



National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—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 (Facilitating the Preparation of Participants' Plans—New South Wales) Rules 2016

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 New South Wales.

These Rules revoke the *National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—New South Wales) Rules 2013*.

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

The Hon. Christian Porter MP
Minister for Social Services

Dated: 5 May 2016

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Part 1 What these Rules are about

- 1.1 Each participant in the NDIS 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 transition, 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 whether 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 groups, or "classes", of participants.
- 1.3 These Rules explain how participants in New South Wales will be phased into the NDIS.
- 1.4 The phasing schedule is intended to give effect to agreements that have been reached between the Commonwealth and New South Wales.
- 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 New South Wales

- 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 New South Wales is detailed below.
- 2.2 The table in paragraph 2.7 sets out two classes of New South Wales 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's decisions to commence facilitating the preparation of plans for classes are tied to particular dates. Sometimes the decision must be made before a particular date; sometimes the decision must be made after a particular date.
- 2.4 Otherwise, the sequence of classes is generally 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; for example, the Agency has 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 an NDIS area in New South Wales 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.

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 two classes of participants, and the circumstances in which the CEO is to commence facilitating the preparation of plans for participants in those classes, are as follows:

Class	Participants in the class	Circumstances in, or period within, which the CEO is to commence facilitating the preparation of the participants' plans
Class 1	Residents of the following districts of New South Wales as defined in Schedule A to this Instrument: (i) Central Coast; (ii) Hunter New England; (iii) Nepean Blue Mountains; (iv) Northern Sydney; (v) South Western Sydney; (vi) Southern NSW; (vii) Western Sydney.	The CEO decides (on or after 1 July 2016) that the Agency has the capacity to commence the facilitation of the preparation of the participants' plans.
Class 2	Residents of the following districts of New South Wales as defined in Schedule A to this Instrument: (i) Illawarra Shoalhaven; (ii) Mid North Coast; (iii) Murrumbidgee; (iv) Northern NSW; (v) South Eastern Sydney; (vi) Sydney; (vii) Western NSW; (viii) Far West;	The CEO decides (on or after 1 July 2017) 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.

Subclasses

- 2.8 Classes 1 and 2 (the main classes) are further divided into four subclasses as set out below.

Subclass	Participants in the subclass	Circumstances in, or period within, which the CEO is to commence facilitating the preparation of the participants' plans
Subclass A	Persons who, at the time they make an access request, are receiving, or scheduled to receive, specialist disability services funded by or directly provided by the NSW Department of Family and Community Services who reside in a NSW Large Residential Centre, Group Home or receiving support defined as Community High.	As soon as practicable after 1 July 2016 for Class 1 participants and 1 July 2017 for Class 2 participants.
Subclass B	Persons who, at the time they make an access request, are receiving, or scheduled to receive, specialist disability services funded by or directly provided by the NSW Department of Family and Community Services defined as Community Access or Community Support.	<p>Subject to the CEO deciding 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 Subclass A whose plans have been dealt with and the number yet to be dealt with:</p> <ul style="list-style-type: none"> Up to 75% of Subclass B participants, between 1 July and 31 December of the relevant year for the class of participants; remaining Subclass B participants between 1 January and 30 June of the following year.

Subclass	Participants in the subclass	Circumstances in, or period within, which the CEO is to commence facilitating the preparation of the participants' plans
Subclass C	Persons who, at the time they make an access request, are receiving, or scheduled to receive, specialist disability services funded by or directly provided by the NSW Department of Family and Community Services defined as Respite or Community Care.	<p>Subject to the CEO deciding 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 Subclasses A and B whose plans have been dealt with and the number yet to be dealt with:</p> <ul style="list-style-type: none"> • 25% of Subclass C participants between 1 July and 31 December of the relevant year for the class of participants; • remainder of Subclass C participants between 1 January and 30 June of the following year.
Subclass D	All other persons within the main class.	The CEO decides 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 Subclasses A, B and C whose plans have been dealt with and the number yet to be dealt with.

- 2.9 For each subclass, the CEO is to commence facilitating the preparation of plans for participants in the subclass when the CEO decides that it is appropriate to do so, having regard to the progress of the preparation of plans for participants in the relevant main class.
- 2.10 In making a decision under paragraph 2.8, or considering whether to make such a decision, the CEO must have regard to the following principles:
- that the commencement of the facilitation of the preparation of plans for persons who have individual funding arrangements for disability services with the State of New South Wales should be prioritised;
 - that the facilitation of the preparation of plans for supported accommodation residents should be done in a way that:

- (i) takes into account the intensive planning and support required for that facilitation; and
- (ii) enables, where practicable, participants who reside in the same home or facility to have their plans facilitated contemporaneously;
- (c) that where practicable, participants receiving services from the same provider should have their plans facilitated contemporaneously;
- (d) that the Agency should retain the capacity to facilitate the preparation of plans of participants who do not receive Commonwealth disability services or New South Wales disability services.

2.11 Paragraph 2.10 does not limit the matters that the CEO may take into account in making a decision.

Consultation

2.12 In making a decision under paragraph 2.9, or considering whether to make such a decision, the CEO must also, where practicable, seek the views of the Government of New South Wales and have regard to those views (if any).

2.13 If the table in paragraph 2.8 requires that a decision be made on or after a particular date, and the CEO is considering making that decision after that date, the CEO must, as early as possible:

- (a) seek the views of the Government of New South Wales 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 New South Wales 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—New South Wales) Rules 2016*.

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 *Legislation 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.

Commonwealth disability services means the following programs, services or allowances:

- (a) Australian Disability Enterprises;
- (b) Helping Children with Autism;
- (c) the Better Start for Children with Disability initiative;
- (d) the Continence Aids Payment Scheme;
- (e) Support for Day to Day Living in the Community—A Structured Activity Program;
- (f) Disability Employment Services—Work Based Personal Assistance;
- (g) Hearing Services Program;
- (h) Improved Support for People with Younger Onset Dementia;
- (i) Targeted Community Care—Mental Health;

- (j) Respite: Carer Support and Personal Helpers and Mentors component;
- (k) National Auslan Interpreter Booking and Payment Service;
- (l) After School Hours Care for Teenagers with Disability;
- (m) Partners in Recovery: Coordinated Support and Flexible Funding for people with severe and persistent mental illness and complex needs;
- (n) Respite Support for Carers of Young People with Severe or Profound Disability;
- (o) mobility allowance (under the *Social Security Act 1991*).

NDIS area has the same meaning as in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

New South Wales disability services means services provided or funded under the *Disability Services Act 1993* (NSW).

Schedule A

District	Districts are comprised of the following areas of New South Wales constituted under the <i>Local Government Act 1993 (NSW)</i> as at 1 January 2016
Central Coast	City of Gosford Wyong Shire
Hunter New England	Armidale Dumaresq City of Cessnock Dungog Shire Glen Innes Severn Gloucester Shire Great Lakes City of Greater Taree Gunnedah Shire Guyra Shire Gwydir Shire Inverell Shire City of Lake Macquarie Liverpool Plains Shire City of Maitland Moree Plains Shire Muswellbrook Shire Narrabri Shire City of Newcastle Port Stephens Singleton Tamworth Regional Tenterfield Shire Upper Hunter Shire Uralla Shire Walcha
Nepean Blue Mountains	City of Blue Mountains City of Hawkesbury City of Lithgow City of Penrith
Northern Sydney	Hornsby Shire Hunters Hill Municipality Ku-ring-gai Lane Cove Municipality Manly Mosman Municipality North Sydney Pittwater City of Ryde Warringah City of Willoughby
South Western Sydney	City of Bankstown Camden City of Campbelltown

District	Districts are comprised of the following areas of New South Wales constituted under the <i>Local Government Act 1993 (NSW)</i> as at 1 January 2016
	City of Fairfield City of Liverpool Wingecarribee Shire Wollondilly Shire
Southern NSW	Bega Valley Shire Bombala Cooma-Monaro Shire Eurobodalla Shire Goulburn Mulwaree Palerang City of Queanbeyan Snowy River Shire Upper Lachlan Shire Yass Valley
Western Sydney	City of Auburn City of Blacktown City of Holroyd City of Parramatta The Hills Shire
Illawarra Shoalhaven	Kiama Municipality City of Shellharbour City of Shoalhaven City of Wollongong
Mid North Coast	Bellingen Shire City of Coffs Harbour Kempsey Shire Nambucca Shire Port Macquarie-Hastings
Murrumbidgee	City of Albury Berrigan Shire Bland Shire Boorowa Carrathool Shire Conargo Shire Coolamon Shire Cootamundra Shire Corowa Shire Deniliquin Greater Hume Shire City of Griffith Gundagai Shire Harden Shire Hay Shire Jerilderie Shire Junee Shire Leeton Shire Lockhart Shire

District	Districts are comprised of the following areas of New South Wales constituted under the <i>Local Government Act 1993 (NSW)</i> as at 1 January 2016
	Murray Shire Murrumbidgee Shire Narrandera Shire Temora Shire Tumbarumba Shire Tumut Shire Urana Shire City of Wagga Wagga Wakool Shire Young Shire
Northern NSW	Ballina Shire Byron Shire Clarence Valley Kyogle City of Lismore Richmond Valley Tweed Shire
South Eastern Sydney	City of Botany Bay City of Hurstville City of Kogarah City of Randwick City of Rockdale Sutherland Shire City of Sydney - Inner and East Waverley Woollahra Municipality
Sydney	Ashfield Burwood Canada Bay Canterbury Leichhardt Marrickville Strathfield Sydney - South and West
Western NSW	Bathurst Regional Blayney Shire Bogan Shire Bourke Shire Brewarrina Shire Cabonne Cobar Shire Coonamble Shire Cowra Shire City of Dubbo Forbes Shire Gilgandra Shire Lachlan Shire

District	Districts are comprised of the following areas of New South Wales constituted under the <i>Local Government Act 1993 (NSW)</i> as at 1 January 2016
	Mid-Western Regional Narromine Shire Oberon City of Orange Parkes Shire Walgett Shire Warren Shire Warrumbungle Shire Weddin Shire Wellington
Far West	Balranald Shire City of Broken Hill Central Darling Shire Wentworth Shire