



National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—Victoria) 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 (Facilitating the Preparation of Participants' Plans—Victoria) Rules 2013

These Rules are made for the purposes of sections 32 and 32A (other than subsection 32A(4)) of the Act.

These Rules are about the circumstances in which the facilitation of the preparation of participants' plans will commence in the State of Victoria.

These Rules commence on 1 July 2013.

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

24 June 2013

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Part 1 What these Rules are about

- 1.1 Each participant in the NDIS launch will have a plan, prepared by and with the participant and approved by the CEO of the Agency. Among other things, a participant's plan sets out the supports that will be funded for the participant.
- 1.2 To enable an orderly launch, participants will be phased into the NDIS. There are two steps involved in accessing supports under the NDIS. The first is to become a participant: the prospective participant makes an access request and the CEO decides that they meet the access criteria. The second is for the participant to have a plan approved by the CEO of the Agency. These Rules relate to the second step, and the order in which the CEO will commence the facilitation of the preparation of plans for different classes of participants.
- 1.3 In Victoria, the NDIS launch will initially be restricted to particular launch areas, being Colac-Otway Shire, the City of Greater Geelong, the Borough of Queenscliffe and Surf Coast Shire: see the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*. This is because one of the access criteria for participants or prospective participants in Victoria is that they reside in one of those areas. For participants in these launch areas, the CEO will commence the facilitation of preparation of plans in an order that depends on the programs under which they are receiving disability services.
- 1.4 These Rules explain how participants in Victoria will be phased into the NDIS. The Rules set out the process for working out when the CEO must commence facilitating the preparation of the plan of a participant in a launch area in Victoria. The phasing process is based on an agreement that has been reached between the Government of the Commonwealth and the Government of Victoria (the Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch, Schedule B—Bilateral Agreement for NDIS Launch between the Commonwealth and Victoria) and is intended to give effect to that agreement.
- 1.5 The Act sets out a number of objects and principles for the NDIS, to which these Rules give effect. In giving effect to the objects, regard is to be had to the progressive implementation of the NDIS and the need to ensure the financial sustainability of the NDIS.

Part 2 Preparation of plans for residents of Victoria

- 2.1 Once a person becomes a participant, the CEO can commence facilitating the preparation of a plan for the person. The process for commencing the facilitation of the preparation of plans for participants in Victoria is detailed below.
- 2.2 The table in paragraph 2.6 sets out eight classes of Victorian participants and sets out the circumstances in which the CEO is to commence the facilitation of the preparation of those participants' plans. The CEO will deal with each class sequentially; facilitation for a class will be commenced once the CEO has decided that the Agency has the capacity to do so, in light of the number of participants in previous classes whose plans have been dealt with, and the number yet to be dealt with.
- 2.3 The CEO cannot make a decision to commence facilitating the preparation of plans for a class before the date specified in the table for that class. Otherwise, the sequence of classes is not inflexible. The CEO need not be satisfied that all participants in a particular class have had their plans facilitated before moving on to the next class; the Agency might have the capacity to commence the facilitation of plans in Class 2 before having fully completed that task for Class 1. Further, the classes do not close at any point in time. For example, a person in Class 1 who becomes a participant after the Agency has started to facilitate plans for Class 2 participants can still have their plan facilitated while participants in Class 2 are having their plans facilitated.
- 2.4 If a participant who is a resident of an NDIS launch area in Victoria does not fall within one of the classes in the table, the CEO is to commence facilitating the preparation of the participant's plan as soon as reasonably practicable having regard to the CEO's obligations to commence facilitating the preparation of other participants' plans. Such participants are not part of the phasing sequence set out in the table; their plans will be facilitated as soon as reasonably practicable after they become participants. This ensures equity of access to the NDIS for such participants, who include those who are receiving services from a program that is not described in the table.

Paragraph 2.4 summarises the effect of subsection 32(3) of the Act.

- 2.5 In urgent circumstances, the CEO can commence the facilitation of the preparation of a participant's plan at a particular time, despite the sequence set out in the table in paragraph 2.6. If the CEO does so, the CEO is able to delay the commencement of the facilitation of other participants' plans, so far as is reasonably necessary, even if that delay would be contrary to that sequence.

Paragraph 2.5 summarises the effect of subsection 32A(3) of the Act.

2.6 The eight classes of participants, and the circumstances in which the CEO is to commence the facilitation of the preparation of plans for participants in those classes, are as follows:

Class	Participants in the class (who must be residents of an NDIS launch area in Victoria)	Circumstances in which the CEO is to commence the facilitation of the preparation of the participants' plans
Class 1	<ul style="list-style-type: none"> a) Persons who, as of 15 April 2013, are registered on the Disability Support Register administered by Victoria's Department of Human Services and who are assessed as requiring individually funded disability support; and b) children who, as of 15 April 2013, are assessed as requiring Early Childhood Intervention Services (administered by Victoria) 	As soon as practicable after the participants become participants
Class 2	<ul style="list-style-type: none"> a) Participants in the Futures for Young Adults Program (Victoria) who are not undergoing planning for entering or leaving the program; and b) persons who receive Individual Support Packages (Victoria); and c) children receiving support under the Commonwealth Helping Children with Autism program or the Commonwealth Better Start for Children with Disability initiative 	The CEO decides (on or after 1 August 2013) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Class 1 whose plans have been dealt with and the number yet to be dealt with

Class	Participants in the class (who must be residents of an NDIS launch area in Victoria)	Circumstances in which the CEO is to commence the facilitation of the preparation of the participants' plans
Class 3	<ul style="list-style-type: none"> a) Persons receiving Respite, Flexible Support Packages, Recreation, Therapy, Independent Living Training, Outreach Support, Behaviour intervention services or Case Management, provided by the State of Victoria, and remaining participants in the Futures for Young Adults Program (Victoria); and b) persons receiving care under the Commonwealth Outside School Hours Care for Teenagers with Disability program; and c) persons receiving employment assistance from Commonwealth-funded Australian Disability Enterprises 	<p>The CEO decides (on or after 1 October 2013) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1 and 2(a) and (b) whose plans have been dealt with and the number yet to be dealt with</p>
Class 4	<p>Participants receiving disability related supports under the Home and Community Care Program</p>	<p>The CEO decides (on or after 1 March 2014) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1, 2(a) and (b) and 3(a) and (b) whose plans have been dealt with and the number yet to be dealt with</p>
Class 5	<p>Persons receiving supported accommodation services under the <i>Disability Act 2006</i> (Vic)</p>	<p>The CEO decides (on or after 1 April 2014) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1, 2(a) and (b), 3(a) and (b) and 4 whose plans have been dealt with and the number yet to be dealt with</p>

Class	Participants in the class (who must be residents of an NDIS launch area in Victoria)	Circumstances in which the CEO is to commence the facilitation of the preparation of the participants' plans
Class 6	<ul style="list-style-type: none"> a) Psychiatric Rehabilitation and Support Services recipients; and b) persons receiving Commonwealth-funded Personal Helpers and Mentors (PHaMs) services 	<p>The CEO decides (on or after 1 May 2014) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1, 2(a) and (b), 3(a) and (b), 4 and 5 whose plans have been dealt with and the number yet to be dealt with</p>
Class 7	Early Childhood Intervention Services (ECIS) recipients	<p>The CEO decides (on or after 1 June 2014) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1, 2(a) and (b), 3(a) and (b), 4, 5 and 6(a) whose plans have been dealt with and the number yet to be dealt with</p>
Class 8	<ul style="list-style-type: none"> a) Residents of the Colanda residential institution; and b) persons receiving Work Based Personal Assistance under Commonwealth Disability Employment Services 	<p>The CEO decides (on or after 1 September 2014) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans, in light of the number of participants in Classes 1, 2(a) and (b), 3(a) and (b), 4, 5, 6(a) and 7 whose plans have been dealt with and the number yet to be dealt with</p>

2.7 To avoid doubt, a person may be in more than one class. In practice, this means that they will be treated as being in the first of those classes. For example, a participant who is a member of Class 1 and Class 2 will be phased in as a member of Class 1.

2.8 There are two exceptions to this rule, as follows:

- (a) First, if a participant is in Class 5, they may not be in Class 1, 2, 3 or 4. This means that recipients of supported accommodation services will be treated as being in Class 5 even if they would otherwise be in an earlier class because, for example, they are also receiving other kinds of services.

- (b) Second, if a participant is in Class 8(a), they may not be in Class 1, 2, 3, 4, 5, 6 or 7. This means that residents of the Colanda residential institution will be treated as being in Class 8 even if they would otherwise be in an earlier class because, for example, they are also receiving other kinds of services.

Consultation

- 2.9 If the CEO is considering making a decision referred to in the third column of the table in paragraph 2.6 after the date mentioned in that column, the CEO must, as early as possible:
- (a) seek the views of the Government of Victoria and of the Commonwealth Department that administers the Act about the proposed decision (including their views about the effect that making the decision would have on arrangements agreed between the Commonwealth and Victoria for the funding of the NDIS); and
 - (b) use his or her best endeavours to reach an agreement with those entities about the proposed decision.

Part 3 Other matters

Citation

- 3.1 These Rules may be cited as the *National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—Victoria) Rules 2013*.

Interpretation

- 3.2 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.
- 3.3 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 3.4.
- 3.4 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.

NDIS—see section 9 of the Act.

NDIS launch area has the same meaning as in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*.

NDIS rules—see section 9 of the Act.

participant—see section 9 of the Act.