

Detailed comparison of existing and proposed NDIS Rules

Plan Management Rules

The 2021 Plan Management Rules repeal and replace the 2013 Plan Management 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 management of a participant's plan, including rules dealing with how to assess whether it would pose an unreasonable risk for a participant to manage their own plan; how and when NDIS amounts are paid; extensions of the grace period for temporary absences from Australia; and how supports in a participant's plan are to be specified.</p> <p>1.2 The Act sets out a number of objects and principles for the NDIS. The following are particularly relevant to these Rules:</p> <p><i>Objects</i></p> <p>(a) to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;</p> <p><i>Principles</i></p> <p>(b) people with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports;</p> <p>(c) people with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation;</p> <p>(d) people with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise informed choice and engage as equal partners in decisions that will affect their lives, to the full extent of their capacity;</p> <p>(e) people with disability should be supported in all their dealings and communications with the Agency so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs;</p> <p>(f) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves.</p>	<p>Part 1—Preliminary</p> <p>1 Name</p> <p>This instrument is the <i>National Disability Insurance Scheme (Plan Management) 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 7.4 of the 2013 Rules)
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	<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>5 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) participant;</p> <p>(d) plan.</p> <p>In this instrument:</p> <p>Act means the <i>National Disability Insurance Scheme Act 2013</i>.</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>Part 2 Outline of these Rules</p> <p>2.1 Part 3 deals with the situations in which it is not appropriate for participants to manage funding for supports under their plan for themselves. In particular, it deals with assessing whether self-management would pose an unreasonable risk to the participant.</p> <p>2.2 Part 4 deals with payment of NDIS amounts (that is, payments under the NDIS in respect of reasonable and necessary supports funded under a participant's plan). In particular, this Part deals with the timing of payments of NDIS amounts, and the manner of paying NDIS amounts.</p> <p>2.3 Part 5 deals with temporary absences of participants from Australia. In particular, it deals with extensions of the 6 week grace period for absences from Australia.</p>	<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

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<p>2.4 Part 6 deals with how supports are described in a participant's plan. In particular, it deals with when supports should be specifically identified in a plan.</p> <p>2.5 Part 7 deals with other matters, including interpretation of these Rules.</p>			
<p>Part 3 When self-management of funding will pose unreasonable risk to participant</p> <p>3.1 A participant's plan includes a statement of participant supports that specifies, among other things:</p> <p>(a) the reasonable and necessary supports (if any) that will be funded under the NDIS; and</p> <p>(b) the management of the funding for supports under the plan.</p> <p>3.2 A participant is able, during the planning process, to make a plan management request that specifies who the participant wishes to manage the funding for supports under the plan. The plan must specify that the funding is to be managed wholly, or to an extent specified in the plan, by any of the participant, a registered plan management provider, the Agency or the plan nominee.</p> <p>3.3 There are some restrictions under the Act on the extent to which participants are able to self-manage the funding for supports under their plan.</p> <p>3.4 A participant will not be able to self-manage the funding for supports under their plan to any extent if they are an insolvent under administration.</p> <p>3.5 Nor will a participant be able to manage the funding for supports under their plan to a particular extent if the CEO is satisfied that this would present an unreasonable risk to the participant.</p> <p>3.6 This Part relates to deciding whether there would be an unreasonable risk to the participant if the participant (or the participant's plan nominee or child's representative) were to manage the funding for supports to the extent proposed.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraphs 3.1 to 3.6 summarise subsection 33(2) and sections 42, 43 and 44 of the Act. Division 3 of Part 2 of Chapter 3 of the Act provides further details relating to managing the funding for supports under a participant's plan.</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

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<p><i>Unreasonable risk if the participant is a child or is represented by a nominee</i></p> <p>3.7 If the participant is a child, or is represented by a plan nominee, the CEO is to have regard to the following:</p> <p>(a) the capacity of the child’s representative or the plan nominee to manage finances;</p> <p>(b) whether the child’s representative or the plan nominee has an interest that could lead a reasonable person to consider that NDIS amounts within their control might be spent other than in accordance with the participant’s plan;</p> <p>(c) whether, and the extent to which, any risks could be mitigated by any safeguards or strategies the Agency could put in place through the participant’s plan.</p>	<p>9 Unreasonable risk—registered plan management provider, plan nominee or child’s representative managing funding</p> <p>(1) For the purposes of subsection 44(3) of the Act, the CEO is to have regard to the matters specified in subsection (2) of this section in considering whether any of the following would present an unreasonable risk to a participant:</p> <p>(a) a registered plan management provider managing the funding for supports under the participant’s plan;</p> <p>(b) a plan nominee managing the funding for supports under the participant’s plan;</p> <p>(c) if the participant is a child—the representative of the child managing the funding for supports under the child’s plan.</p> <p>(2) The following matters are specified:</p> <p>(a) whether, and the extent to which, the risk could be mitigated by the inclusion of particular safeguards or strategies in the participant’s plan;</p> <p>(b) the possibility that the participant may receive supports from a person or entity that is not a registered provider of supports;</p> <p>(c) for the circumstances mentioned in paragraph (1)(b)—whether the plan nominee has misapplied the funding for supports under:</p> <p>(i) the participant’s plan; or</p> <p>(ii) a previous plan for the participant; or</p> <p>(iii) the plan of another participant;</p> <p>(d) for the circumstances mentioned in paragraph (1)(b) or (c)—whether the plan nominee or the representative of the child, as the case may be, has an interest that could lead a reasonable person to consider that NDIS amounts within the nominee’s or representative’s control might be spent otherwise than in accordance with the participant’s or child’s plan;</p> <p>(e) for the circumstances mentioned in paragraph (1)(b) or (c)—the capacity of the plan nominee or the representative of the child, as the case may be, to manage finances.</p>	<p>Replaced – policy change</p>	<ul style="list-style-type: none"> • The corresponding provisions of the 2013 Rules were limited to considerations of unreasonable risk where the participant was represented by a nominee or child representative. • The 2021 provisions extend these circumstances to considerations of unreasonable risk where the participant has requested to plan manage their NDIS funds. • This new provision has been included in response to recommendation 19 of the Tune Review. The Tune review noted there are potential risks for participants engaging unregistered providers through registered plan managers without the same risk assessment that is currently required for self-managing participants. • These concerns are on the basis that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers. • There is no intent to reduce the number of people who use a registered plan manager through these changes, rather the intent is to make sure participants who choose a registered plan manager, are not put at unreasonable risk through this decision. • Paragraphs 9(2)(b) and (c) of the 2021 Rules are new provisions • Paragraph 9(2)(a) of the 2021 Rules is identical to paragraph 3.7(c) of the 2013 Rules • Paragraph 9(2)(d) of the 2021 Rules is identical to paragraph 3.7(b) of the 2013 Rules • Paragraph 9(2)(e) of the 2021 Rules is identical to paragraph 3.7(a) of the 2013 Rules.

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<p>Unreasonable risk in other cases</p> <p>3.8 Otherwise, the CEO is to have regard to the following:</p> <p>(a) whether material harm, including material financial harm, to the participant could result if the participant were to manage the funding for supports to the extent proposed, taking into account the nature of the supports identified in the plan;</p> <p>(b) the vulnerability of the participant to:</p> <p>(i) physical, mental or financial harm; or</p> <p>(ii) exploitation; or</p> <p>(iii) undue influence;</p> <p>(c) the ability of the participant to make decisions;</p> <p>(d) the capacity of the participant to manage finances;</p> <p>(e) whether a court or a tribunal has made an order under Commonwealth, State or Territory law under which the participant's property (including finances) or affairs are to be managed, wholly or partly, by another person;</p> <p>(f) whether, and the extent to which, any risks could be mitigated by:</p> <p>(i) the participant's informal support network; or</p> <p>(ii) any safeguards or strategies the Agency could put in place through the participant's plan.</p> <p>3.9 The safeguards referred to in paragraph 3.8(f)(ii) could include, for example:</p> <p>(a) setting a shorter period before the participant's plan is reviewed; or</p> <p>(b) setting out regular contacts between the Agency and the participant; or</p> <p>(c) providing funding for supports (for example, budgeting training) that would assist the participant to manage their own plan.</p>	<p>10 Unreasonable risk—adult participant managing funding</p> <p>For the purposes of subsection 44(3) of the Act, if a participant is not a child, the CEO is to have regard to the following matters in considering whether the participant managing the funding for supports under the participant's plan would present an unreasonable risk to the participant:</p> <p>(a) the nature of the supports included in the participant's plan;</p> <p>(b) the vulnerability of the participant to:</p> <p>(i) physical, mental or financial harm; or</p> <p>(ii) exploitation; or</p> <p>(iii) undue influence;</p> <p>(c) the ability of the participant to make decisions;</p> <p>(d) the capacity of the participant to manage finances;</p> <p>(e) whether the participant has misapplied the funding for supports under the participant's plan or a previous plan for the participant;</p> <p>(f) whether a court or tribunal has ordered another person to manage, wholly or partly, the property or finances of the participant;</p> <p>(g) the possibility that the participant may receive supports from a person or entity that is not a registered provider of supports;</p> <p>(h) whether, and the extent to which, the risk could be mitigated by:</p> <p>(i) the participant's informal community supports and other community supports; or</p> <p>(ii) the inclusion of particular safeguards or strategies in the participant's plan;</p> <p>(i) whether the risk could be mitigated by the management of that funding instead being done by a registered plan management provider.</p>	<p>Replaced – policy change</p>	<ul style="list-style-type: none"> • The provisions in the 2021 Rules largely reflect the 2013 Rules however, the 2021 provisions extend considerations of unreasonable risk to include: <ul style="list-style-type: none"> ○ the possibility that the participant may choose to receive supports from a non-registered NDIS provider, ○ Whether the participant has misapplied the funding for supports under their current or previous plan ○ Whether the risk to the participant can be minimised by using a registered plan manager instead of the participant self-managing. • These changes have been included in response to concerns raised in the Tune Review that having access to an unregistered provider market, while providing greater choice over service offerings, arguably exposes participants to greater risk of abuse, neglect or exploitation – particularly as the additional protections put in place for registered providers are not required of unregistered providers. • There is no intention to require self-managed participants to use registered NDIS providers. Rather the intention is to make sure the risk posed to participants who may choose to use unregistered providers is reasonable and participants are protected from abuse, neglect or exploitation. • Paragraphs 10(e), (g) and (i) of the 2021 Rules are new provisions • Paragraphs 10(a), (b), (c), (d), (f) and (h) of the 2021 Rules are identical to paragraphs 3.8(a), (b), (c), (d), (e) and (f) of the 2013 Rule respectively.
<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</p>	<p>Moved to the National Disability Insurance Scheme (Plan Administration) Rules 2021.</p>	<p>Uplifted to alternative NDIS Rules</p>	<p>Please refer to Plan Administration Rules Table</p>

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<p>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>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>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> <p><i>Paragraphs 5.1 to 5.4 summarise the effect of section 40 of the Act.</i></p>	<p>Moved to the National Disability Insurance Scheme (Plan Administration) Rules 2021.</p>	<p>Uplifted to alternative NDIS Rules</p>	<p>Please refer to Plan Administration Rules Table</p>

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<p>5.5 When deciding whether, and by how much, to extend the grace period, the CEO is to have regard to:</p> <ul style="list-style-type: none"> (a) the general considerations in paragraph 5.8; and (b) any relevant specific considerations in paragraphs 5.9 to 5.15. <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> <ul style="list-style-type: none"> (a) a period to which one of the specific considerations applies; or (b) humanitarian purposes. 			
<p><i>Paragraph 5.6 does not compel the CEO to extend the grace period in any particular instance.</i></p>			
<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> <ul style="list-style-type: none"> (a) the proposed length of absence from Australia; (b) any previous decisions that the grace period should be extended; (c) the supports provided to the participant under their plan; (d) the participant's ability to continue to access supports while they are absent from Australia; (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; (f) whether the refusal to extend the grace period would cause undue hardship to the participant. 			
<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> <ul style="list-style-type: none"> (a) an element of a course that the participant is undertaking at an Australian secondary or tertiary educational institution; or 			

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<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>(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>			

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<ul style="list-style-type: none"> (ii) becomes seriously ill; or (iii) is hospitalised; or (iv) is the victim of a serious crime; or (v) is a party in custody proceedings; or (vi) is required to remain overseas in connection with criminal proceedings; (b) war, industrial action, or social or political unrest in which the participant is not willingly participating; (c) natural disaster. 			
<p>Part 6 Describing supports in participant's plan</p> <p>6.1 A participant's statement of participant supports (referred to as the statement in this Part) specifies, among other things:</p> <ul style="list-style-type: none"> (a) the general supports (if any) that will be provided to, or in relation to, the participant; and (b) the reasonable and necessary supports (if any) that will be funded under the NDIS. <p>6.2 Some supports in the statement may be described generally, whether by reference to a specified purpose or otherwise. For such supports, the participant will have a high degree of flexibility over the implementation of the supports.</p> <p>6.3 In contrast, some supports may be specifically identified in the statement. Such supports will have to be purchased or provided in the way described in the statement.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>Paragraphs 6.1 to 6.3 summarise paragraphs 33(2)(a) and (b), and subsections 33(3) and 35(2) of the Act.</i></p> </div>	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>Description of a support in a participant's statement</p> <p>6.3A Paragraphs 6.4 to 6.7 and 6.9 set out rules that apply to the description of a support in a participant's statement.</p>	<p>6 Funding and provision of supports included in participant's plan</p> <p>(1) This section is made for the purposes of subsection 35(1) of the Act.</p>	Replaced – drafting standards	Reflects best drafting practice
<p>Whether supports should be specifically identified or described generally</p> <p>6.4 When deciding whether the support should be described generally or more specifically in the participant's statement, the CEO is to have regard to the following:</p> <ul style="list-style-type: none"> (a) the cost of the support; 	No equivalent provision	Repealed – drafting standards	<ul style="list-style-type: none"> • This provision has been repealed as paragraphs 6(2) to (5) of the 2021 Rules state the circumstances in which supports must be specifically identified in a participant's plan. • Repealing this provision simplifies the Rules by removing duplication and makes them easier to understand.

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<p>(b) any expected return or saving in costs from providing the support;</p> <p>(c) any risks associated with the supply of the support such as the need for the support to conform to State or Territory laws;</p> <p>(d) whether achievement of other goals in the plan or the effectiveness of other supports is contingent on a particular support being procured or used;</p> <p>(e) whether the participant's disability requires a specialist, evidence-informed support provided by a qualified person or a particular delivery mode;</p> <p>(f) whether the participant accessed the NDIS by satisfying the early intervention requirements.</p>			
<p><i>Describing supports where more cost-effective for agency to provide</i></p> <p>6.5 If the CEO considers that it is more cost-effective for the support to be provided directly by the Agency (for example, using bulk purchasing of goods), the statement is to record that the support will be provided by the Agency.</p> <p><i>Describing supports where most efficient and effective to be provided by particular provider</i></p> <p>6.6 If:</p> <p>(a) the Agency has entered into a funding arrangement with a provider to provide the support; and</p> <p>(b) the CEO considers that the support is most efficiently and effectively provided to the participant by that provider;</p> <p>the statement is to record that the support will be provided by that provider.</p>	<p>6 Funding and provision of supports included in participant's plan</p> <p>[...]</p> <p><i>Supports or classes of supports provided under agreement with Agency</i></p> <p>(2) For each support or class of supports to be specified in the statement of participant supports to be included in a participant's plan, if:</p> <p>(a) the Agency has entered into an agreement with a person or provider in relation to the provision of the support or class of supports to other participants; and</p> <p>(b) the CEO is satisfied that the support or class of supports would be most efficiently and effectively provided to the participant by that person or provider;</p> <p>the statement of participant supports must specify that the support or class of supports is to be provided to the participant by that person or provider.</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • The provisions in the 2021 Rules reflect the same policy intent as the 2013 Rules • The NDIA is not a provider of supports to participants therefore does not provide supports directly. Rather the NDIA may enter into agreement for supports, or classes of support to be provided by providers. • The language in the 2021 Rules reflects this situation and makes the Rules easier to understand.
<p><i>Describing supports where disability requires particular service provider or delivery mode</i></p> <p>6.7 If:</p> <p>(a) the CEO considers that the participant's disability requires:</p> <p>(i) specialist, evidence-informed support provided by a qualified person; or</p> <p>(ii) a support to be provided in a certain delivery mode; and</p>	<p>6 Funding and provision of supports included in participant's plan</p> <p>[...]</p> <p><i>Supports or classes of supports provided by particular person or provider</i></p> <p>(3) If:</p> <p>(a) a specialist, evidence-informed support or class of supports is provided by a particular person or provider; and</p>	<p>Replaced – drafting standards</p>	<ul style="list-style-type: none"> • The provisions in the 2021 Rules reflect the same policy intent as the 2013 Rules • The provisions at paragraph 6.7 of the 2013 Rules have been split into two paragraphs in the 2021 Rules to separate out the topics and address the unique circumstances of each. • This change aims to make the Rules easier to understand.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>(b) the CEO considers that the support is most efficiently and effectively provided to the participant by a particular person or through a particular delivery mode;</p> <p>the statement is to record that the support will be provided by that qualified person or in that delivery mode.</p>	<p>(b) the CEO is satisfied that:</p> <p>(i) a participant requires that support or class of supports; and</p> <p>(ii) the support or class of supports would be most efficiently and effectively provided to the participant by that person or provider;</p> <p>the statement of participant supports included in the participant's plan must specify that the support or class of supports is to be provided to the participant by that person or provider.</p> <p><i>Supports or classes of supports provided in particular manner</i></p> <p>(4) If:</p> <p>(a) a support or class of supports can be provided in a particular manner; and</p> <p>(b) the CEO is satisfied that:</p> <p>(i) a participant requires that support or class of supports; and</p> <p>(ii) the support or class of supports would be most efficiently and effectively provided to the participant in that manner;</p> <p>the statement of participant supports included in the participant's plan must specify that the support or class of supports is to be provided to the participant in that manner.</p>		
<p>No equivalent provision</p>	<p>6 Funding and provision of supports included in participant's plan</p> <p>[...]</p> <p><i>Market intervention</i></p> <p>(5) For each support or class of supports to be specified in the statement of participant supports to be included in a participant's plan, if the CEO is satisfied that it is not reasonably practicable for the participant to access the support or class of supports through the NDIS market, the statement of participant supports may specify that, during a specified period, the support or class of supports is to be provided to the participant:</p> <p>(a) in a specified manner; or</p> <p>(b) by a specified person or provider; or</p> <p>(c) by a person or provider in a specified class of persons or providers.</p> <p>(6) In deciding whether or not the CEO is satisfied as mentioned in subsection (5) the CEO must have regard to the following matters:</p>	<p>New – policy change</p>	<ul style="list-style-type: none"> Section 14 of the NDIS Act empowers the NDIA to provide funding to entities to support participants to access supports. This is particularly relevant in circumstance where the NDIS market is thin and poses barriers to the participant accessing supports in a safe and timely manner. Where the NDIA has engaged in market intervention to ensure a participant has access to a support or class of support, it must be identified in the participant's plan to provide transparency and clarity to the participant and enhance their ability to pursue any rights of review. The provisions in paragraph 6(6) have been developed to ensure that the need for market intervention is balanced with the participant's rights to exercise choice and control and engage as equal partners in decisions that affect them.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	<p>(a) any preference expressed by the participant, or by another participant in the participant's local community, in relation to the manner in which a support or class of supports is to be provided, or by whom a support or class of supports is to be provided, to the participant;</p> <p>(b) the principle that any intervention in the NDIS market should be as limited as possible;</p> <p>(c) any other circumstances relevant to the participant.</p>		
No equivalent provision	<p>7 Reasons for market intervention to be included</p> <p>For the purposes of subsection 33(7) of the Act, if the statement of participant supports to be included in a participant's plan is to specify matters under subsection 6(5) of this instrument for a support, the plan must include the reasons for specifying those matters.</p>	New – policy change	<ul style="list-style-type: none"> • This provision has been included as a consequence of paragraphs 6(5) and (6) in the 2021 Rules. • Despite safeguards, market intervention may limit a participant's choice and control over who or how supports are provided. • This provision supports the NDIA to deliver on the service standards aligned with transparency under the Participant Service Guarantee.
No equivalent provision	<p>8 Supports not to be provided by particular providers</p> <p>(1) For the purposes of subsection 35(1) of the Act, the statement of participant supports included in a participant's plan may specify that a support must not be provided to the participant by a particular person if the CEO is satisfied, having regard to the matters specified in subsection (2) of this instrument, of one or more of the following:</p> <p>(a) the provision of the support to the participant by that person is not likely to substantially improve outcomes for the participant or benefit the participant in the long term;</p> <p>(b) both of the following:</p> <p>(i) another person could provide the support to the participant;</p> <p>(ii) that other person is likely to provide better outcomes for the participant than that person;</p> <p>(c) both of the following:</p> <p>(i) the participant has particular cultural safety needs;</p> <p>(ii) the provision of the support to the participant by that person creates a risk to the participant's long-term wellbeing;</p> <p>(d) the provision of the support to the participant by that person is likely to adversely affect the participant's:</p> <p>(i) inclusion in the participant's community; or</p>	New – policy change	<ul style="list-style-type: none"> • This new provision has been included to ensure the participant has access to quality supports and services and is protected from harm, including where the participant may be at risk of exploitation due to conflict of interest.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
	<ul style="list-style-type: none"> (ii) ability to exercise choice and control in relation to the other supports specified in the statement of participant supports; (e) there is a risk that that person may inappropriately influence the participant's choice of providers of other supports specified in the statement of participant supports; (f) there is a risk that the provision of the support to the participant by that person may cause harm (including financial harm) to the participant; (g) that person will not: <ul style="list-style-type: none"> (i) provide the support to the participant; or (ii) provide the support to the participant in accordance with the participant's plan. (2) The following matters are specified: <ul style="list-style-type: none"> (a) that it is important for the participant's plan to be flexible in an undeveloped NDIS market; (b) that it is desirable for the participant to receive essential supports; (c) that it is desirable for the participant to be able to exercise choice and control in relation to: <ul style="list-style-type: none"> (i) the supports specified in the statement of participant supports; and (ii) the provider of those supports; (d) that it is desirable to support and develop a range of other support providers, or potential support providers, in the participant's community; (e) any other matter the CEO considers relevant. 		
<p>Describing in-kind supports</p> <p>6.8 Paragraph 6.9 applies if the support is an in-kind support. A support is an in-kind support if:</p> <ul style="list-style-type: none"> (a) the support is available to be provided to the participant by a provider (the in-kind provider) who is: <ul style="list-style-type: none"> (i) the relevant jurisdiction; or (ii) the Commonwealth; or 	No equivalent provision	Repealed – drafting standards	<ul style="list-style-type: none"> • Paragraph 6.9 has been repealed because the requirement to specifically identify in-kind supports in a participant's plan ended on 30 June 2019 (refer to paragraph 6.12 of the 2013 Rules) • Paragraphs 6.10, 6.11 and 6.13 support the operation of paragraph of 6.9 and are subsequently not required. • Repealing these provisions simplifies the Rules and makes them easier to understand. • Paragraphs 6.8 has been uplifted and moved to the <i>National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020</i>.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<p>(iii) a provider under a service delivery mechanism operated by the relevant jurisdiction or the Commonwealth; or</p> <p>(iv) a person engaged or funded by the relevant jurisdiction or the Commonwealth; and</p> <p>(b) the support is made available to the Agency on an in-kind basis as part of the contribution to the NDIS made by:</p> <p>(i) the relevant jurisdiction; or</p> <p>(ii) the Commonwealth;</p> <p>whether or not the participant has previously been provided with the support.</p> <p>6.9 Subject to paragraphs 6.10, 6.11 and 6.12, the statement is to record that the support will be provided by the in-kind provider.</p> <p>6.10 Paragraph 6.9 does not apply if the CEO has received written notification from the in-kind contributor that:</p> <p>(a) the in-kind provider is not available to be specified as an in-kind provider in the statement that is included in the plan for:</p> <p>(i) the participant; or</p> <p>(ii) a class of participants that includes the participant; or</p> <p>(b) the in-kind provider is not available to be specified as the in-kind provider of:</p> <p>(i) the support; or</p> <p>(ii) a class of supports that includes the support.</p> <p>6.11 Paragraph 6.9 does not apply if the CEO considers that the provision of the support to the participant by the in-kind provider would involve a serious threat to the participant's life, health or safety.</p> <p>6.12 Paragraph 6.9 does not apply after 30 June 2019.</p> <p>6.13 In this Part:</p> <p>relevant jurisdiction, in relation to a participant and a support, means the State or Territory in which the participant is provided with the support.</p> <p>in-kind contributor, in relation to a participant and a support, means:</p> <p>(a) if the support is made available to the Agency on an in-kind basis as part of the contribution to the NDIS made by the relevant jurisdiction—the relevant jurisdiction; and</p>			<ul style="list-style-type: none"> This change is detailed in Specialist Disability Accommodation table.

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
(b) if the support is made available to the Agency on an in-kind basis as part of the contribution to the NDIS made by the Commonwealth—the Commonwealth.			
<p>Citation</p> <p>7.1 These Rules may be cited as the <i>National Disability Insurance Scheme (Plan Management) Rules 2013</i>.</p>	<p>1 Name</p> <p>This instrument is the <i>National Disability Insurance Scheme (Plan Management) Rules 2021</i>.</p>	Replaced – drafting standards	<ul style="list-style-type: none"> Replaced to reflect best practice drafting
<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>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>child's representative means a person referred to in subsection 74(1) of the Act. (A child's representative is able to act and make decisions on behalf of a participant who is under 18 years of age.)</p> <p>financial institution—see section 9 of the Act.</p> <p>general supports—see section 9 of the Act.</p> <p>NDIS means the National Disability Insurance Scheme (see section 9 of the Act).</p> <p>NDIS amounts—see section 9 of the Act.</p> <p>NDIS rules means the National Disability Insurance Scheme rules (see section 9 of the Act).</p> <p>nominee—see section 9 of the Act.</p> <p>participant—see section 9 of the Act.</p> <p>participant's statement of goals and aspirations—see section 9 of the Act.</p> <p>plan—see section 9 of the Act.</p>	<p>5 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) participant;</p> <p>(d) plan.</p> <p>In this instrument:</p> <p>Act means the <i>National Disability Insurance Scheme Act 2013</i>.</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>	Replaced – drafting standards	<ul style="list-style-type: none"> Replaced to reflect best practice drafting

Existing provision (2013 Rules)	New provision (2021 Rules)	Nature of the change	Specific changes
<i>plan nominee</i> —see section 9 of the Act.			