persons and the child; and</p> <p>(ii) which persons have responsibility for day-to-day parenting decisions; and</p> <p>(iii) which persons can act in conjunction with other representatives and supporters of the child in the best interests of the child;</p> <p>(d) whether 1 or more of those persons are willing and able to work together in the best interests of the child;</p> <p>(e) the desirability of preserving family relationships and informal support networks of the child;</p> <p>(f) for any of the persons:</p> <p>(i) where the CEO has asked the person to answer any questions or provide any information in relation to making a determination that applies to that person (including requesting the person to consent to the release of information concerning their criminal history or suitability to work with children):</p> <p>(A) any answers or information that have been provided by the person; and</p> <p>(B) any refusal by the person to provide answers or information; and</p> <p>(ii) any relevant conviction for an offence under Commonwealth, State or Territory law; and</p> <p>(iii) any relevant information relating to the suitability of the person to work with children.</p>	<p>(d) whether there are any existing arrangements between the relevant persons and the child including living, decision-making and other arrangements that are relevant to the decision;</p> <p>(e) whether the relevant persons have responsibility for the child's long-term or day-to-day care, welfare and development;</p> <p>(f) whether the CEO is satisfied that the relevant persons can act in conjunction with any other persons who represent or support the child, in the best interests of the child;</p> <p>(g) if there is more than one relevant person—whether the CEO is satisfied that the relevant persons are willing and able to work together in the best interests of the child;</p> <p>(h) the impact the decision may have on the family relationships or informal support networks of the child;</p> <p>(i) whether the information available to the CEO indicates that the person has been convicted of an offence against a law of the Commonwealth, a State or a Territory that is relevant to the decision;</p> <p>(j) whether, based on the information available to the CEO, the CEO considers the person is suitable to work with children;</p> <p>(k) if the CEO has requested that any of the relevant persons answer questions or provide information in relation to the proposed determination, or that any of the relevant persons consent to the release of information concerning that person's criminal history or suitability to work with children:</p> <p>(i) any answers or information provided by that person or released to the CEO; and</p> <p>(ii) any refusal or failure by that person to comply with the request.</p> <p>Note: If the guardian of a child is a State or Territory Minister or the head (however described) of a Department of State of a State or Territory, the CEO must not make a determination under subsection 75(3) of the Act in</p>		<ul style="list-style-type: none"> • Paragraphs 4.9(c)(i) to 4.9(c)(iii) of the 2013 Rules are reflected at paragraphs 11(d) to (f) of the 2021 Rules respectively. • Paragraphs 4.9(d) and (e) of the 2013 Rules are reflected at paragraphs 11(g) and (h) of the 2021 Rules respectively. • Paragraphs 4.9(f)(i), (ii) and (iii) of the 2013 Rules are reflected at paragraphs 11(k), (i) and (j) of the 2021 Rules respectively.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	relation to the child unless the Minister or head of the Department, as the case may be, has agreed in writing to the making of the determination: see subsection 75(3A) of the Act.		
<p>Part 5 When a child does not need a child's representative</p> <p>5.1 Under the Act, a child will sometimes be able to do things for himself or herself. For this to be the case, the CEO must:</p> <p>(a) be satisfied that the child is capable of making their own decisions; and</p> <p>(b) be satisfied that it is appropriate in the circumstances for certain provisions of the Act not to apply to the child (essentially, the CEO must be satisfied that it is appropriate for the child to do things for himself or herself); and</p> <p>(c) make a determination about these matters.</p> <p><i>Paragraph 5.1 summarises subsection 74(5) of the Act.</i></p>	No equivalent provision	Repealed – drafting standards	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes
<p>5.2 When making a decision in relation to the matter referred to in paragraph 5.1(a) above, the CEO is to:</p> <p>(a) consult with the child and the child's representative; and</p> <p>(b) have regard to the following:</p> <p>(i) whether the child:</p> <p>(A) is able to understand the kind of information relevant to decisions that need to be made under the NDIS; and</p> <p>(B) is able to use information of that kind when making decisions; and</p> <p>(C) is able to understand the consequences of decisions that need to be made under the NDIS; and</p> <p>(D) is able to communicate decisions in some way;</p> <p>(ii) whether there are people in the child's life who can support them to make their own decisions.</p>	<p>8 Deciding whether child is capable of making own decisions</p> <p>For the purposes of paragraph 74(6)(c) of the Act, in deciding whether a child is capable of making decisions for themselves:</p> <p>(a) the CEO must consult:</p> <p>(i) the child; and</p> <p>(ii) if a State or Territory Minister or the head (however described) of a Department of State of a State or Territory is a representative of the child—that representative of the child; and</p> <p>(iii) any other representative of the child to the extent that the consultation is appropriate and reasonably practicable in the circumstances; and</p> <p>(b) the CEO must have regard to the following matters:</p> <p>(i) whether the child is able to understand information of the kind that is relevant to decisions that must be made as a participant in the NDIS;</p>	Replaced – drafting standards	<ul style="list-style-type: none"> • Reflects best drafting practice • Provisions updated and reordered to make them easier to use. • Makes the Rules easier to understand by clearly identifying the section of the NDIS Act under which the determination is being made. • There is no change to the policy intent • Paragraph 5.2(a) of the 2013 Rules is reflected in paragraph 8(a) of the 2021 Rules. • Paragraphs 5.2(b)(i)(A) to 5.2(b)(i)(D) of the 2013 Rules are reflected at paragraphs 8(b)(i) to 8(b)(iv) of the 2021 Rules respectively • Paragraph 5.2(b)(ii) of the 2013 Rules is reflected at paragraph 8(b)(v) of the 2021 Rules.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	<ul style="list-style-type: none"> (ii) whether the child is able to use information of that kind when making decisions; (iii) whether the child is able to understand the consequences of decisions that need to be made by participants in the NDIS; (iv) whether the child is able to communicate decisions in some way; (v) if the child requires support to make decisions that must be made as a participant in the NDIS—whether there are persons who can support the child to make those decisions. 		
<p>5.3 When making a decision in relation to the matter referred to in paragraph 5.1(b) above, the CEO is to:</p> <ul style="list-style-type: none"> (a) consult with the child and the child’s representative; and (b) have regard to the following: <ul style="list-style-type: none"> (i) the preferences (if any) of the child; (ii) whether there are other people in the child’s life who would be willing and able to assist them in carrying out actions and making decisions under the NDIS; (iii) the need to preserve existing family relationships; (iv) any existing arrangements in place under Commonwealth, State and Territory schemes. 	<p>9 Deciding whether it is appropriate for subsections 74(1) and (2) of the Act not to apply</p> <p>For the purposes of paragraph 74(6)(d) of the Act, in deciding whether it is appropriate for subsections 74(1) and (2) of the Act not to apply to a child:</p> <ul style="list-style-type: none"> (a) the CEO must consult: <ul style="list-style-type: none"> (i) the child; and (ii) if a State or Territory Minister or the head (however described) of a Department of State of a State or Territory is a representative of the child—that representative of the child; and (iii) any other representative of the child to the extent that the consultation is appropriate and reasonably practicable in the circumstances; and (b) the CEO must have regard to the following matters: <ul style="list-style-type: none"> (i) the views of the child and any representative of the child consulted under paragraph (a); (ii) whether the CEO is satisfied that there are persons who support the child and would be willing and able to assist the child to carry out actions and make decisions as a participant in the NDIS; (iii) the impact the decision may have on the family relationships or informal support networks of the child; 	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • Reflects best drafting practice • Makes the Rules easier to understand by clearly identifying the section of the NDIS Act under which the determination is being made. • There is no change to the policy intent.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	; (iv) whether there are any existing arrangements in place for the child in relation to child protection or decision-making under a Commonwealth, State or Territory law that are relevant to the decision.		
<p>Part 6 Duties of child's representatives</p> <p>6.1 The Act provides guidance as to how a child's representative is to act under the NDIS.</p> <p>6.2 One duty of a child's representative is to:</p> <p>(a) ascertain the wishes of the child; and</p> <p>(b) act in a manner that promotes the best interests of that child.</p> <p>6.3 This duty is not breached if the child's representative does a thing, or refrains from doing a thing, so long as:</p> <p>(a) the child's representative reasonably believes that they have ascertained the wishes of the child in relation to the thing; and</p> <p>(b) the child's representative reasonably believes that doing the thing, or refraining from doing the thing, promotes the best interests of the child.</p> <p><i>The duty set out in paragraph 6.2 and the qualification set out in paragraph 6.3 summarise subsections 76(1) to (3) of the Act.</i></p> <p>6.4 A child's representative also has a duty to consult, wherever practicable, with the following in relation to doing things under, or for the purposes of, the Act:</p> <p>(a) the guardian of the child (if any) and any other person who satisfies parental condition 1 or parental condition 2 (see paragraph 4.2) in relation to the child;</p> <p>(b) any other person who assists the child to manage their day-to-day activities and make decisions.</p>	<p>Part 4—Duties to children</p> <p>12 Duty to consult certain other persons</p> <p>For the purposes of subsection 76(4) of the Act, a person who may do a thing in relation to a child because of section 74 of the Act has a duty to consult, so far as is practicable, with the following persons in relation to the doing of that thing:</p> <p>(a) any person who:</p> <p>(i) has parental responsibility for the child; or</p> <p>(ii) but for subsection 75(2) or (3) of the Act, would have parental responsibility for the child;</p> <p>(b) any other person who assists the child:</p> <p>(i) to make decisions as a participant in the NDIS; and</p> <p>(ii) to manage the child's day-to-day activities.</p>	Replaced – drafting standards	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes • Simplifies and makes the Rules easier to understand • There is no change to the policy intent. • Paragraph 6.4 of the 2013 Rules is reflected in section 12 of the 2021 Rules.
<p>Citation</p> <p>7.1 These Rules may be cited as the <i>National Disability Insurance Scheme (Children) Rules 2013</i>.</p>	<p>1 Name</p> <p>This instrument is the <i>Error! Use the Home tab to apply ShortT to the text that you want to appear here..</i></p>	Replaced – drafting standards	<ul style="list-style-type: none"> • Reflects best drafting practice

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>Interpretation</p> <p>7.2 These Rules include text that summarises provisions of the Act. The boxed notes identify such text, which does not form an operative part of these Rules.</p> <p>7.3 Terms and expressions that are used in the Act have the same meaning in these Rules unless these Rules display a contrary intention—see the <i>Acts Interpretation Act 1901</i> and the <i>Legislative Instruments 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 7.4.</p> <p>7.4 In these Rules:</p> <p>Act means the <i>National Disability Insurance Scheme Act 2013</i>.</p> <p>CEO—see section 9 of the Act.</p> <p>child—see section 9 of the Act.</p> <p>child’s representative means a person referred to in subsection 74(1) of the Act.</p> <p>Convention on the Rights of the Child means the treaty known as the <i>Convention on the Rights of the Child</i> done at New York on 20 November 1989. The text of the Convention is set out in the Australian Treaty Series 1991 No. 4.</p> <p>guardian means a guardian appointed under a law of the Commonwealth, a State or a Territory, and guardianship has a corresponding meaning.</p> <p>NDIS means the National Disability Insurance Scheme (see section 9 of the Act).</p> <p>parental responsibility—see section 9 of the Act.</p> <p>parental condition 1—see paragraph 4.2 of these Rules.</p> <p>parental condition 2—see paragraph 4.2 of these Rules.</p> <p><i>Appointment of child’s representative does not affect other duties or functions of carers</i></p> <p>7.5 In some cases, carers will have been appointed by an appropriate State or Territory body. Some such carers will have been delegated powers, functions or duties, and will have corresponding obligations under the State or Territory law. Nothing in these Rules is intended to impact on obligations of that nature.</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) CEO;</p> <p>(b) child;</p> <p>(c) National Disability Insurance Scheme;</p> <p>(d) parental responsibility.</p> <p>In this instrument:</p> <p>Act means the <i>National Disability Insurance Scheme Act 2013</i>.</p> <p>guardian of a child means a person who has guardianship of the child under a law of the Commonwealth, a State or a Territory.</p> <p>NDIS means the National Disability Insurance Scheme.</p> <p>representative of a child means:</p> <p>(a) if a person is determined under paragraph 74(1)(b) of the Act in relation to the child—that person; or</p> <p>(b) otherwise—the person who has, or each of the persons who jointly have, parental responsibility for the child.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> Reflects best drafting practice