



National Disability Insurance Scheme Rules—Rules for becoming a participant

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 becoming a participant

These Rules are made for the purposes of sections 21, 22, 23 and 27 of the Act.

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

These Rules commence on [...].

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Contents

National Disability Insurance Scheme Rules—Rules for becoming a participant¹

Contents	2
Part 1 What these Rules are about	3
Part 2 Outline of these Rules	4
Part 3 When does a person meet the age requirements?	5
Part 4 When does a person meet the residence requirements?	6
Division 1 Introduction	6
Division 2 Requirement	7
Division 3 The qualifying residence requirement	7
Division 4 The ongoing residence requirement	8
Division 5 Children	8
Part 5 When does a person meet the disability requirements?	9
Division 1 Introduction	9
Division 2 When is an impairment permanent or likely to be permanent?	9
Division 3 When does an impairment result in substantially reduced functional capacity to undertake relevant activities?	10
Part 6 When does a person meet the early intervention requirements?	11
Division 1 Introduction	11
Division 2 Criteria to be applied	11
Part 7 Alternative way to meet the access criteria	13
Part 8 Other matters	14
Commencement	14
Citation	14
Interpretation	14

Part 1 What these Rules are about

- 1.1 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.
- 1.2 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) that 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;
- (d) that 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 acting 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.
- 2.2 A person becomes a participant in the NDIS launch on the day the CEO of the Agency decides they **meet the access criteria**.
- 2.3 The main way in which a person is able to meet the access criteria is if the CEO is satisfied that they meet each of the following:
- (a) the **age requirements** (see **Part 3**); and
 - (b) the **residence requirements** (see **Part 4**); and
 - (c) either the **disability requirements** or the **early intervention requirements** (see **Parts 5 and 6**).
- 2.4 In limited circumstances a person who does not meet the requirements above may still be able to access the NDIS. This can occur if the person resides in a launch area in accordance with the rules in Part 4 and has been receiving support for their disability (from a program listed in **Part 7** of these Rules) before the NDIS launch. The aim of providing these people with access to the NDIS is to ensure continuity of their support.
- 2.5 **Part 8** deals with other matters, including interpretation of these Rules.

The above summarises aspects of Part 1 of Chapter 3 of the Act. Paragraph 2.4 above summarises subsection 21(2) in that Part of the Act.

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 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 (which includes the NPY lands—see the definition in paragraph 8.5) 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?

Division 1 Introduction

- 4.1 A person **meets the residence requirements** if the person resides in Australia, and is either an Australian citizen, the holder of a permanent visa, or a special category visa holder who is a protected SCV holder. The person must also meet one *other* residence requirement, which is prescribed by Division 2 of this Part.

This summarises subsection 23(1) of the Act. (A range of factors are relevant to whether a person resides in Australia. See subsection 23(2) 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.

- 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 In this Part, the following areas are the **2013 NDIS launch areas**:

- (a) South Australia (which includes the NPY lands—see the definition in paragraph 8.5);
- (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**.

Paragraphs 4.4 and 4.5 define terms used in the remainder of Part 4.

Division 2 Requirement

- 4.6 A person is required to meet:
- (a) the qualifying residence requirement in Division 3; and
 - (b) the ongoing residence requirement in Division 4.
- 4.7 The qualifying residence requirement and ongoing residence requirement for children are set out separately in Division 5 of this Part.

Paragraphs 4.6 and 4.7, read with paragraphs 4.8 to 4.13, impose requirements in relation to residence, for the purposes of paragraph 23(1)(c) of the Act. Other residence requirements also apply, which are set out in the Act and summarised in paragraph 4.1 above.

Division 3 The qualifying residence requirement

- 4.8 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.
- 4.9 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.

Division 4 The ongoing residence requirement

- 4.10 A person meets the **ongoing residence requirement** at a particular time if, at that time, the person resides in an NDIS launch area.
- 4.11 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.

Division 5 Children

- 4.12 A child (that is, a person aged under 18) meets the **qualifying residence requirement** if:
- (a) the child meets the qualifying residence requirement in Division 3 of this Part; or
 - (b) 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
 - (c) 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
 - (d) at a time after 1 July 2013, the child comes to be in the care of a guardian with ongoing parental responsibility for that child (including an adoptive parent), and at that time the guardian is residing in a 2013 NDIS launch area (and this will be the child's place of residence); or
 - (e) at a time after 1 July 2014, the child comes to be in the care of a guardian with ongoing parental responsibility for that child (including an adoptive parent), and at that time the guardian is residing in the Australian Capital Territory (and this will be the child's place of residence); or
 - (f) in the case of a child whose parents are separated and who spends time with each parent—at least one of the child's parents with parental responsibility for the child meets the qualifying residence requirement in paragraph 4.8.
- 4.13 A child meets the **ongoing residence requirement** if the child:
- (a) meets the ongoing residence requirement in Division 4; or
 - (b) in the case of a child whose parents are separated and who spends time with each parent—at least one of the child's parents with parental responsibility for the child meets the ongoing residence requirement in Division 4.

Part 5 When does a person meet the disability requirements?

Division 1 Introduction

- 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; 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; and
 - (d) the impairment or impairments affect the person's capacity for social and economic participation; and
 - (e) the person's support needs in relation to his or her impairment or impairments are likely to continue 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's support needs in relation to the impairment may be likely to continue for the person's lifetime, despite the variation.

<i>This summarises section 24 of the Act.</i>

- 5.3 **Division 2** of this Part sets out when a person's impairment or impairments are, or are likely to be, permanent (see paragraph 5.1(b) above).
- 5.4 **Division 3** of this Part sets out when a person's impairment or impairments result in substantially reduced functional capacity to undertake one or more of the activities mentioned in paragraph 5.1(c) above.

Division 2 When is an impairment permanent or likely to be permanent?

- 5.5 An impairment is, or is likely to be, permanent if the impairment is irreversible or likely to be irreversible.

- 5.6 An impairment may require medical treatment and assessment before a determination can be made about whether the impairment is irreversible or likely to be irreversible. The impairment is, or is likely to be, permanent only if the impairment does not require further medical assessment or treatment in order for its irreversibility or likely irreversibility to be demonstrated (even though the impairment may continue to be treated and assessed after this has been demonstrated).
- 5.7 If an impairment is of a degenerative nature, the impairment is, or is likely to be, irreversible if medical or other treatment would not, or would be unlikely to, improve it.

Paragraphs 5.5 to 5.7 are made for the purposes of paragraph 27(1)(a) of the Act.

Division 3 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—if its result is that:
- (a) the person is unable to perform day to day tasks or actions required to undertake or participate in the activity; or
 - (b) the person experiences severe difficulty in independently performing tasks or actions required to undertake or participate in the activity; or
 - (c) the person can perform tasks or actions required to undertake or participate in the activity only with the assistance of other persons or with the use of assistive technology or equipment (other than commonly used items such as glasses) or home modifications; or
 - (d) the person can perform tasks or actions required to undertake or participate in the activity only with regular supervision or training by other persons.

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?

Division 1 Introduction

6.1 Under the Act, a person ***meets the early intervention requirements*** 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, or 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 reduce the person's future needs for supports in relation to disability; and
- (c) the CEO is satisfied that provision of early intervention supports for the person is likely to:
 - (i) mitigate, alleviate or prevent the deterioration of the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management; or
 - (ii) strengthen the sustainability of the informal supports available to the person, including through building the capacity of the person's carer.

This summarises section 25 of the Act.

6.2 **Division 2** sets out criteria that the CEO is to apply in assessing the matters in paragraphs 6.1(b) and (c) above.

Division 2 Criteria to be applied

6.3 The criteria to be applied in assessing whether the provision of early intervention supports for a person is likely to reduce the person's future needs for supports in relation to disability, and is likely to have an effect mentioned in paragraph 6.1(c)(i) or (ii) above, are:

- (a) that the person has a recognised impairment for which there is contemporary credible and relevant evidence, or credible emerging evidence, which supports the proposition, which may include:
 - (i) evidence that, without the kind of supports most appropriately funded or provided by the NDIS, or supports that would be more appropriately funded or provided by other service systems (such as health or education systems), the person's impairment is likely to have an increased impact on their functional capacity resulting in future needs for supports from the NDIS; or

- (ii) evidence that a specific intervention (for example a specific therapy, piece of equipment, or support or training including working with a person's family) will benefit a person by improving their functioning and reducing future support needs; and
 - (b) that there are no other service systems that could more appropriately fund or provide supports that could achieve the outcome described above in paragraph 6.1(c)(i) or (ii).
- 6.4 For the purpose of paragraph 6.3 above, where the CEO does not already hold evidence to support the proposition, the CEO can consider evidence from a range of sources, including information provided by the person with disability or a person acting on their behalf, and may seek expert opinion in order to make a decision.
- 6.5 The CEO may consider advice from a suitably qualified panel of experts on the available evidence for the purposes of making a determination in accordance with paragraph 6.3, including evidence obtained in accordance with paragraph 6.4.

<p><i>Paragraphs 6.3 to 6.5 are made for the purposes of paragraphs 27(1)(d), (e) and (f) of the Act.</i></p>

Part 7 Alternative way to meet the access criteria

7.1 If a person does not meet the age requirements, or the disability or early intervention requirements, the person nevertheless **meets the access criteria** if the CEO is satisfied of all of the following:

- (a) the person meets the qualifying residence requirement and the ongoing residence requirement in Part 4;
- (b) the person received supports under a program listed in the table below (which may be a component of a broader program);
- (c) the person received those supports at the time set out in the table below in relation to the relevant program;
- (d) the person received the supports throughout the period set out in the table below in relation to the relevant program;
- (e) if the person becomes a participant, the person would not be entitled to receive the supports under the relevant program listed below, or equivalent supports.

Program	NDIS launch area where program delivered	Time of receiving supports	Period of receiving supports
[<i>program name</i> ; also include other details eg the administering Department if necessary to precisely identify the program]		[eg ' <i>at the time the CEO considers the access request</i> ' or specify <i>another time</i>]	[eg 1 July 2012-1 January 2013]

Part 8 Other matters

Commencement

8.1 These Rules commence on ...

Citation

8.2 These Rules may be cited as the *National Disability Insurance Scheme Rules—Rules for becoming a participant*.

Interpretation

8.3 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.

8.4 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 8.5.

8.5 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.

South Australia is taken to include the whole of the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara lands (the NPY lands).

Commonwealth Draft