



## **National Disability Insurance Scheme (Prescribed Programs—New South Wales) Rules 2016**

*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 (Prescribed Programs—New South Wales) Rules 2016*

These Rules are made for the purposes of sections 21, 23 and 209 of the Act.

These Rules are about ensuring that people in New South Wales who are currently receiving supports from certain specified Commonwealth or State funded disability services will be supported as participants in the National Disability Insurance Scheme, including people who do not meet the residence requirements as prescribed in paragraphs 23(1)(a) and 23(1)(b) of the Act.

These Rules commence on the day after this instrument is registered.

The Hon Christian Porter MP  
Minister for Social Services

Date: 5 May 2016

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## Part 1 What these Rules are about

- 1.1 The NDIS was initially implemented in certain areas throughout Australia. In New South Wales, the NDIS was initially implemented in the areas listed in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*.
- 1.2 The Government of the Commonwealth and the Government of New South Wales have agreed that the NDIS will be implemented throughout the entirety of New South Wales, on a staged basis: see the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* and the *National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—New South Wales) Rules 2016*.
- 1.3 As part of this implementation, certain Commonwealth and New South Wales disability services which are currently being provided in New South Wales will cease to be provided and the funding applicable to those programs transferred to the NDIS.
- 1.4 Some persons who are currently receiving supports from such programs may not meet the access criteria set out in section 21(1) of the Act.
- 1.5 These Rules are about ensuring that the transition to full roll-out of the NDIS in New South Wales does not disadvantage those in New South Wales with a disability who, prior to the full roll-out of the NDIS, was receiving disability services under certain Commonwealth or New South Wales programs but do not meet the residence requirements as prescribed in paragraphs 23(1)(a) and 23(1)(b) of the Act.
- 1.6 These Rules are made for the purpose of subsection 21(2) of the Act and are intended to give effect to agreements that have been reached between the Government of the Commonwealth and the Government of New South Wales.
- 1.7 The Act sets out a number of objects and principles for the NDIS. The following are particularly relevant to these Rules:

### *Objects*

- (a) to support the independence and social and economic participation of people with disability;
- (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 (an access request) under the Act to become a participant in the NDIS. Participants will develop a personal goal-based plan which may provide for supports for the participant (for residents of New South Wales, this will be in accordance with the timeframes and requirements set out in the *National Disability Insurance Scheme (Facilitating the Preparation of Plans – NSW) Rules 2016*).

2.2 A person becomes a participant in the NDIS on the day the CEO of the Agency decides they meet the access criteria.

*This summarises subsection 28(1) of the Act.*

2.3 The Act sets out when a person meets the access criteria.

2.4 Under subsection 21(1), a person meets the access criteria if the CEO is satisfied that they meet each of the following:

- (a) the age requirements;
- (b) the residence requirements;
- (c) either the disability requirements or the early intervention requirements.

*This summarises subsection 21(1) of the Act.*

2.5 Subsection 21(2) of the Act sets out an alternative method by which a person may meet the access criteria. If the CEO is not satisfied that a person meets the requirements set out in subsection 21(1) of the Act, the person meets the access criteria if the CEO is satisfied that each of the requirements set out in subsection 21(2) of the Act are met.

2.6 The Act enables rules to be made prescribing requirements which the CEO must be satisfied are met before a person meets the access criteria under subsection 21(2) of the Act.

*Paragraphs 2.5 and 2.6 summarise subsection 21(2) of the Act.*

2.7 These Rules prescribe requirements for the purposes of subsection 21(2) of the Act—see **Part 3**. These Rules do not relate to the preparation or management of a participant's plan, but only relate to the access criteria to become a participant. These Rules do not attempt to limit or affect the circumstances in which the CEO may be satisfied that a person meets the access criteria under subsection 21(1) of the Act.

2.8 **Part 4** deals with other matters, including interpretation of these Rules.

## Part 3 When does a person meet the access criteria?

- 3.1 A person meets the access criteria under section 21(2) of the Act if the following are satisfied:
- (a) at the time of the CEO considering the request, the person satisfies the requirements in relation to residence prescribed as mentioned in subsection 23(3) (whether or not the person also satisfies the requirements mentioned in subsection 23(1));
  - (b) the person was receiving supports;
    - (i) at the time of the CEO considering the request; or
    - (ii) at the qualifying time—see paragraph 3.2; and
  - (c) the person received the supports throughout the qualifying period—see paragraph 3.3; and
  - (d) the person received the supports under a qualifying program—see paragraph 3.4; and
  - (e) if the person becomes a participant, the person would not be entitled to receive the supports referred to in paragraphs (b) to (d), or equivalent supports.

*Paragraph 3.1(a) summarises subsection 21(2)(a) of the Act.*

*Paragraph 3.1(b) is made for the purposes of paragraph 21(2)(b)(i) of the Act.*

*Paragraph 3.1(c) is made for the purposes of paragraph 21(2)(b)(ii) of the Act.*

*Paragraph 3.1(d) is made for the purposes of paragraph 21(2)(b)(iii) of the Act.*

*Paragraph 3.1(e) summarises subsection 21(2)(c) of the Act.*

### **The qualifying time**

- 3.2 The qualifying time is the day immediately before the relevant date specified for the relevant NDIS area in which the person resides in Schedule A of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

*Paragraph 3.3 is made for the purposes of paragraph 21(2)(b)(i) of the Act.*

### **The qualifying period**

- 3.3 The qualifying period is the period between the date these rules come into force and the date the person makes an access request.

*Paragraph 3.4 is made for the purposes of paragraph 21(2)(b)(ii) of the Act.*

### ***The qualifying programs***

3.4 The qualifying programs are any of the following programs which are provided to residents of New South Wales, and administered by the New South Wales Department of Family and Community Services, to the extent of the operation of the programs in relation to people under 65 years of age:

(a) New South Wales programs:

#### **Large Residential Centres**

(i) Large Residential Centre / Institution

#### **Group Home**

(ii) Small Residential Centre / Institution

(iii) Group Homes

#### **Community High**

(iv) Hostels

(v) Attendant Care

(vi) In-home Accommodation Support

(vii) Alternative Family Placement

(viii) Other Accommodation Support

#### **Community Support**

(ix) Therapy Services for Individuals

(x) Early Childhood Intervention

(xi) Behaviour / Specialist Intervention

(xii) Counselling

(xiii) Regional Resource and Support Teams

(xiv) Case Management, Local Coordination and Development

(xv) Other Community Support

#### **Community Access**

(xvi) Learning and Life Skills Development

(xvii) Recreation / Holiday Programs

(xviii) Other Community Access

#### **Respite**

(xix) Own Home Respite



- (xx) Centre-based Respite/Respite Homes
- (xxi) Host Family Respite/Peer Support Respite
- (xxii) Flexible / Combination Respite
- (xxiii) Other Respite

**Community Care**

- (xxiv) Domestic assistance
- (xxv) Social support
- (xxvi) Nursing care received at home or at centre/other
- (xxvii) Allied health care received at home or at centre/other by intervention type
- (xxviii) Personal care
- (xxix) Centre-based day care
- (xxx) Other food services
- (xxxi) Respite care
- (xxxii) Assessment including screening (client)
- (xxxiii) Assessment including screening (carer)
- (xxxiv) Case management
- (xxxv) Client care coordination (client)
- (xxxvi) Client care coordination (carer)
- (xxxvii) Home maintenance
- (xxxviii) Counselling/support, information and advocacy (client)
- (xxxix) Counselling/support, information and advocacy (carer)
- (xl) Meals received at home or at centre/other
- (xli) Goods and equipment (self-care aids, support and mobility aids, communication aids, aids for reading, medical care aids, car modifications, other goods/equipment)
- (xlii) Formal linen services
- (xlili) Transport - Client – number of one-way individual or group trips by purpose
- (xliv) Home modification.

(b) Commonwealth programs:

- (i) Better Start for Children with Disability
- (ii) Disability Employment Assistance: Australian Disability Enterprises
- (iii) Helping Children with Autism

- (iv) Younger Onset Dementia Key Worker Program
- (v) Outside School Hours Care for Teenagers with Disability
- (vi) Remote Vision and Hearing Services.

*Paragraph 3.5 is made for the purposes of paragraph 21(2)(b)(iii) of the Act.*

## Part 4 Other matters

### **Citation**

- 4.1 These Rules may be cited as the *National Disability Insurance Scheme (Prescribed Programs—New South Wales) Rules 2016*.

### **Interpretation**

- 4.2 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.
- 4.3 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 4.4.
- 4.4 In these Rules:

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

**age requirements**—see section 22 of the Act.

**CEO**—see section 9 of the Act.

**disability requirements**—see section 24 of the Act.

**early intervention requirements**—see section 25 of the Act.

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

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

**qualifying period** has the meaning given by paragraph 3.4.

**qualifying program** has the meaning given by paragraph 3.5.

**qualifying time** has the meaning given by paragraph 3.3.

**request** means **access request** as defined in section 18 of the Act.

**residence requirements**—see section 23 of the Act.