



National Disability Insurance Scheme (Facilitating the Preparation of Participants’ Plans – Tasmania) Rules 2016

made under sections 32 and 32A (other than subsection 32A(4)) of the *National Disability Insurance Scheme Act 2013* (the Act)

Compilation No. 1

Compilation date: 19 December 2017

Includes amendments up to: *National Disability Insurance Scheme
(Facilitating the Preparation of Participant’s
Plans – Tasmania) Amendment Rules 2017 –
F2017L01651*

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—Tasmania) Rules 2016

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

Prepared by the Department of Social Services

About this compilation

This compilation

This is a compilation of the *National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans – Tasmania) Rules 2016* that shows the text of the law as amended and in force on 19 December 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Citation

Interpretation

*National Disability Insurance Scheme (Facilitating the Preparation
of Participants' Plans - Tasmania) Rules 2016* 1

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 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 groups, known as classes, of participants.
- 1.3 These Rules explain how participants in Tasmania 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 Tasmania.
- 1.4 The phasing schedule is intended to give effect to agreements that have been reached between the Government of the Commonwealth and the Government of Tasmania.
- 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 Tasmania

- 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 Tasmania is detailed below.
- 2.2 The table in paragraph 2.6 sets out seven classes of Tasmanian 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.

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- 2.3 The CEO's decisions to commence facilitating the preparation of plans for classes are tied to the sequence specified in the table at paragraph 2.6. 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 area in Tasmania 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, including where there is an unmet need for the participant.

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 the preparation 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 seven classes of participants, and the time at 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	Period or circumstances in which the CEO is to commence the facilitation of the preparation of the participants' plans
Class 1	Participants who: a) are aged at least 15, and under 25; and b) were aged under 25 on 1 July 2013.	From the day on which these Rules commence.
Class 2	Participants aged at least 12, and under 25.	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, in light of the number of participants in the above classes whose plans have been dealt with and the number yet to be dealt with
Class 3	Participants aged at least 25, and under 29.	The CEO decides (on or after 1 January 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 the above classes whose plans have been dealt with and the number yet to be dealt with
Class 4	Participants aged at least 4, and under 12.	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 the above classes whose plans have been dealt with and the number yet to be dealt with

Class	Participants in the class	Period or circumstances in which the CEO is to commence the facilitation of the preparation of the participants' plans
Class 5	Participants aged at least 29, and under 35.	The CEO decides (on or after 1 January 2018) 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 the above classes whose plans have been dealt with and the number yet to be dealt with
Class 6	a) Participants aged under 4; or b) Participants aged at least 35, and under 50.	The CEO decides (on or after 1 July 2018) 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 the above classes whose plans have been dealt with and the number yet to be dealt with.
Class 7	Participants aged at least 50, and under 65.	The CEO decides (on or after 1 January 2019) 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 the above classes whose plans have been dealt with and the number yet to be dealt with.

2.6A The CEO may make a decision mentioned in column 3 of the table at paragraph 2.6 before the date mentioned for that decision. Such a decision may only be made if:

- (a) the CEO decides that the Agency has the capacity to commence the facilitation of the preparation of plans for participants in the relevant class before the date; and
- (b) the decision would not adversely affect the facilitation of the plans of participants in other classes; and
- (c) the Governments of Tasmania and the Commonwealth agree to the CEO making the decision.

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- 2.7 Participants who are co-residents in Tasmanian-funded shared Supported Accommodation will have their plans facilitated at the same time. As such, a participant who:
- (a) lives in Tasmanian-funded shared Supported Accommodation;
 - (b) lives with one or more participants who belong to one of the above classes; and
 - (c) would belong to a class later than a class to which one or more participants with whom they live belongs,
- will be considered to be within the earliest of the classes to which a participant with whom they live belongs.
- 2.8 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.
- 2.9 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 Tasmania 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 Tasmania 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.

Subclasses

- 2.10 Among the participants in Classes 1 to 7 (a main class), the CEO may decide that there are one or more classes (subclasses) of participants, constituted by reference to:
- (a) whether the participants have previously accessed supports; or
 - (b) the identity of the provider of services to the participants; or

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- (c) the kind of services provided to the participants; or
 - (d) for supported accommodation residents—the home or facility in which they reside; or
 - (e) the participant's age.
- 2.11 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.
- 2.12 In making a decision under paragraph 2.10 or 2.11, or considering whether to make such a decision, the CEO must have regard to the following principles:
- (a) 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 Tasmania should be prioritised;
 - (b) that the facilitation of the preparation of plans for shared 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 Tasmania disability services.
- 2.13 Paragraph 2.12 does not limit the matters that the CEO may take into account in making a decision.

Consultation

- 2.14 In making a decision under paragraph 2.10 or 2.11, or considering whether to make such a decision, the CEO must also, where practicable, seek the views of the Government of Tasmania and have regard to those views (if any).

Part 3 Other Matters

Citation

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

NDIS - see section 9 of the Act.

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

participant - see section 9 of the Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
<i>National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans – Tasmania) Rules 2016 – F2016L00795</i>	13 May 2016	14 May 2016	
<i>National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans – Tasmania) Amendment Rules 2017 – F2017L01651</i>	18 December 2017	19 December 2017	

National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans - Tasmania) Rules 2016

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Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Paragraph 2.3	am; F2017L01651
Paragraph 2.6A	ad; F2017L01651