



National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—South Australia) 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—South Australia) 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 South Australia.

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 South Australia, the NDIS launch will initially be restricted to persons in particular age groups: see the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*. For the first year of the NDIS (1 July 2013 to 30 June 2014), only persons under the age of 6 can become participants. In the second year, the NDIS will become accessible to persons aged under 14, and from the third year, to persons aged under 15.
- 1.4 These Rules explain how participants in South Australia in the first year of the NDIS 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 South Australia. It is intended that future rules will deal with the phasing in of participants who meet the access criteria in the second and third years of the NDIS (those aged under 15).
- 1.5 The phasing process is based on an agreement that has been reached between the Government of the Commonwealth and the Government of South Australia (the Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch, Schedule C—Bilateral Agreement for NDIS Launch between the Commonwealth and South Australia), and is intended to give effect to that agreement.
- 1.6 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 South Australia

- 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 South Australia is detailed below.
- 2.2 This Part deals with the birth to age 5 group of participants. From 1 July 2014, the NDIS will become accessible to persons in other age groups in South Australia. For persons in these other age groups, it is intended that future rules will deal with how the facilitation of the preparation of their plans is to commence.
- 2.3 The table in paragraph 2.7 sets out four classes of South Australian participants and sets out the circumstances in which the CEO is to commence the facilitation 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.
- 2.4 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. Those dates are set on a quarterly basis. Otherwise, the sequence of classes is flexible. 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.
- 2.5 If a participant who is a resident of South Australia 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 not receiving disability services provided or funded by the Commonwealth or South Australia.

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

- 2.6 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 2.7. If the CEO does so, the CEO is able to delay the commencement of the facilitation of the preparation of other participants' plans, so far as is reasonably necessary, even if that delay would be contrary to that sequence.

Paragraph 2.6 summarises the effect of subsection 32A(3) of the Act.

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

Class	Participants in the class (who are residents of South Australia)	Circumstances in which the CEO is to commence the preparation of the facilitation of the participants' plans
Class 1	Persons who, on 1 July 2013, are aged under 3 years and who are receiving disability services provided or funded by the Commonwealth or South Australia	As soon as practicable after the participants become participants
Class 2	Persons who, on 1 July 2013, are aged at least 3 years and under 4 years and who are receiving disability services provided or funded by the Commonwealth or South Australia	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 Class 1 whose plans have been dealt with and the number yet to be dealt with
Class 3	Persons who, on 1 July 2013, are aged at least 4 years and under 5 years and who are receiving disability services provided or funded by the Commonwealth or South Australia	The CEO decides (on or after 1 January 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 and 2 whose plans have been dealt with and the number yet to be dealt with
Class 4	Persons who, on 1 July 2013, are aged at least 5 years and under 6 years and who are receiving disability services provided or funded by the Commonwealth or South Australia	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 and 3 whose plans have been dealt with and the number yet to be dealt with

Sequential facilitation within a class based on participants' areas of residence

- 2.8 If the CEO considers that the Agency's facilitation of the preparation of plans for participants in a class described in the table in paragraph 2.7 (a **main class**) would be best managed by commencing that facilitation sequentially in different areas of South Australia, the CEO may decide that, among the participants of the main class, there is to be one or more classes (**subclasses**) comprised of participants who reside in particular areas.
- 2.9 For each subclass, the CEO is to commence facilitating the preparation of the plans of participants in the subclass when the CEO decides that it is appropriate to do so. Such a decision must be made:
- (a) no earlier than the time at which the CEO decides that the Agency has the capacity to commence facilitating the preparation of plans for participants in the main class; and
 - (b) no later than the time at which the CEO decides that the Agency has the capacity to commence facilitating the preparation of plans for participants in the next main class (for Class 2, the subsequent main class is Class 3).

Separate commencement of facilitation for participants in remote and regional areas

- 2.10 Despite paragraph 2.7, the CEO may decide that all participants who reside in a particular remote or regional area constitute a class. The CEO may only make such a decision if he or she considers that, because of the low number of participants in the area, the preparation of those participants' plans would be best facilitated together. If the CEO makes such a decision, the CEO is to commence facilitating the preparation of those participants' plans when the CEO decides that the Agency has the capacity to do so.

Consultation

- 2.11 In making a decision under paragraph 2.8, 2.9 or 2.10, or considering whether to make such a decision, the CEO must, where practicable, seek the views of the Government of South Australia and have regard to those views (if any).
- 2.12 If the CEO is considering making a decision referred to in the third column of the table in paragraph 2.7 after the date mentioned in that column, the CEO must, as early as possible:
- (a) seek the views of the Government of South Australia 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 South Australia 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—South Australia) 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.

disability services:

- (a) provided or funded by South Australia—means the following programs or services:
- (i) Attendant Care/Personal Care;
 - (ii) Behaviour/Specialist Intervention;
 - (iii) Centre-based Respite/Respite Homes;
 - (iv) Counselling;
 - (v) Early Childhood Intervention;
 - (vi) Host Family Respite/Peer Support Respite;
 - (vii) In-Home Accommodation Support;
 - (viii) Learning and Life Skills Development;
 - (ix) Other Community Support;
 - (x) Other Support Services;

- (xi) Recreation/Holiday Programs;
 - (xii) Regional Resource and Support Teams;
 - (xiii) Therapy Support for Individuals;
 - (xiv) other programs and services funded under the National Disability Agreement;
 - (xv) Home and Community Care—Personal care;
 - (xvi) Home and Community Care—Respite;
 - (xvii) Other—Home and Community Care;
 - (xviii) Disability Equipment;
 - (xix) Other—Transport/Health/Education; and
- (b) provided or funded by the Commonwealth—means the following programs, services or allowances:
- (i) Australian Disability Enterprises;
 - (ii) Helping Children with Autism;
 - (iii) the Better Start for Children with Disability initiative;
 - (iv) the Continence Aids Payment Scheme;
 - (v) Support for Day to Day Living in the Community—A Structured Activity Program;
 - (vi) Disability Employment Services—Work Based Personal Assistance;
 - (vii) Hearing Services Program;
 - (viii) Improved Support for People with Younger Onset Dementia;
 - (ix) Targeted Community Care—Mental Health;
 - (x) Respite: Carer Support and Personal Helpers and Mentors component;
 - (xi) National Auslan Interpreter Booking and Payment Service;
 - (xii) After School Hours Care for Teenagers with Disability;
 - (xiii) Partners in Recovery: Coordinated Support and Flexible Funding for people with severe and persistent mental illness and complex needs;
 - (xiv) Respite Support for Carers of Young People with Severe or Profound Disability;
 - (xv) mobility allowance.

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.

South Australia has the same meaning as in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013*.