

Detailed comparison of existing and proposed NDIS Rules

Plan Administration Rules

The National Disability Insurance Scheme (Plan Administration) Rules 2021 are new.

These rules implement the following provisions representing a change in policy:

Section	Policy intention
<p>5 Funding to persons or entities</p> <p>For the purposes of subsection 14(3) of the Act, the Agency must have regard to the following matters in deciding whether to provide funding under subsection 14(2) of the Act to a person or entity to assist a participant to receive supports:</p> <ul style="list-style-type: none"> (a) the urgency with which the participant needs supports; (b) the extent to which the participant is able to exercise choice and control in sourcing supports; (c) whether providing funding to the person or entity would promote the diversity and sustainability of the NDIS market at the location where the participant lives; (d) if the participant has a particular cultural background—whether the person or entity takes a best-practice and evidence-based approach to assisting persons who have that cultural background; (e) if the participant lives at a regional or remote location—whether the person or entity takes a best-practice and evidence-based approach to assisting persons who live at such locations; (f) whether providing funding to the person or entity would provide the Agency with an opportunity to deliver improved outcomes for other participants. 	<ul style="list-style-type: none"> • This new provision relates to changes being made to section 14 of the Act, contained in the Bill. • It sets out when the NDIA may intervene in the market on behalf of a participant to help them access their NDIS supports. This provision rose from recommendation 17 of the Tune Review • The matters prescribed in this section are not intended to limit the matters to which the NDIA may have regard when exercising the discretion to provide funding under proposed paragraph 14(2) of the Bill.
<p>9 Acquittal of NDIS amounts</p> <ul style="list-style-type: none"> (1) This section is made for the purposes of subsections 46(2) and (3) of the Act. (2) If a participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant, uses all or part of the NDIS amount to purchase goods or services: <ul style="list-style-type: none"> (a) the purchaser; and (b) if the purchase is from an NDIS provider—the NDIS provider; must retain a record of each of those purchases for a period of 5 years beginning on: <ul style="list-style-type: none"> (c) if the purchase is of goods—the day on which the goods are delivered to the participant; or (d) if the purchase is of services—the last day on which the services are provided to the participant. (3) A record retained in accordance with subsection (2) must include the following: <ul style="list-style-type: none"> (a) the name and ABN (if any) of the supplier; (b) the day on which the record is made; (c) if the purchase is of goods—the day on which the goods are delivered to the participant; (d) if the purchase is of services—each day on which the services are provided to the participant; (e) the purchase price inclusive of GST; (f) the purchase price exclusive of GST; (g) the kind of goods or services; (h) the day of purchase. 	<ul style="list-style-type: none"> • This new provision relates to changes being made to section 46 of the Act contained in the Bill. • This provision requires purchasers of NDIS funds on behalf of a participant (i.e. a plan nominee or registered plan manager) to retain records for 5 years and set out the specific information that must be retained in those records. • The provision also requires NDIS providers from whom NDIS supports are purchased to keep records for 5 years and sets out the specific information that must be retained in those records. • This change ensures that participants and providers are provided clear guidance about their record keeping requirements and the minimum expectations that must be met.

Section	Policy intention
<p>10 Variation of participant’s plan on CEO’s own initiative</p> <p>(1) For the purposes of paragraph 47A(6)(a) of the Act, the CEO must have regard to the matters set out in subsection (2) of this section in deciding whether to vary a participant’s plan on the CEO’s own initiative.</p> <p>(2) The matters are as follows:</p> <ul style="list-style-type: none"> (a) whether the variation is minor or technical; (b) if the variation is to add a particular support to the statement of participant supports included in the participant’s plan—both of the following: <ul style="list-style-type: none"> (i) how that support is to be delivered to the participant; (ii) the cost of that support; (c) whether the variation is of the reassessment date of the participant’s plan; (d) whether the variation is to how a particular support covered by the statement of participant supports included in the participant’s plan is to be delivered to the participant; (e) whether the variation relates to the cost of a particular support covered by the statement of participant supports included in the participant’s plan; (f) whether the variation relates to compensation received, or to be received, by the participant; (g) whether the variation relates to the management of any aspect of the participant’s plan, including the funding for supports under the plan; (h) whether the variation increases the total funding for supports under the participant’s plan; (i) whether the variation mitigates an immediate risk of harm to the participant or another person. 	<ul style="list-style-type: none"> • This new provision relates to new section 47A contained in the Bill which allows the CEO to vary a participant’s plan (excluding the participant’s statements of goals and aspirations), without requiring a plan reassessment to be undertaken, or a new plan to be created. • New section 47A contained in the Bill gives the CEO the power to vary a participant’s plan either on the CEO’s own initiative or at the participant’s request. • This provision sets out the matters to which the CEO must have regard when deciding whether to vary the participant’s plan on their own initiative. • This aligns with recommendation 21 of the Tune Review.
<p>11 Variation etc. of participant’s plan at participant’s request</p> <p>(1) For the purposes of paragraph 47A(6)(b) of the Act, this section sets out the matters to which the CEO must have regard when making a decision under paragraph 47A(3)(a), (b) or (c) of the Act in relation to a participant’s request for a variation of the participant’s plan.</p> <p><i>Decisions under paragraph 47A(3)(a) of the Act</i></p> <p>(2) In making a decision under paragraph 47A(3)(a) of the Act that the plan needs to be varied, the CEO must have regard to the matters set out in subsection 10(2) of this instrument.</p> <p><i>Decisions under paragraph 47A(3)(b) or (c) of the Act</i></p> <p>(3) In making a decision:</p> <ul style="list-style-type: none"> (a) under paragraph 47A(3)(b) of the Act not to vary the plan and not to reassess the plan under section 48 of the Act; or (b) under paragraph 47A(3)(c) of the Act not to vary the plan but to reassess the plan under subsection 48(1) of the Act instead; <p>the CEO must have regard to:</p> <ul style="list-style-type: none"> (c) the matters set out in subsection 10(2) of this instrument; and (d) the matters set out in subsection (4) of this section. <p>(4) The matters are as follows:</p> <ul style="list-style-type: none"> (a) whether the participant has experienced, is experiencing or is likely to experience a significant change in circumstances; (b) whether there has been a change in the participant’s functional capacity to undertake one or more of the following activities: <ul style="list-style-type: none"> (i) communication; (ii) social interaction; 	<ul style="list-style-type: none"> • This new provision relates to new section 47A contained in the Bill which allows the CEO to vary a participant’s plan (excluding the participant’s statements of goals and aspirations), without requiring a plan reassessment to be undertaken, or a new plan to be created. • New section 47A contained in the Bill gives the CEO the power to vary a participant’s plan either on the CEO’s own initiative or at the participant’s request. • This provision sets out the matters to which the CEO must have regard when deciding whether to vary the participant’s plan at the request of the participant. • This aligns with recommendation 21 of the Tune Review.

Section	Policy intention
<ul style="list-style-type: none"> (iii) learning; (iv) mobility; (v) self-care; (vi) self-management; (c) if the participant has a degenerative condition—whether there has been a change in that condition; (d) whether the participant has received, or is receiving, early intervention support. 	
<p>12 Reassessment of participant’s plan</p> <p>For the purposes of subsection 48(2) of the Act, the CEO must have regard to the matters set out in subsections 10(2) and 11(4) of this instrument in deciding whether to conduct a reassessment of a participant’s plan.</p>	<ul style="list-style-type: none"> • This new provision relates to changes made to section 48 of the Act contained in the Bill which will allow the CEO, on the CEO’s own initiative, to conduct a reassessment of a participant’s plan at any time. • ‘Reassessment’ is the language chosen to replace the word ‘review’ to reduce confusion between a plan review and a merits review of a decision. This gives effect to recommendation 22 of the Tune Review. • This provision sets out the matters to which the CEO must have regard when deciding whether to conduct a reassessment of the participant’s plan.

The Plan Administration Rules also include provisions that were previously included in the 2013 Plan Management Rules Please see the table below for a comparison of these provisions.

Existing provision (2013 Plan Management Rules)	New provision (2021 Plan Administration Rules)	Nature of the change	Specific changes
<p>Part 5 Grace period for temporary absences from Australia</p> <p>5.1 For people with disability, as with other members of Australian society, travel abroad, including extended holidays, can be considered to be an ordinary part of life. Under the NDIS, a participant for whom a plan is in effect may be temporarily absent from Australia for a certain period without affecting their plan. This period is known as the grace period.</p> <p>5.2 If the participant is temporarily absent from Australia after the end of the grace period, their plan is suspended from the end of the grace period until they return to Australia.</p> <p>5.3 The general rule is that the grace period is 6 weeks, beginning when the participant leaves Australia.</p> <p>5.4 However, the CEO may extend the grace period for a particular participant if the CEO is satisfied that it is appropriate.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Paragraphs 5.1 to 5.4 summarise the effect of section 40 of the Act.</i></p> </div> <p>5.5 When deciding whether, and by how much, to extend the grace period, the CEO is to have regard to:</p> <p>(a) the general considerations in paragraph 5.8; and</p> <p>(b) any relevant specific considerations in paragraphs 5.9 to 5.15.</p> <p>5.6 It is expected that the CEO would ordinarily extend the grace period if a participant is, or is to be, temporarily absent from Australia for:</p> <p>(a) a period to which one of the specific considerations applies; or</p> <p>(b) humanitarian purposes.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><i>Paragraph 5.6 does not compel the CEO to extend the grace period in any particular instance.</i></p> </div> <p>General considerations relating to extending the grace period</p> <p>5.7 The general considerations are relevant in the case of any participant who is to be temporarily absent for more than 6 weeks (including a participant who is on an extended holiday that lasts for more than 6 weeks).</p> <p>5.8 The general considerations are the following:</p> <p>(a) the proposed length of absence from Australia;</p>	<p>6 Extension of grace period</p> <p>For the purposes of paragraph 40(2)(b) of the Act, in deciding on a period for a temporary absence from Australia of a participant that is longer than 6 weeks, the CEO must have regard to the following matters:</p> <p>(a) the length of the temporary absence;</p> <p>(b) any previous decision by the CEO that it was appropriate for the grace period for another temporary absence of the participant to be longer than 6 weeks;</p> <p>(c) any supports, or classes of supports, that are specified in the statement of participant supports included in the participant's plan;</p> <p>(d) the participant's ability to access supports during the temporary absence;</p> <p>(e) the ability of the Agency to facilitate the provision of supports to, and maintain a relationship with, the participant during the temporary absence;</p> <p>(f) if the participant is undertaking a course (the principal course) at an Australian secondary or tertiary educational institution and leaves, or has left, Australia to undertake an exchange program or course of studies—whether that program or course of studies is:</p> <p>(i) an element of the principal course; or</p> <p>(ii) part of a program of international exchanges that is recognised by the institution;</p> <p>(g) whether the participant leaves, or has left, Australia because the participant, the participant's spouse or a family member of the participant is:</p> <p>(i) temporarily employed outside of Australia; or</p> <p>(ii) temporarily deployed outside of Australia, including as a member of a reserve force;</p> <p>(h) if the participant leaves, or has left, Australia to receive medical treatment or therapy—both of the following:</p> <p>(i) whether that treatment or therapy is clinically appropriate;</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 have been made simpler and clearer. This makes the Rules easier to understand. • There is no change to the policy intent. • Paragraphs 5.8(a) to (e) of the 2013 Rules are reflected in paragraphs 6(a) to (b) of the 2021 Rules respectively • Paragraph 5.9 of the 2013 Rules is reflected at paragraph 6(f) of the 2021 Rules. • Paragraphs 5.10, 5.11 and 5.12 of the 2013 Rules are reflected at paragraph 6(g) of the 2021 Rules. • Paragraph 5.13 of the 2013 Rules is reflected at paragraph 4 of the 2021 Rules. • Paragraph 5.14 of the 2013 Rules is reflected at paragraph 6(h) of the 2021 Rules. • Paragraphs 5.15 and 5.16(a) of the 2013 Rules are reflected at paragraph 6(i) of the 2021 Rules. • Paragraphs 5.16(b) and (c) of the 2013 Rules are reflected at paragraph 6(j) of the 2021 Rules. •

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<p>(b) any previous decisions that the grace period should be extended;</p> <p>(c) the supports provided to the participant under their plan;</p> <p>(d) the participant's ability to continue to access supports while they are absent from Australia;</p> <p>(e) the Agency's ability to facilitate the provision of supports to, and maintain a relationship with, the participant while they are absent from Australia;</p> <p>(f) whether the refusal to extend the grace period would cause undue hardship to the participant.</p> <p>Specific considerations relating to extending the grace period</p> <p><i>Overseas study</i></p> <p>5.9 If the participant is to complete an exchange program or course of studies outside Australia that is:</p> <p>(a) an element of a course that the participant is undertaking at an Australian secondary or tertiary educational institution; or</p> <p>(b) part of a recognised program of international exchanges;</p> <p>a specific consideration is the period of the overseas exchange program or course of studies.</p> <p><i>Temporary employment</i></p> <p>5.10 If the absence is because the participant, a spouse or family member is required to travel overseas for the purposes of temporary employment, a specific consideration is the period of employment.</p> <p><i>Reserve forces</i></p> <p>5.11 If the participant is a member of the reserve forces and is required to be temporarily absent from Australia to fulfil their duties in this role, a specific consideration is the period of deployment.</p> <p>5.12 If the absence is because a spouse or family member of the participant:</p> <p>(a) is a member of the reserve forces; and</p> <p>(b) is required to be temporarily absent from Australia to fulfil duties in this role;</p> <p>a specific consideration is the period of deployment.</p> <p>5.13 In paragraphs 5.11 and 5.12, reserve forces means:</p> <p>(a) the Naval Reserve established under the <i>Naval Defence Act 1910</i>; and</p>	<p>(ii) whether that treatment or therapy is available in Australia;</p> <p>(i) if the participant has left Australia—whether the participant, the participant's spouse or a family member of the participant, while outside of Australia:</p> <p>(i) has been involved in a serious accident; or</p> <p>(ii) has been seriously ill; or</p> <p>(iii) has been hospitalised; or</p> <p>(iv) has been the victim of a serious crime; or</p> <p>(v) has been a party in custody proceedings; or</p> <p>(vi) is required to remain outside of Australia because of criminal proceedings;</p> <p>(j) if the participant has left Australia—whether, while outside Australia, the participant has been affected by:</p> <p>(i) a war, industrial action, or social or political unrest, in which the participant did not willingly take part; or</p> <p>(ii) a natural disaster; or</p> <p>(iii) an epidemic;</p> <p>(k) whether the participant leaves, or has left, Australia to compete in, or train for, an international sporting competition.</p>		

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<p>(b) the Army Reserve established under the <i>Defence Act 1903</i>; and</p> <p>(c) the Air Force Reserve established under the <i>Air Force Act 1923</i>.</p> <p><i>Medical treatment or therapy</i></p> <p>5.14 If the absence is so that the participant can receive clinically appropriate medical treatment or therapy that is not available in Australia, a specific consideration is the period of treatment plus a reasonable period to allow for recuperation.</p> <p><i>Participant prevented from returning to Australia</i></p> <p>5.15 If the participant is prevented from returning to Australia for a reason that is beyond their control, a specific consideration is what period will be reasonable to allow the participant to return to Australia.</p> <p>5.16 The following are examples of reasons beyond the participant's control:</p> <p>(a) while temporarily absent from Australia, the participant, their spouse, or a family member of the participant:</p> <p>(i) is involved in a serious accident; or</p> <p>(ii) becomes seriously ill; or</p> <p>(iii) is hospitalised; or</p> <p>(iv) is the victim of a serious crime; or</p> <p>(v) is a party in custody proceedings; or</p> <p>(vi) is required to remain overseas in connection with criminal proceedings;</p> <p>(b) war, industrial action, or social or political unrest in which the participant is not willingly participating;</p> <p>(c) natural disaster.</p>			
<p>Part 4 Payment of NDIS amounts</p> <p>4.1 A participant's plan specifies, among other things, the reasonable and necessary supports (if any) that will be funded under the NDIS. Amounts paid under the NDIS in respect of such supports are known as NDIS amounts.</p> <p>4.2 NDIS amounts are to be paid to the participant, or to a person who is managing the funding for supports under a participant's plan, in accordance with this Part.</p> <p><i>Paragraphs 4.1 and 4.2 summarise paragraph 33(2)(b) and section 45 of the Act.</i></p>	<p>7 Manner of paying NDIS amounts</p> <p>For the purposes of subparagraph 45(1)(b)(i) of the Act, if an NDIS amount is payable to a person, the CEO:</p> <p>(a) may pay the amount to the person as a single amount or in instalments; and</p> <p>(b) must pay that single amount, or those instalments, to the credit of a bank account nominated and maintained by the person.</p>	<p>Replaced – drafting standard</p>	<ul style="list-style-type: none"> • Reflects best drafting practice to remove unnecessary information summarised from the NDIS Act • Removes text boxes • There is no change to the policy intent. • Paragraph 4.3 of the 2013 Rules is reflected at paragraph 7 of the 2021 Rules. • Paragraph 4.4 of the 2013 Rules has been repealed. If the CEO wishes to request information or a document relating to instalments of an NDIS amount, they may use the information gathering powers at section 53 and 55 of the Act.

Existing provision (2013 Plan Management Rules)	New provision (2021 Plan Administration Rules)	Nature of the change	Specific changes
<p>Timing for payments of NDIS amounts</p> <p>4.3 The CEO may pay an NDIS amount:</p> <p>(a) in a single payment; or</p> <p>(b) by instalments.</p> <p>4.4 If:</p> <p>(a) the CEO is paying an NDIS amount by instalments; and</p> <p>(b) the CEO requires the participant to provide information or a document relating to expenditure of previous instalments;</p> <p>the CEO may make a payment of an instalment only after the information or document has been provided.</p>			
<p>Manner of paying NDIS amounts</p> <p>4.5 A participant must provide the CEO with details of an account with a financial institution into which NDIS amounts can be paid.</p> <p>4.6 The CEO must pay NDIS amounts into the account nominated by the participant.</p>	<p>8 When NDIS amounts not payable</p> <p>For the purposes of subsection 45(3) of the Act, an amount payable under the National Disability Insurance Scheme in respect of a participant's plan is not payable to a person determined by the CEO under paragraph 45(1)(a) of the Act until the person nominates a bank account into which the amount is to be paid.</p>	<p>Replaced – policy change</p>	<ul style="list-style-type: none"> • Reflects best drafting practice • The 2013 provisions (at paragraph 4.4) permitted the CEO to withhold a second or subsequent payment of an instalment where the CEO had requested information or a document and that information or document had not been provided. This provision has been repealed.