



## **National Disability Insurance Scheme Rules—Rules for registered providers of supports**

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

The Act establishes the National Disability Insurance Scheme (NDIS).

Participants in the NDIS can develop a personal, goal-based plan about how they will be provided with reasonable and necessary supports. People with disability who do not have a plan can also be assisted by the NDIS.

The NDIS will enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports.

*National Disability Insurance Scheme Rules—Rules for registered providers of supports*

These Rules are made for the purposes of sections 70 to 73 of the Act.

These Rules are about registered providers of supports—how they become approved and the requirements that apply to them. When the Agency manages the funding of supports under a participant's plan, only registered providers can provide those supports (in other cases, anyone can provide the supports). These Rules also apply to the registration of registered plan management providers.

These Rules commence on [...].

[signature block]

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## Part 1 What these Rules are about

- 1.1 Each participant in the NDIS launch will have a plan, prepared in conjunction 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 For each participant, someone (or more than one person) will be identified as managing the funding for supports under the participant's plan. Funding can be managed by the participant, the Agency, a plan nominee, or a *registered plan management provider*.
- 1.3 Unless a participant's plan is managed by the Agency, there is no restriction on who may provide supports under the plan. Participants are able to exercise choice about the selection of their providers. It is only when funding for a participant's supports is managed by the Agency that the supports must be provided by a *registered provider of supports*: see subsection 33(6) of the Act.
- 1.4 A person or entity can apply to be a *registered provider of supports*. An applicant can seek approval to manage the funding for supports under plans (a registered plan management provider), to provide supports, or both. Where an applicant seeks to be both a provider of supports and a registered plan management provider there must be mechanisms in place for dealing with conflicts of interest. Applications are made to the CEO of the Agency and are to be accompanied by the information and documents that the CEO requires (for example, information about the supports that the applicant proposes to provide and the applicant's experience in providing those supports).
- 1.5 A provider's registration can be revoked on a number of grounds, including that the provider no longer meets the approval criteria. A provider's registration will be revoked only if the CEO is satisfied that the provider poses an unreasonable risk to a participant.
- 1.6 These Rules set out the criteria for approval as a registered provider and the requirements with which a registered provider is to comply.
- 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 enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
- (b) to promote the provision of high quality and innovative supports to people with disability;

*Principles*

- (c) that people with disability should be supported to participate in and contribute to social and economic life to the extent of their ability;
- (d) that people with disability should be supported to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
- (e) that 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;
- (f) that people with disability have the same right as other members of Australian society to pursue any grievance;
- (g) that 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;
- (h) that people with disability should have their privacy and dignity respected;
- (i) that innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports to people with disability are to be promoted.

- 1.8 These Rules also are intended to give effect to the principle that regulation should minimise the administrative and regulatory burden on registered providers of supports and prospective registered providers of supports and to reduce barriers to entry to the NDIS.

## Part 2 Outline of these Rules

- 2.1 When a person or entity (the applicant) applies to be a registered provider of supports, the CEO of the Agency considers the applicant against a set of criteria. Those criteria are set out in **Part 3**.
- 2.2 **Part 4** sets out some requirements that apply to registered providers of supports. The requirements are that providers notify the Agency if particular things happen, such as the provider being the subject of a complaint to, or an adverse action by, a responsible authority.
- 2.3 **Part 5** provides for the revocation of a provider's approval in certain circumstances.
- 2.4 **Part 6** deals with other matters, including interpretation of these Rules.

## Part 3 Criteria for approval as a registered provider of supports

- 3.1 Registered providers of supports are approved by the CEO of the Agency. There are two steps to be fulfilled for approval to be given.
- 3.2 **First**, the person or entity seeking approval (the applicant) makes an application and provides supporting information. Applications are made in writing, in the approved form (if there is one), and are to include or attach any information or documents that the CEO requires.
- 3.3 **Second**, the CEO considers the application and any supporting information against the criteria set out in this Part.
- 3.4 If the CEO approves the applicant as a registered provider, the CEO will issue a written instrument to that effect.
- 3.5 An approval can be limited in scope. It can cover a particular class of supports, or a particular class of persons. The instrument of approval may also provide for the approval to expire on a particular day.
- 3.6 The criteria for approval prescribed in this Part continue to be important after an applicant is approved as a registered provider as the failure to continue to fulfil the criteria is a basis on which a registered provider's approval can be revoked. Accordingly, even though each criterion is expressed to apply to an applicant, the criteria continue to apply to a person or entity after being registered.

<p><i>Paragraphs 3.1 to 3.6 summarise Part 3 of Chapter 4 of the Act.</i></p>
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### **The criteria**

- 3.7 The applicant is to have:
- (a) an ABN (**ABN** means an Australian Business Number, as shown in the Australian Business Register established under the *A New Tax System (Australian Business Number) Act 1999*); and
  - (b) an account with a financial institution (paragraph 6.5 defines **financial institution**).
- 3.8 The applicant is to declare its agreement to be bound by the Agency's terms of business (as in force from time to time).
- 3.9 The applicant is to declare that it complies with, and has mechanisms in place to ensure ongoing compliance with, all employment and workplace health and

safety laws that apply to the applicant (including, for example, the *Fair Work Act 2009* if that Act applies to the applicant).

- 3.10 The applicant is to declare that the applicant and its staff comply with, and that the applicant has mechanisms in place to ensure ongoing compliance with, all laws:
- (a) that apply to the applicant and its staff in the provision of supports or the management of funding for supports (as the case requires); and
  - (b) the contravention of which is punishable by a criminal penalty.
- 3.11 For an applicant for registration in relation to the provision of supports—the applicant is to be a suitable person or entity to provide the kinds of supports that they propose to provide, having regard to the following considerations:
- (a) the qualifications and approvals relevant to the provision of those kinds of supports held by the applicant and the applicant's staff (paragraph 6.5 defines **approvals**);
  - (b) the applicant's capacity to provide those kinds of supports;
  - (c) the applicant's experience in providing those kinds of supports;
  - (d) if the applicant proposes to provide supports to a particular participant—whether that participant has stated that he or she considers the applicant to be suitable to provide those supports.
- 3.12 For an applicant for registration in relation to managing the funding for supports under plans—the applicant is to be a suitable person or entity to manage such funding, having regard to the following considerations:
- (a) the qualifications and approvals relevant to the management of funding for supports held by the applicant and the applicant's staff (paragraph 6.5 defines **approvals**);
  - (b) the applicant's capacity to manage the funding for supports;
  - (c) the applicant's experience in managing the funding for supports;
  - (d) if the applicant proposes to manage funding for a particular participant—whether that participant has stated that he or she considers the applicant to be suitable to manage that funding.
- 3.13 To avoid doubt, if a person or entity applies to be a registered provider of supports in relation to both the provision of supports and managing the funding of supports under plans, the criteria in paragraphs 3.11 and 3.12 apply.

#### *Conflict of interest*

- 3.14 If an applicant seeks approval in relation to both the provision of supports and managing the funding for supports under plans, the applicant is to have

mechanisms in place for dealing with conflicts of interest when performing both of those roles in relation to the same participant.

*Paragraphs 3.7 to 3.14 prescribe criteria for paragraph 70(1)(d) (and 72(1)(a)) of the Act.*

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## Part 4 Requirements for registered providers

- 4.1 A registered provider of supports must notify the Agency if:
- (a) the provider has been the subject of a complaint to a responsible authority about the standard, effectiveness or safety of the provider's provision of supports or management of the funding for supports, regardless of whether those supports are provided or funded under the Act; or
  - (b) a responsible authority has taken action as a result of such a complaint (including deciding to dismiss or not investigate the complaint); or
  - (c) the provider has been the subject of adverse action by a responsible authority relating to the provision of supports or management of the funding for supports, regardless of whether those supports are provided or funded under the Act; or
  - (d) the provider or a member of its staff has been the subject of adverse action by a responsible authority in respect of an approval held by the provider or the member of staff (paragraph 6.5 defines **approval**); or
  - (e) the provider becomes insolvent; or
  - (f) the provider becomes aware that it has failed to comply with an employment or workplace health and safety law that applies to the provider (including, for example, the *Fair Work Act 2009* if that Act applies to the provider); or
  - (g) the provider becomes aware that the provider or a member of its staff has failed to comply with a law of a kind mentioned in paragraph 3.10.
- 4.2 The provider must notify the Agency of the matter as soon as possible after becoming aware of the matter.
- 4.3 If paragraph 4.1(a) applies, the provider must also notify the Agency of the action that the provider takes in relation to the complaint (for example, to resolve or address the complaint).

<p><i>This Part prescribes requirements with which registered providers must comply, under subsection 73(2) of the Act.</i></p>
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## Part 5 Revocation

- 5.1 The CEO may, at any time, revoke the instrument approving a person or entity as a registered provider of supports if the CEO is satisfied that:
- (a) a circumstance mentioned in paragraph 5.2 applies; and
  - (b) that circumstance gives rise to an unreasonable risk to a participant.
- 5.2 The circumstances are the following:
- (a) the person or entity (the provider) no longer meets the applicable criteria set out in Part 3;
  - (b) the application by the provider for approval as a registered provider of supports contained information that was false or misleading in a material particular;
  - (c) the provider contravenes the Agency's terms of business (as in force from time to time);
  - (d) the provider is the subject of a complaint to a responsible authority about the standard, effectiveness or safety of the provider's provision of supports or management of the funding for supports, regardless of whether those supports are provided or funded under the Act;
  - (e) the provider is the subject of adverse action by a responsible authority relating to the provision of supports or the management of funding for supports, regardless of whether those supports are provided or funded under the Act;
  - (f) the provider or a member of its staff is the subject of adverse action by a responsible authority in respect of an approval held by the provider or the member of staff (paragraph 6.5 defines **approval**);
  - (g) the provider is insolvent;
  - (h) the provider contravenes an employment or workplace health and safety law that applies to the provider (including, for example, the *Fair Work Act 2009* if that Act applies to the provider);
  - (i) the provider or a member of its staff contravenes a law of a kind mentioned in paragraph 3.10;
  - (j) the provider contravenes a requirement in Part 4.
- 5.3 Before revoking a provider's instrument of approval, the CEO must comply with the requirements of subsections 72(2) to (5) of the Act as if those requirements were requirements of these Rules.
- 5.4 If the CEO revokes a provider's instrument of approval, Part 6 of the Act applies as if it were part of these Rules, and as if the CEO's decision were a reviewable decision.

*This Part sets out provisions in relation to registered providers of supports, under subsection 73(2) of the Act.*

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## Part 6 Other matters

### **Commencement**

6.1 These Rules commence on ...

### **Citation**

6.2 These Rules may be cited as the *National Disability Insurance Scheme Rules—Rules for registered providers of supports*.

### **Interpretation**

6.3 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.

6.4 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 6.5.

6.5 In these Rules:

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

**Agency**—see section 9 of the Act.

**applicant** means a person or entity that applies to be a registered provider of supports.

**approvals** includes any approvals, licences, registrations, authorisations or certifications (however described) that an applicant or its staff are required to hold under an applicable law of the Commonwealth, a State or a Territory.

**CEO**—see section 9 of the Act.

**entity**—see section 9 of the Act.

**financial institution** means:

- (a) an ADI (short for authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (a) a **State bank**, meaning a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

**NDIS**—see section 9 of the Act.

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

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

**responsible authority** means a body which, under a law of the Commonwealth or of a State or Territory, can receive complaints about, or take action against, a person or entity in providing supports to a person with disability (regardless of how the functions and powers of the body are expressed in that law). For example, a body regulating the provision of disability supports could be a responsible authority; so could a body charged with general fair trading and consumer protection functions.

**staff**, in relation to a person or entity, means the staff of the person or entity who:

- (a) provide, or are to provide, the supports that the person or entity provides or proposes to provide; or
- (b) manage, or are to manage, the funding of supports under plans.

The term includes any individual engaged by the person or entity, whether as an employee, a contractor or otherwise, and includes any individual engaged by a contractor of the person or entity.