



National Disability Insurance Scheme (Becoming a Participant) 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 (Becoming a Participant) Rules 2013

These Rules are made for the purposes of sections 22, 23, 25, 27 and 209 of the Act.

These Rules are about becoming a participant in the NDIS launch.

These Rules commence on 1 July 2013.

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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 Before the NDIS is implemented nationally, it is being launched in certain areas of Australia.
- 1.2 These Rules are about becoming a participant in the NDIS launch, which is part of the process towards developing a personal goal-based plan which may provide for supports for the participant.
- 1.3 The Act sets out a number of objects and principles for the NDIS. The following are particularly relevant to these Rules:

Objects

- (a) to provide reasonable and necessary supports, including early intervention supports, for participants in the NDIS launch;
- (b) to facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability;

Principles

- (c) people with disability should be supported to participate in and contribute to social and economic life to the extent of their ability;
- (d) people with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime;
- (e) people with disability should be supported to receive reasonable and necessary supports, including early intervention supports.

Part 2 Outline of these Rules

- 2.1 A person, or someone who is able to act on their behalf, may make a request under the Act to become a participant in the NDIS launch (an **access request**). Once a person becomes a participant, they can develop a personal goal-based plan which may provide for supports for the participant. A number of principles apply in relation to the preparation and management of a participant's plan, which are set out in section 31 of the Act.
- 2.2 These Rules assist the CEO to determine who becomes a participant. Separate rules determine reasonable and necessary supports that a person may get, including support in the nature of early intervention.
- 2.3 A person becomes a participant in the NDIS launch on the day the CEO of the Agency decides they **meet the access criteria**.
- 2.4 A person meets the access criteria if the CEO is satisfied that they meet each of the following:
- (a) the **age requirements** (see **Part 3**);
 - (b) the **residence requirements** (see **Part 4**);
 - (c) either the **disability requirements** or the **early intervention requirements** (see **Parts 5 and 6**).
- 2.5 Generally speaking:
- (a) a person will meet the disability requirements if they have a disability that is attributable to an impairment that is permanent or likely to be permanent and that results in substantially reduced functional capacity;
 - (b) alternatively, a person can access the NDIS through the early intervention requirements without having substantially reduced functional capacity. Instead, the early intervention requirements consider the likely trajectory and impact of a person's impairment over time and the potential benefits of early intervention on the impact of the impairment on the person's functional capacity. The CEO may consider a range of evidence in deciding the potential benefit of early intervention on a person's impairment. The CEO may consider existing evidence or information from an individual or their family or carer. Where a young child has an impairment resulting in developmental delay, or resulting from a condition on a list published by the CEO for which the benefits of early intervention have already been established, no further evidence of the benefit of early intervention supports to the child is required to meet the early intervention requirements. A young child or other person can still meet the early intervention requirements without having one of these conditions, provided there is evidence that the requirements are satisfied.

- 2.6 **Part 7** deals with the use of assessment tools in assessing whether a person meets the disability requirements or the early intervention requirements.
- 2.7 **Part 8** deals with other matters, including interpretation of these Rules.

The above summarises aspects of Part 1 of Chapter 3 of the Act.

What happens once a person has become a participant

- 2.8 Once a person has become a participant, their supports, if any, will be determined in accordance with the Act and the *National Disability Insurance Scheme (Supports for Participants) Rules 2013*. Where necessary, decisions under the Act (eg about supports) will be made with a nominee or a child's representatives (see the *National Disability Insurance Scheme (Nominees) Rules 2013* and the *National Disability Insurance Scheme (Children) Rules 2013*).

Part 3 When does a person meet the age requirements?

- 3.1 Generally, a person **meets the age requirements** if the person was aged from birth up to 65 when the access request in relation to the person was made.

This summarises paragraph 22(1)(a) of the Act.

- 3.2 However, additional age requirements apply to persons in South Australia and Tasmania as set out below.

- 3.3 A person who resides in South Australia will **meet the age requirements** only if:

- (a) for an access request made before 1 July 2014—the person was aged under 6 on 1 July 2013 (this includes children born after 1 July 2013); or
- (b) for an access request made between 1 July 2014 and 30 June 2015 (or made before 1 July 2014 and decided by the CEO on or after 1 July 2014)—the person was aged under 14 on 1 July 2014 (this includes children born after 1 July 2014); or
- (c) for an access request made on or after 1 July 2015 (or made before 1 July 2015 and decided by the CEO on or after 1 July 2015)—the person is aged under 15 on the date of the access request.

This is made for the purposes of paragraph 22(1)(b) of the Act.

- 3.4 A person who resides in Tasmania will **meet the age requirements** only if the person is:

- (a) aged at least 15, and under 25, on the date the access request was made; and
- (b) aged under 25 on 1 July 2013.

This is made for the purposes of paragraph 22(1)(b) of the Act.

Part 4 When does a person meet the residence requirements?

4.1 A person *meets the residence requirements* if they:

- (a) reside in Australia; and
- (b) are either an Australian citizen, the holder of a permanent visa, or a special category visa holder who is a protected SCV holder; and
- (c) meet the qualifying residence requirement—see paragraphs 4.6 to 4.8; and
- (d) meet the ongoing residence requirement—see paragraphs 4.9 to 4.11.

Paragraphs 4.1(a) and (b) summarise paragraphs 23(1)(a) and (b) of the Act. (A range of factors are relevant to whether a person resides in Australia: see subsection 23(2) of the Act.) Paragraphs 4.1(c) and (d) are made for the purposes of paragraph 23(1)(c) of the Act.

4.2 The residence requirements apply when a person seeks to become a participant in the NDIS launch, and continue to apply after the person becomes a participant. If a person stops meeting the residence requirements, their status as a participant in the NDIS launch can be revoked.

This summarises paragraph 30(1)(a) of the Act.

NDIS launch areas

4.3 Under this Part, a person can only meet the residence requirements if the person resides in a particular area of Australia (an NDIS launch area) at a particular time.

4.4 The following areas are the **2013 NDIS launch areas**:

- (a) South Australia;
- (b) Tasmania;
- (c) the areas that comprise the following municipal districts of Victoria as at the commencement of these Rules:
 - (i) Colac-Otway Shire;
 - (ii) City of Greater Geelong;
 - (iii) Borough of Queenscliffe;
 - (iv) Surf Coast Shire;

- (d) the areas that comprise the following areas of New South Wales proclaimed under section 204 of the *Local Government Act 1993* (NSW) as at the commencement of these Rules:
 - (i) Lake Macquarie City;
 - (ii) Maitland City;
 - (iii) Newcastle City.

- 4.5 The 2013 NDIS launch areas, together with the Australian Capital Territory, constitute the **NDIS launch areas**.

<p><i>Paragraphs 4.4 and 4.5 define terms used in the remainder of Part 4.</i></p>
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The qualifying residence requirement

- 4.6 A person meets the ***qualifying residence requirement*** if:

- (a) on 1 July 2013, the person resides in a 2013 NDIS launch area; or
- (b) on 1 July 2014, the person resides in the Australian Capital Territory.

- 4.7 A person also meets the ***qualifying residence requirement*** if:

- (a) at any time after 1 July 2013, the person starts to reside in a 2013 NDIS launch area; or
- (b) at any time after 1 July 2014, the person starts to reside in the Australian Capital Territory;

and:

- (c) the person starts to reside in the relevant NDIS launch area for the dominant purpose of accessing supports not provided under the Act (for example, education, employment, health care or family support); and
- (d) exceptional circumstances apply—for example, the person would suffer significant financial or personal hardship, which could reasonably be expected to significantly undermine the person's wellbeing or social or economic participation, by reason of not being a participant.

- 4.8 A child (that is, a person aged under 18) also meets the ***qualifying residence requirement*** if:

- (a) the child is born after 1 July 2013, and at least one of the child's birth parents who cares for that child resides in a 2013 NDIS launch area on the day the child is born; or
- (b) the child is born after 1 July 2014, and at least one of the child's birth parents who cares for the child resides in the Australian Capital Territory on the day the child is born; or

- (c) at a time after 1 July 2013, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in a 2013 NDIS launch area since 1 July 2013, and this will be the child's place of residence; or
- (d) at a time after 1 July 2014, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Australian Capital Territory since 1 July 2014, and this will be the child's place of residence; or
- (e) in the case of a child whose parents are separated and who spends time with each parent:
 - (i) at least one of the child's parents meets the qualifying residence requirement in paragraph 4.6; or
 - (ii) the following apply:
 - (A) at least one of the child's parents started to reside in a 2013 NDIS launch area after 1 July 2013, or in the Australian Capital Territory after 1 July 2014, for the dominant purpose of the child accessing supports that are not provided under the Act (for example, education, employment, health care or family support); and
 - (B) exceptional circumstances apply—for example, the child would suffer significant personal hardship (including because of financial hardship to the parent), which could reasonably be expected to significantly undermine their wellbeing or social or economic participation, by reason of not being a participant.

The ongoing residence requirement

- 4.9 A person meets the ***ongoing residence requirement*** at a particular time if, at that time, the person resides in an NDIS launch area.
- 4.10 If a person who is a participant stops residing in an NDIS launch area, the person continues to satisfy the ***ongoing residence requirement*** for a period of 12 months.
- 4.11 In the case of a child whose parents are separated and who spends time with each parent—the child meets the ***ongoing residence requirement***:
- (a) at a particular time if, at that time, at least one of the child's parents resides in an NDIS launch area; and
 - (b) for a period of 12 months if the child is a participant and both the child's parents stop residing in an NDIS launch area.

Part 5 When does a person meet the disability requirements?

- 5.1 The Act sets out when a person ***meets the disability requirements***. The requirements are met if:
- (a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or to one or more impairments attributable to a psychiatric condition; and
 - (b) the person's impairment or impairments are, or are likely to be, permanent (see paragraphs 5.4 to 5.7); and
 - (c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: communication, social interaction, learning, mobility, self-care, self-management (see paragraph 5.8); and
 - (d) the impairment or impairments affect the person's capacity for social and economic participation; and
 - (e) the person is likely to require support under the NDIS for the person's lifetime.
- 5.2 In relation to the above, an impairment that varies in intensity (for example because the impairment is of a chronic episodic nature) may be permanent, and the person is likely to require support under the NDIS for the person's lifetime, despite the variation.

Paragraphs 5.1 and 5.2 summarise section 24 of the Act.

- 5.3 This Part sets out rules relating to some of the elements in paragraph 5.1 above, however, in order to meet the disability requirements, all of the requirements in that paragraph need to be satisfied.

When is an impairment permanent or likely to be permanent for the disability requirements?

- 5.4 An impairment is, or is likely to be, permanent (see paragraph 5.1(b)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.
- 5.5 An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity, including their psychosocial functioning, may improve.
- 5.6 An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be

permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).

- 5.7 If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

Paragraphs 5.4 to 5.7 are made for the purposes of paragraph 27(1)(a) of the Act.

When does an impairment result in substantially reduced functional capacity to undertake relevant activities?

- 5.8 An impairment results in substantially reduced functional capacity of a person to undertake one or more of the relevant activities—communication, social interaction, learning, mobility, self-care, self-management (see paragraph 5.1(c))—if its result is that:
- (a) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or completely in the activity, without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or
 - (b) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or
 - (c) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.

Paragraph 5.8 is made for the purposes of paragraph 27(1)(b) of the Act.

Part 6 When does a person meet the early intervention requirements?

- 6.1 A person does not **meet the early intervention requirements** if the CEO is satisfied that early intervention support for the person is more appropriately funded or provided through another service system (**service systems** is defined in paragraph 8.4) rather than the NDIS.
- 6.2 However, a person **meets the early intervention requirements** if:
- (a) the person:
 - (i) has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or
 - (ii) has one or more identified impairments that are attributable to a psychiatric condition and are, or are likely to be, permanent (see paragraphs 6.4 to 6.7); or
 - (iii) is a child who has developmental delay; and
 - (b) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by reducing the person's future needs for supports in relation to disability (see paragraphs 6.8 to 6.11); and
 - (c) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by:
 - (i) mitigating or alleviating the impact of the person's impairment upon the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management; or
 - (ii) preventing the deterioration of such functional capacity; or
 - (iii) improving such functional capacity; or
 - (iv) strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer (see paragraphs 6.8 to 6.11).

<p><i>Paragraph 6.1 summarises subsection 25(3) of the Act.</i> <i>Paragraph 6.2 summarises subsection 25(1) of the Act.</i></p>
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- 6.3 This Part sets out rules relating to some of the elements in paragraph 6.2 above, however, in order to meet the early intervention requirements, all of the requirements in that paragraph need to be satisfied.

When is an impairment permanent or likely to be permanent for the early intervention requirements?

- 6.4 An impairment is, or is likely to be, permanent (see paragraphs 6.2(a)(i) and (ii)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.
- 6.5 An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity may improve.
- 6.6 An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).
- 6.7 If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

Paragraphs 6.4 to 6.7 are made for the purposes of paragraph 27(1)(a) of the Act.

Deciding whether provision of early intervention supports is likely to benefit the person

- 6.8 Where paragraph 6.2(a) applies to a person, the main way in which the CEO can determine whether the provision of early intervention supports is likely to benefit the person in the ways set out in paragraphs 6.2(b) and (c) above is to consider evidence going to those matters, as indicated in paragraph 6.9 below. However, young children who have an impairment resulting in developmental delay (see paragraph 6.10) or resulting from a particular condition (see paragraph 6.11) will not need to provide further evidence of the matters in paragraphs 6.2(b) and (c).

Where evidence is required

- 6.9 In deciding whether provision of early intervention supports is likely to benefit the person in the ways mentioned in paragraphs 6.2(b) and (c) above, it is expected that the CEO would consider:
- (a) the likely trajectory and impact of the person's impairment over time; and
 - (b) the potential benefits of early intervention on the impact of the impairment on the person's functional capacity and in reducing their future needs for supports; and

- (c) evidence from a range of sources, such as information provided by the person with disability or their family members or carers. The CEO may also in some cases seek expert opinion.

Paragraph 6.9 does not compel the CEO to take the actions mentioned in that paragraph in any particular instance.

Early intervention in early childhood

6.10 The CEO is taken to be satisfied that provision of early intervention supports for a child under the age of 6 is likely to benefit the child in the ways mentioned in paragraphs 6.2(b) and (c) above if one or more of the child's impairments is a mental or physical impairment which, by itself or in combination with other mental or physical impairments, results in developmental delay.

Note: **Developmental delay** is defined in section 9 of the Act as a delay in the development of a child under 6 years of age that:

- (a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
- (b) results in substantial reduction in functional capacity in one or more of the following areas of major life activity:
 - (i) self-care;
 - (ii) receptive and expressive language;
 - (iii) cognitive development;
 - (iv) motor development; and
- (c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated.

6.11 The provision of early intervention supports is likely to benefit a child aged 6 or under in the ways mentioned in paragraphs 6.2(b) and (c) above in the circumstance that one or more of the child's impairments results from a condition which is on a list of conditions published by the CEO for which evidence has established that early intervention supports will have these benefits.

Paragraph 6.10 is made for the purposes of subsection 25(2) of the Act. Paragraph 6.11 is made for the purposes of paragraphs 27(1)(d), (e) and (f) of the Act.

Part 7 Assessing whether a person meets the disability or early intervention requirements

7.1 In deciding whether a prospective participant meets the disability requirements or the early intervention requirements, the CEO may, if the CEO considers it appropriate, conduct an assessment, which is to be done using an assessment tool specified in operational guidelines in accordance with this Part from time to time.

Specification of assessment tools in guidelines

7.2 The CEO may specify, in operational guidelines, assessment tools that may be used for the purposes of deciding whether a person meets the disability requirements or the early intervention requirements.

7.3 A tool specified under paragraph 7.2 may be the same as a tool specified under paragraph 4.4 of the *National Disability Insurance Scheme (Supports for Participants) Rules 2013*.

7.4 Without limitation, the CEO may specify:

- (a) different tools to be used for adults and children; and
- (b) tools that are specifically tailored to particular impairments.

7.5 A tool must:

- (a) be designed to ensure the fair and transparent assessment of whether a person meets the disability requirements or the early intervention requirements; and
- (b) have reference to areas of activity and social and economic participation identified in the World Health Organisation International Classification of Functions, Disability and Health as in force from time to time.

*This Part is made for the purposes of subsection 209(2A)
of the Act.*

Part 8 Other matters

Citation

- 8.1 These Rules may be cited as the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*.

Interpretation

- 8.2 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.
- 8.3 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 8.4.
- 8.4 In these Rules:

2013 NDIS launch area—see paragraph 4.4.

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.

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

NDIS launch area—see paragraph 4.5.

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

parental responsibility—see section 9 of the Act.

participant—see section 9 of the Act.

service systems means general systems of service delivery or support services offered by a person, agency or body, or systems of service delivery or support services offered:

- (a) as part of a universal service obligation; or

- (b) in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability.