



National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013

National Disability Insurance Scheme Act 2013 (the Act)

The Act establishes the National Disability Insurance Scheme (NDIS).

People who are participants in the NDIS will be assisted to develop a personal, goal-based plan about how they will be provided with general supports and reasonable and necessary supports.

The NDIS will respect the interests of people with disability in exercising choice and control about matters that affect them.

National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013

These Rules are made for the purposes of sections 58 and 67 of the Act.

These Rules are about safeguarding the privacy of people whose information is held by the Agency. These Rules deal with the circumstances in which a State or Territory law may prevent the disclosure of information or a document by a person to the Agency, and the ability of the CEO of the Agency to disclose information in the public interest or to a Commonwealth, State or Territory Department or authority.

These Rules commence on the day they are registered.

The Hon Jenny Macklin MP
Minister for Families, Community Services and Indigenous Affairs
Minister for Disability Reform

14 June 2013

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Part 1 What these Rules are about

- 1.1 These Rules are about safeguarding the privacy of people whose information is held by the Agency.
- 1.2 The Rules deal with the circumstances in which a State or Territory law may prevent the disclosure of information or a document by a person to the Agency, and the ability of the CEO of the Agency to disclose information in the public interest or to a Commonwealth, State or Territory Department or authority.
- 1.3 The Act sets out a number of principles for the NDIS. The following are particularly relevant to these Rules:
 - (a) 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;
 - (b) people with disability should have their privacy and dignity respected.

Part 2 Outline of these Rules

- 2.1 **Part 3** relates to the circumstances in which a person may be required to give information, produce a document, or give evidence to the Agency for the purposes of the Act. Part 3 deals with the circumstances in which a State or Territory law can affect whether or not a person is required to give this information or evidence, or produce a document.
- 2.2 **Part 4** deals with the power of the CEO to disclose information collected under the Act where it is necessary to do so in the public interest.
- 2.3 **Part 5** deals with the circumstances in which the CEO may disclose information to the heads of other Commonwealth, State or Territory Departments or authorities.
- 2.4 **Part 6** deals with other matters, including interpretation of these Rules.

Part 3 Effect of State and Territory laws on a requirement to give information or evidence or produce documents

- 3.1 A person (for example, a participant or prospective participant) may be required, in certain circumstances, to give particular information or evidence, or produce documents, to the Agency or an officer for the purposes of the Act.
- 3.2 Generally, a requirement under the Act to give information or evidence, or to produce documents, to the Agency is not affected by State or Territory laws. That is, the general rule is that nothing in a State or Territory law excuses a person from complying with the requirement.

Paragraph 3.2 summarises subsection 58(1) of the Act.

- 3.3 However, by exception to this general rule, a person is not required to give information, produce a document, or give evidence to the Agency for the purposes of the Act if:
- (a) the person would be prevented from doing so under a law of a State or Territory; and

Paragraph 3.3(a) summarises paragraph 58(2)(a) of the Act.

- (b) the law of the State or the Territory is one of the following laws:

Victoria

Accident Compensation Act 1985, section 61A, subsection 65(3)

Assisted Reproductive Technology Act 2008, section 72

Audit Act 1994, sections 12, 20A

Australian Crime Commission (State Provisions) Act 2003, section 44

Child Employment Act 2003, section 46

Children, Youth and Families Act 2005, sections 129-131, 180, 191, 209, 213, 552

Corrections Act 1986, section 36

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, section 62

Disability Act 2006, section 128

Emergency Management Act 1986, subsection 21G(2)

Equal Opportunity Act 2010, section 176

Freedom of Information Act 1982, section 63D

Health Services Act 1988, section 63D

Housing Act 1983, section 128

Independent Broad-based Anti-corruption Commission Act 2011, Divisions 2 and 3 of Part 2; sections 50, 166, 177

Major Crime (Investigative Powers) Act 2004, sections 20, 68

Mental Health Act 1986, sections 35, 63, 117, 120A

Ombudsman Act 1973, sections 16L, 20; Part VA

Police Regulation Act 1958, sections 86ZG, 86ZH

Protected Disclosure Act 2012, sections 52, 53

Terrorism (Community Protection) Act 2003, sections 12, 23

Victorian Civil and Administrative Tribunal Act 1998, section 34

Victorian Inspectorate Act 2011, Divisions 2 and 3 of Part 2

Witness Protection Act 1991, section 10

New South Wales

Assisted Reproductive Technology Act 2007, section 32B

Children and Young Persons (Care and Protection) Act 1998, section 29

Crime Commission Act 2012, section 80

Independent Commission Against Corruption Act 1988, section 111

Ombudsman Act 1974, section 34

Parliamentary Electorates and Elections Act 1912, section 48

Police Integrity Commission Act 1996, section 56

Privacy and Personal Information Protection Act 1998, section 67

Royal Commission (Police Service) Act 1994, section 30

State Records Act 1998, section 73

Terrorism (Police Powers) Act 2002, section 26P

Witness Protection Act 1995, sections 24, 32, 33

South Australia

Children's Protection Act 1993, section 13

Health Care Act 2008, section 73

Tasmania

Adoption Act 1975, section 75
Archives Act 1983, section 16
Children, Young Persons and Their Families Act 1997, sections 16, 40, 111A
Commission of Inquiry Act 1995, sections 10, 14
Community Protection (Offender Reporting) Act 2005, section 45
Guardianship and Administration Act 1995, section 86
Health Act 1997, section 4
Health Complaints Act 1995, sections 37, 65
Health Practitioners Tribunal Act 2010, section 54
HIV/AIDS Preventive Measures Act 1993, section 18
Integrity Commission Act 2009, section 94
Magistrate's Court (Children's Division) Act 1998, section 12
Mental Health Act 1996, sections 85, 90
Obstetric and Paediatric Mortality and Morbidity Act 1994, section 15
Ombudsman Act 1978, section 26
Public Health Act 1997, sections 61, 147
Public Interest Disclosures Act 2002, section 23
Relationships Act 2003, section 22
Witness Protection Act 2000, section 13
Youth Justice Act 1997, sections 22, 31, 45

Australian Capital Territory

Australian Crime Commission Act 2003, section 46
Children and Young People Act 2008, sections 846, 847
Drugs of Dependence Act 1989, section 201
Electoral Act 1992, section 63
Epidemiological Studies (Confidentiality) Act 1992, sections 4, 5, 6, 7, 8
Human Rights Commission Act 2005, section 66
Inquiries Act 1991, section 17
Judicial Commission Act 1994, section 28
Legal Aid Act 1997, section 92

Ombudsman Act 1989, section 33

Royal Commissions Act 1991, section 20

Territory Records Act 2002, section 52

Witness Protection Act 1996, section 23.

Note: The list of laws prescribed above is subject to ongoing review and the Minister may amend these Rules to alter the list.

Paragraph 3.3(b) is made for the purposes of paragraph 58(2)(b) of the Act.

- 3.4 A person is not required to give information or produce a document under Part 1 of Chapter 4 of the Act to the extent that in doing so the person would contravene a Commonwealth law.

Paragraph 3.4 summarises section 59 of the Act.

Part 4 Disclosure of information by the CEO in the public interest

- 4.1 The Act restricts the circumstances in which information that the Agency has about a person, and certain other information, can be disclosed. However, the CEO may disclose information acquired by a person in the performance of his or her functions or duties or in the exercise of his or her powers under the Act (**NDIS information**), including information about a person, if the CEO certifies that it is necessary in the public interest to do so in a particular case or class of cases. The NDIS information can in these circumstances be disclosed to such persons and for such purposes as the CEO determines.

Paragraph 4.1 summarises sections 62 and 65 and paragraph 66(1)(a) of the Act.

- 4.2 This Part sets out guidance for the CEO in the exercise of the power to certify that disclosure is necessary in the public interest—that is, to give a public interest certificate—in particular classes of cases. These Rules are not intended to limit the circumstances in which the CEO may give a public interest certificate under paragraph 66(1)(a) of the Act.

General considerations

- 4.3 In cases where this Part applies, identified below, the CEO may give a public interest certificate for the disclosure of NDIS information if:
- (a) the information cannot reasonably be obtained from a source other than the Agency; and
 - (b) the person to whom the information will be disclosed has sufficient interest in the information.
- 4.4 A person has **sufficient interest** in the NDIS information if:
- (a) the CEO is satisfied that, in relation to the purpose of the disclosure, the person has a genuine and legitimate interest in the information; or
 - (b) the person is a Commonwealth, State or Territory Minister.
- 4.5 In considering whether to give a public interest certificate under paragraph 4.3 to disclose information about a particular person, the CEO should have regard to whether the person would be likely to be in a position to seek assistance themselves or give notice of their circumstances.

Enforcement of laws

4.6 This Part applies to cases where:

- (a) the disclosure is necessary:
 - (i) for the enforcement of a criminal law; or
 - (ii) for the enforcement of a law imposing a pecuniary penalty; or
 - (iii) to prevent an act that may have a significant adverse effect on the public revenue; or
- (b) the disclosure relates to an offence or threatened offence:
 - (i) against an officer of the Commonwealth, a State or a Territory; or
 - (ii) against Commonwealth, State or Territory property; or
 - (iii) in premises occupied by the Agency.

Note: An example of the type of information that may be disclosed in these cases is information about the whereabouts of a person suspected of committing an offence or breaching a relevant law.

Mistake of fact

4.7 This Part applies to cases where:

- (a) the disclosure is necessary to correct a mistake of fact in relation to the administration of the NDIS; and
- (b) either:
 - (i) the integrity of the NDIS will be at risk if the mistake of fact is not corrected; or
 - (ii) the mistake of fact relates to a matter that was, or will be, published (whether by, or with or without the consent of, the person to whom the information relates).

Note: An example of the type of information that may be disclosed in these cases is a description of how the Agency has handled a person's requirements under the NDIS.

Ministerial briefing

4.8 This Part applies to cases where the disclosure of the NDIS information is necessary to brief a Commonwealth, State or Territory Minister:

- (a) so that the Minister can be advised of complaints or issues raised by or on behalf of a person with the Minister (in writing or orally), and if necessary respond to that person in relation to the complaints or issues; or

- (b) in relation to issues raised or proposed to be raised publicly by or on behalf of the person to whom the relevant information relates so that the Minister can respond by correcting a mistake of fact, a misleading perception or impression, or a misleading statement; or
- (c) about an error or delay on the part of the Agency; or
- (d) about an instance of an anomalous or unusual operation of the Act, regulations made under the Act or the NDIS rules.

Note: An example of the type of information that may be disclosed in these cases is a description of how the Agency has handled a person's requirements under the NDIS.

Missing and deceased persons

4.9 This Part applies to cases where:

- (a) the information is about a person who is, or has been reported to be, missing or dead; and
- (b) there is no reasonable ground to believe that the person would not want the information disclosed; and
- (c) the disclosure is necessary:
 - (i) to locate a person (including the missing or dead person him or herself, or a relative or beneficiary of the person); or
 - (ii) to assist a court, a coronial enquiry, a royal commission or commission of inquiry (however described), a Department or other authority of a State or Territory, or an authority responsible for administering a disability support scheme in another country, in relation to its inquiries about the person; or
 - (iii) in relation to a dead person—to assist a person responsible for the administration of the estate of the dead person in relation to the administration of the estate of the person.

Note: Examples of the types of information that may be disclosed in these cases are information about the whereabouts of a missing person and information regarding whether a person is dead or alive.

Agencies responsible for children

4.10 This Part applies to cases where:

- (a) the disclosure is necessary to assist a child welfare agency contact a parent or relative in relation to a child; or
- (b) the disclosure is necessary to assist a child welfare agency to carry out its responsibilities relating to the safety, welfare or wellbeing of a child.

4.11 A **child welfare agency** includes a Commonwealth, State or Territory agency, or a non-government agency or institution, that has responsibilities relating to the safety, welfare or wellbeing of children or that provides care for children (even if it also provides care for adults). Examples include child protection agencies, schools, and public and private health facilities.

Note: Examples of the types of information that may be disclosed in these cases are information about a child's welfare and information about a relevant person's whereabouts.

<p><i>Paragraphs 4.3 to 4.11 are made for the purposes of paragraph 67(a) of the Act.</i></p>

Part 5 Disclosure of information by the CEO to Secretaries, chief executives and heads of authorities

- 5.1 Under the Act, the CEO may disclose **NDIS information** to the Secretary of a Commonwealth Department, the chief executive (however described) of a State or Territory Department, or the head of an authority of the Commonwealth or of a State or Territory for the purposes of the relevant Department or authority.

Paragraph 5.1 summarises subparagraphs 66(1)(b)(i) and (v) of the Act.

- 5.2 This Part sets out matters relating to the exercise of this power by the CEO.
- 5.3 The CEO may disclose NDIS information to a Secretary, chief executive (however described) or head of an authority if the Secretary, chief executive or head of the authority requests that the relevant information be disclosed to them for one or more purposes of the Department or authority described in the request.
- 5.4 The CEO may also disclose NDIS information to a Secretary, chief executive (however described) or head of an authority on the CEO's own initiative.
- 5.5 If the CEO discloses relevant information to a Secretary, chief executive (however described) or head of an authority for the purposes of the Department or authority, the CEO must make a record of:
- (a) the information that was disclosed; and
 - (b) the Secretary, chief executive (however described) or head of authority to whom the information was disclosed; and
 - (c) where relevant, the purpose for which the disclosure was requested by the Secretary, chief executive (however described) or head of authority or, if the information was disclosed on the CEO's own initiative, the purpose for which the information was disclosed.

Paragraphs 5.3 to 5.5 are made for the purposes of paragraph 67(b) of the Act.

Part 6 Other matters

Citation

- 6.1 These Rules may be cited as the *National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013*.

Interpretation

- 6.2 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.
- 6.3 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 *Acts Interpretation Act 1901* and the *Legislative Instruments Act 2003*, 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 6.4.
- 6.4 In these Rules:

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

Agency—see section 9 of the Act.

CEO—see section 9 of the Act.

child—see section 9 of the Act.

criminal law means:

- (a) for Australia—a criminal law of the Commonwealth or of a State or Territory; and
- (b) for a place outside Australia—a criminal law that may be recognised under an extradition arrangement to which Australia is a party.

NDIS means the National Disability Insurance Scheme (see section 9 of the Act).

NDIS information—see paragraph 4.1.

NDIS rules means the National Disability Insurance Scheme rules (see section 9 of the Act).

participant—see section 9 of the Act.

penalty unit has the same meaning as in section 4AA of the *Crimes Act 1914*.