



## **National Disability Insurance Scheme (Plan Management) Rules 2013**

*National Disability Insurance Scheme Act 2013 (the Act)*

The Act establishes the National Disability Insurance Scheme (the 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 (Plan Management) Rules 2013*

These Rules are made for the purposes of sections 35, 40, 44, 45 and 46 of the Act.

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.

These Rules commence on 1 July 2013.

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

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## Part 1 What these Rules are about

- 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.
- 1.2 The Act sets out a number of objects and principles for the NDIS. The following are particularly relevant to these Rules:

### *Objects*

- (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;

### *Principles*

- (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;
- (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;
- (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;
- (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;
- (f) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves.

## Part 2 Outline of these Rules

- 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.
- 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.
- 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.
- 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.
- 2.5 **Part 7** deals with other matters, including interpretation of these Rules.

## **Part 3 When self-management of funding will pose unreasonable risk to participant**

- 3.1 A participant's plan includes a statement of participant supports that specifies, among other things:
- (a) the reasonable and necessary supports (if any) that will be funded under the NDIS; and
  - (b) the management of the funding for supports under the plan.
- 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.
- 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.
- 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.
- 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.
- 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.

*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.*

### **Unreasonable risk if the participant is a child or is represented by a nominee**

- 3.7 If the participant is a child, or is represented by a plan nominee, the CEO is to have regard to the following:
- (a) the capacity of the child's representative or the plan nominee to manage finances;

- (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;
- (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.

***Unreasonable risk in other cases***

3.8 Otherwise, the CEO is to have regard to the following:

- (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;
- (b) the vulnerability of the participant to:
  - (i) physical, mental or financial harm; or
  - (ii) exploitation; or
  - (iii) undue influence;
- (c) the ability of the participant to make decisions;
- (d) the capacity of the participant to manage finances;
- (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;
- (f) whether, and the extent to which, any risks could be mitigated by:
  - (i) the participant's informal support network; or
  - (ii) any safeguards or strategies the Agency could put in place through the participant's plan.

3.9 The safeguards referred to in paragraph 3.8(f)(ii) could include, for example:

- (a) setting a shorter period before the participant's plan is reviewed; or
- (b) setting out regular contacts between the Agency and the participant; or
- (c) providing funding for supports (for example, budgeting training) that would assist the participant to manage their own plan.

## Part 4 Payment of NDIS amounts

- 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**.
- 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.

*Paragraphs 4.1 and 4.2 summarise paragraph 33(2)(b) and section 45 of the Act.*

### **Timing for payments of NDIS amounts**

- 4.3 The CEO may pay an NDIS amount:
- (a) in a single payment; or
  - (b) by instalments.
- 4.4 If:
- (a) the CEO is paying an NDIS amount by instalments; and
  - (b) the CEO requires the participant to provide information or a document relating to expenditure of previous instalments;
- the CEO may make a payment of an instalment only after the information or document has been provided.

### **Manner of paying NDIS amounts**

- 4.5 A participant must provide the CEO with details of an account with a financial institution into which NDIS amounts can be paid.
- 4.6 The CEO must pay NDIS amounts into the account nominated by the participant.

## Part 5 Grace period for temporary absences from Australia

- 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**.
- 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.
- 5.3 The general rule is that the grace period is 6 weeks, beginning when the participant leaves Australia.
- 5.4 However, the CEO may extend the grace period for a particular participant if the CEO is satisfied that it is appropriate.

*Paragraphs 5.1 to 5.4 summarise the effect of section 40 of the Act.*

- 5.5 When deciding whether, and by how much, to extend the grace period, the CEO is to have regard to:
- (a) the general considerations in paragraph 5.8; and
  - (b) any relevant specific considerations in paragraphs 5.9 to 5.15.
- 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:
- (a) a period to which one of the specific considerations applies; or
  - (b) humanitarian purposes.

*Paragraph 5.6 does not compel the CEO to extend the grace period in any particular instance.*

### **General considerations relating to extending the grace period**

- 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).
- 5.8 The general considerations are the following:
- (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.

### ***Specific considerations relating to extending the grace period***

#### *Overseas study*

5.9 If the participant is to complete an exchange program or course of studies outside Australia that is:

- (a) an element of a course that the participant is undertaking at an Australian secondary or tertiary educational institution; or
- (b) part of a recognised program of international exchanges;

a specific consideration is the period of the overseas exchange program or course of studies.

#### *Temporary employment*

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.

#### *Reserve forces*

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.

5.12 If the absence is because a spouse or family member of the participant:

- (a) is a member of the reserve forces; and
  - (b) is required to be temporarily absent from Australia to fulfil duties in this role;
- a specific consideration is the period of deployment.

5.13 In paragraphs 5.11 and 5.12, ***reserve forces*** means:

- (a) the Naval Reserve established under the *Naval Defence Act 1910*; and
- (b) the Army Reserve established under the *Defence Act 1903*; and

- (c) the Air Force Reserve established under the *Air Force Act 1923*.

*Medical treatment or therapy*

- 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.

*Participant prevented from returning to Australia*

- 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.

- 5.16 The following are examples of reasons beyond the participant's control:

- (a) while temporarily absent from Australia, the participant, their spouse, or a family member of the participant:
- (i) is involved in a serious accident; or
  - (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.

## Part 6 Describing supports in participant's plan

- 6.1 A participant's statement of participant supports (referred to as the **statement** in this Part) specifies, among other things:
- (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.
- 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.
- 6.3 In contrast, some supports may be specifically identified in the statement. In the case of reasonable and necessary supports, the statement could specify the type of supports that are to be funded and the way in which they are to be provided, where to do so would help ensure that the expected outcomes from the supports are attained by the participant. Such supports will have to be purchased in the way described in the statement.

*Paragraphs 6.1 to 6.3 summarise paragraphs 33(2)(a) and (b), and subsections 33(3) and 35(2) and (3) of the Act.*

### ***Whether supports should be specifically identified or described generally***

- 6.4 When deciding whether the support should be described generally or more specifically in the statement, the CEO is to have regard to the following:
- (a) the cost of the support;
  - (b) any expected return or saving in costs from providing the support;
  - (c) any risks associated with the supply of the support such as the need for the support to conform to State or Territory laws;
  - (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;
  - (e) whether a participant's disability requires a specialist, evidence-informed support provided by a qualified person or a particular delivery mode;
  - (f) whether the participant accessed the NDIS by satisfying the early intervention requirements.

***Describing supports where more cost-effective for agency to provide***

- 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.

***Describing supports where most efficient and effective to be provided by particular provider***

- 6.6 If:
- (a) the CEO is considering approving a particular support for a particular participant; and
  - (b) the Agency has entered into a funding arrangement with a provider to provide that support; and
  - (c) the CEO considers that the support is most efficiently and effectively provided to the participant by that provider;
- the statement is to record that the support will be provided by that provider.

***Describing supports where disability requires particular service provider or delivery mode***

- 6.7 If:
- (a) the CEO considers that a participant's disability requires:
    - (i) specialist, evidence-informed support provided by a qualified person; or
    - (ii) a support to be provided in a certain delivery mode; and
  - (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;
- the statement is to record that the support will be provided by that qualified person or in that delivery mode.

***Describing supports previously provided by the Commonwealth, a State or a Territory***

- 6.8 If the support was previously provided to the participant by the Commonwealth, or by a State or a Territory, and there is a funding agreement that relates to the support that is in force, the statement is to record that the support will be provided by a person other than the Agency in accordance with the funding agreement.

## Part 7 Other matters

### **Citation**

- 7.1 These Rules may be cited as the *National Disability Insurance Scheme (Plan Management) Rules 2013*.

### **Interpretation**

- 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.
- 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 *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 7.4.
- 7.4 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.

**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.)

**financial institution**—see section 9 of the Act.

**general supports**—see section 9 of the Act.

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

**NDIS amounts**—see section 9 of the Act.

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

**nominee**—see section 9 of the Act.

***participant***—see section 9 of the Act.

***participant's statement of goals and aspirations***—see section 9 of the Act.

***plan***—see section 9 of the Act.

***plan nominee***—see section 9 of the Act.