



National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024

No. 81, 2024

***An Act to amend the *National Disability Insurance
Scheme Act 2013*, and for related purposes***

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(<https://www.legislation.gov.au/>)

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National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024

No. 81, 2024

An Act to amend the National Disability Insurance Scheme Act 2013, and for related purposes

[Assented to 5 September 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *National Disability Insurance Scheme Amendment
(Getting the NDIS Back on Track No. 1) Act 2024*.

No. 81, 2024 *National Disability Insurance Scheme Amendment (Getting the NDIS
Back on Track No. 1) Act 2024* 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	3 October 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of a legislative instrument (the *principal instrument*) amended or inserted by this Act, and any other provisions of the principal instrument, may be amended or repealed by an instrument made under the enabling provision for the principal instrument.

4 Review

- (1) The Minister must cause an independent review of the amendments made by this Act to be conducted as soon as practicable after the end of the 5-year period starting on the day this Act receives the Royal Assent.
- (2) The persons who conduct the review must:
- (a) consult with the public in conducting the review; and

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- (b) give the Minister a written report of the review in sufficient time to enable the Minister to comply with subsection (3).
 - (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 9 months after the end of that 5-year period.

5 New NDIS rules and legislative instruments

- (1) The Minister must, within 5 days after the commencement of this Act, prepare and publish a statement of the proposed timeframes for:
 - (a) seeking the agreement of the States and Territories to make the following:
 - (i) new category A rules;
 - (ii) new category C rules; and
 - (b) undertaking consultation with the States and Territories on the following:
 - (i) new category D rules;
 - (ii) new legislative instruments;
 - (iii) transitional rules; and
 - (c) undertaking consultation with the disability community on the following:
 - (i) new category A rules;
 - (ii) new category C rules;
 - (iii) new category D rules;
 - (iv) new legislative instruments;
 - (v) transitional rules.
- (2) The Minister must prepare and publish an updated statement of the proposed timeframes as soon as practicable after a change in the proposed timeframes.
- (3) A statement prepared under subsection (1) or (2) must be published on a website maintained by the Department administered by the Minister.
- (4) In this section:

new category A rules means rules proposed to be made under section 209 of the *National Disability Insurance Scheme Act 2013* for the purposes of any of the following provisions of that Act (as in force immediately after the commencement of this Act):

- (a) subsections 10(1) and (4);
- (b) section 27;
- (c) subsection 29(3);
- (d) paragraph 30(6A)(f);
- (e) subsections 30A(1) and (2) and paragraphs 30A(7A)(f) and (9)(a);
- (f) subparagraph 32D(6)(b)(ii), paragraph 32D(6)(f) and subsection 32D(8);
- (g) subsection 32E(4);
- (h) paragraph 32F(7)(c);
- (i) subsection 32G(4);
- (j) paragraph 32H(2)(d);
- (k) section 32J;
- (l) subsection 32L(7A);
- (m) paragraph 36(3A)(f);
- (n) subsection 41(3);
- (o) paragraph 43(2C)(c) and subsection 43(2D);
- (p) subparagraph 44(1)(b)(ii) and subsections 44(3), (4) and (5);
- (q) subparagraph 47A(1AB)(j)(iii) and paragraph 47A(2A)(f);
- (r) paragraph 74(3C)(c), subparagraph 74(4)(b)(ii) and subsection 74(6).

new category C rules means rules proposed to be made under section 209 of the *National Disability Insurance Scheme Act 2013* for the purposes of either of the following provisions of that Act (as in force immediately after the commencement of this Act):

- (a) paragraph 32(4)(b);
- (b) paragraph 32D(4)(a).

new category D rules means rules proposed to be made under section 209 of the *National Disability Insurance Scheme Act 2013* for the purposes of any of the following provisions of that Act (as in force immediately after the commencement of this Act):

- (a) subsection 32B(3);

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- (b) paragraph 45(5)(e);
 - (c) subsections 73U(4A) and (9A).

new legislative instruments means a legislative instrument proposed to be made under any of the following provisions of the *National Disability Insurance Scheme Act 2013* (as in force immediately after the commencement of this Act):

- (a) subsection 32B(1);
- (b) subsection 32C(2);
- (c) subsection 32K(2);
- (d) subsection 32L(8);
- (e) subsection 33(2E).

transitional rules means rules proposed to be made under subitem 138(1) of Schedule 1 to this Act.

Schedule 1—Main amendments

Part 1—Amendment of the National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme Act 2013

1 Subparagraph 3(3)(c)(i)

Repeal the subparagraph, substitute:

- (i) disability strategies agreed to by the Commonwealth and each host jurisdiction from time to time; and

2 At the end of subsection 3(3)

Add:

Note: For subparagraph (c)(i), in 2024 the relevant strategy was Australia's Disability Strategy 2021-2031, accessible through the Department's website.

3 Section 8 (paragraph (c) of the paragraph beginning "The National Disability Insurance Scheme comprises")

Repeal the paragraph, substitute:

- | |
|---|
| <ul style="list-style-type: none">(c) individual plans under which certain supports (called NDIS supports) will be funded for certain people (called participants) (Chapter 3). |
|---|

4 Section 9

Insert:

Disability Minister for a host jurisdiction means the Minister of the host jurisdiction who is a member of the Ministerial Council.

First Minister for a host jurisdiction means:

- (a) if the host jurisdiction is a State—the Premier of the State; or
- (b) if the host jurisdiction is a Territory—the Chief Minister of the Territory.

flexible funding has the meaning given by paragraph 32E(2)(a).

funding component amount, for a group of reasonable and necessary supports funded under an old framework plan, has the meaning given by paragraph 33(2A)(c).

funding period:

- (a) for flexible funding provided under a new framework plan—has the meaning given by paragraph 32F(2)(a); and
- (b) for funding provided under a new framework plan for a stated support or class of stated supports—has the meaning given by paragraph 32G(3)(a); and
- (c) for funding provided under an old framework plan for all reasonable and necessary supports, or a group of reasonable and necessary supports, funded under the plan—has the meaning given by paragraph 33(2A)(d).

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

4A Section 9 (definition of *host jurisdiction Minister*)

Repeal the definition, substitute:

host jurisdiction Minister for a host jurisdiction means a Minister of the host jurisdiction who is:

- (a) a member of the Ministerial Council; or
- (b) if the host jurisdiction is a State—the Premier of the State; or
- (c) if the host jurisdiction is a Territory—the Chief Minister of the Territory.

5 Section 9 (definition of *NDIS amount*)

Omit “reasonable and necessary supports”, substitute “supports (other than general supports)”.

6 Section 9

Insert:

NDIS support, for a participant, has the meaning given by section 10.

needs assessment report, for a new framework plan, means the report of an assessment undertaken in accordance with section 32L for the purposes of the plan.

new framework plan has the meaning given by subsection 32A(1).

old framework plan has the meaning given by subsection 32A(2).

7 Section 9 (definition of *participant*)

Omit “and 30”, substitute “, 30 and 30A”.

8 Section 9 (definition of *participant’s statement of goals and aspirations*)

Omit “subsection 33(1)”, substitute “subsections 32D(1) and 33(1)”.

9 Section 9

Insert:

reasonable and necessary budget for a new framework plan means the reasonable and necessary budget specified in the plan under paragraph 32D(2)(a).

10 Section 9 (definition of *reassessment date*)

Repeal the definition, substitute:

reassessment date of a participant’s plan means:

- (a) if the plan is a new framework plan—the day after the end of the maximum period of effect specified in the plan under paragraph 32D(2)(d); or
- (b) if the plan is an old framework plan—the date specified in the plan under paragraph 33(2)(c).

11 Section 9

Insert:

stated support for a participant has the meaning given by subsection 32E(4).

12 Section 9 (definition of *statement of participant supports*)

Omit “subsection 33(2)”, substitute “subsections 32D(2) and 33(2)”.

13 Section 9

Insert:

total funding amount:

- (a) for flexible funding provided under a new framework plan—means the amount specified in the plan under paragraph 32E(2)(a); and
- (b) for a stated support or class of stated supports funded under a new framework plan—means the amount specified in the plan for the stated support or class of stated supports under paragraph 32G(2)(a); and
- (c) for reasonable and necessary supports funded under an old framework plan—means an amount specified in the plan under paragraph 33(2A)(a).

14 After section 9A

Insert:

10 Definition of *NDIS support*

Supports that are NDIS supports

- (1) Subject to subsections (4) and (9), a support is an ***NDIS support*** for a person who is a participant or prospective participant if the support is declared by National Disability Insurance Scheme rules made for the purposes of this subsection to be an NDIS support for:
 - (a) participants or prospective participants generally; or
 - (b) a class of participants or prospective participants that includes the person.

Note: The National Disability Insurance Scheme rules may declare a support for the purposes of this subsection by identifying a class of supports (see subsection 13(3) of the *Legislation Act 2003*).

- (2) Before making National Disability Insurance Scheme rules declaring a support for the purposes of subsection (1), the Minister must be satisfied:
 - (a) for rules to which paragraph (1)(a) applies—that the support is appropriately funded or provided through the National Disability Insurance Scheme for participants or prospective participants generally; or

- (b) for rules to which paragraph (1)(b) applies—that the support is appropriately funded or provided through the National Disability Insurance Scheme for participants, or prospective participants, in the relevant class.
- (3) National Disability Insurance Scheme rules may declare a support for the purposes of subsection (1) only if at least one of the following applies:
- (a) the declaration of the support implements Australia’s obligations under:
 - (i) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006; or
 - (ii) any other agreement with one or more other countries;
 - (b) the declaration of the support enables the provision of sickness benefits.

Note: For subparagraph (a)(i), the Convention on the Rights of Persons with Disabilities is in Australian Treaty Series 2008 No. 12 ([2008] ATS 12) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Supports that are not NDIS supports

- (4) The National Disability Insurance Scheme rules may declare that a support is not an **NDIS support** for:
- (a) participants or prospective participants generally; or
 - (b) a class of participants or prospective participants.
- Note: The National Disability Insurance Scheme rules may declare a support for the purposes of this subsection by identifying a class of supports (see subsection 13(3) of the *Legislation Act 2003*).
- (5) Before making National Disability Insurance Scheme rules declaring a support for the purposes of subsection (4), the Minister must be satisfied:
- (a) for rules to which paragraph (4)(a) applies—that the support is not appropriately funded or provided through the National Disability Insurance Scheme for participants or prospective participants generally; or
 - (b) for rules to which paragraph (4)(b) applies—that the support is not appropriately funded or provided through the National

Disability Insurance Scheme for participants, or prospective participants, in the relevant class.

- (6) The CEO may determine, in writing, that a support is taken to not be declared under subsection (4) in relation to a participant if:
- (a) the support is prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and
 - (b) the support would, apart from subsection (4), be an NDIS support for the participant; and
 - (c) the participant applies to the CEO in accordance with subsection (7) for the determination; and
 - (d) the CEO is satisfied that:
 - (i) the support would replace one or more other supports that are NDIS supports for the participant; and
 - (ii) the cost of the support is the same or lower than the total of the costs of the supports it would replace; and
 - (iii) the support would provide the same or a better outcome for the participant than the supports it would replace; and
 - (iv) any other conditions specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph are met in relation to the support, the participant, or both.

Note 1: A determination may be revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: The National Disability Insurance Scheme rules may prescribe a support for the purposes of paragraph (a) by identifying a class of supports (see subsection 13(3) of the *Legislation Act 2003*).

- (7) An application under paragraph (6)(c) must:
- (a) be in the form (if any) approved by the CEO; and
 - (b) include any information, and be accompanied by any documents, required by the CEO; and
 - (c) be made in accordance with any other requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph, which may include requirements as to the circumstances in which an application may, or may not, be made.

- (8) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of subsection (6), including by prescribing requirements with which the CEO must comply, methods or criteria that the CEO is to apply, or matters that the CEO may, must or must not take into account, in deciding whether to make a determination under that subsection.
- (9) A support is not an *NDIS support* for a participant or prospective participant if the support consists of the provision of:
- (a) sexual services; or
 - (b) alcohol; or
 - (c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

15 Subsection 10B(1) (note)

Omit “Note”, substitute “Note 1”.

16 At the end of subsection 10B(1)

Add:

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

17 Paragraph 19(2)(b)

Repeal the paragraph, substitute:

- (b) either of the following apply:
- (i) the CEO decides that the person does not meet the access criteria, or is taken to have so decided because of subsection 21(3);
 - (ii) the person becomes a participant in the National Disability Insurance Scheme as a result of the request but the CEO subsequently decides under subsection 30(1) or (5), paragraph 30A(1)(c) or subsection 30A(7) to revoke the person’s status as such a participant;

18 Subsection 21(2)

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(c), the CEO must separately consider and decide:
- (a) whether or not the prospective participant meets the disability requirements; and
 - (b) whether or not the prospective participant meets the early intervention requirements.

19 Paragraph 24(1)(e)

Omit “support”, substitute “NDIS supports”.

20 Subsections 24(2) and (3)

Omit “support”, substitute “NDIS supports”.

21 At the end of subsection 24(4)

Add:

- Note 1: The time at which a requirement in this section needs to be met is the time the matter falls to be determined. For an access request, that time is the time of considering the request (see paragraph 21(1)(c)).
- Note 2: National Disability Insurance Scheme rules may be made in relation to this section under subsection 27(1).

22 After paragraph 25(1)(c)

Insert:

- ; and (d) the CEO is satisfied any early intervention supports that would be likely to benefit the person as mentioned in paragraphs (b) and (c) would be NDIS supports for the person.

23 Subsection 25(3)

Repeal the subsection, substitute:

- Note 1: The time at which a requirement in this section needs to be met is the time the matter falls to be determined. For an access request, that time is the time of considering the request (see paragraph 21(1)(c)).
- Note 2: National Disability Insurance Scheme rules may be made in relation to this section under subsection 27(1).

24 Subsection 26(3)

After “reasonable for the prospective participant”, insert “, or the other person mentioned in paragraph (1)(a),”.

25 Section 27

Repeal the section, substitute:

27 National Disability Insurance Scheme rules relating to disability requirements and early intervention requirements

- (1) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of section 24 (disability requirements) or 25 (early intervention requirements).
- (2) Without limiting subsection (1), National Disability Insurance Scheme rules made for the purposes of that subsection may prescribe:
 - (a) methods or criteria to be applied, or matters that may, must or must not be taken into account, for the purposes of either of those sections; or
 - (b) circumstances in which a matter relevant to the application of either of those sections is taken to exist or to not exist in relation to a person.

26 Subsection 28(2)

Repeal the subsection, substitute:

- (2) The CEO must give written notice of the decision to the participant, stating:
 - (a) the date on which the person became a participant; and
 - (b) whichever of the following applies:
 - (i) that the CEO is satisfied the participant meets the early intervention requirements;
 - (ii) that the CEO is satisfied the participant meets the disability requirements;
 - (iii) that the CEO is satisfied the participant meets both the early intervention requirements and the disability requirements.

27 Paragraph 29(1)(c)

Omit “section 30”, substitute “subsection 30(1) or (5), paragraph 30A(1)(c) or subsection 30A(7)”.

28 Subsection 29(2)

Repeal the subsection, substitute:

- (2) A person is not entitled to be paid NDIS amounts so far as the amounts relate to supports that are acquired or provided after the person ceases to be a participant.
- (3) The National Disability Insurance Scheme rules may specify circumstances in which specified supports are taken for the purposes of subsection (2) to be, or not to be, acquired or provided after the person ceases to be a participant.

29 Before subsection 30(1)

Insert:

Circumstances in which participant status may be revoked

30 Subsection 30(2)

Repeal the subsection, substitute:

Requesting information and reports

- (2) If the CEO is considering revoking a participant’s status as a participant in the National Disability Insurance Scheme under subsection (1), the CEO may make one or more requests under subsection (3) for the purposes of deciding whether or not to do so.
- (3) The requests the CEO may make under this subsection are as follows:
 - (a) that the participant, or another person, provide information that is reasonably necessary for deciding whether or not to revoke the participant’s status as a participant in the National Disability Insurance Scheme;
 - (b) subject to subsection (3A), that the participant do either or both of the following:

- (i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;
 - (ii) undergo, whether or not at a particular place, a medical, psychiatric, psychological or other examination, conducted by an appropriately qualified person, and provide to the CEO the report, in the approved form, of the person who conducts the examination.
- (3AA) A request under subsection (3) must be made in writing.
- Note: A request may be rescinded or varied under subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3A) The CEO must not request that the participant undergo an assessment under subparagraph (3)(b)(i) or an examination under subparagraph (3)(b)(ii) unless the CEO is satisfied that the report of the assessment or examination would provide information that the CEO cannot otherwise reasonably obtain.
- (4) If:
- (a) information or one or more reports are requested under subsection (3); and
 - (b) the information and each such report are received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;
- the CEO must:
- (c) decide whether or not to revoke the participant's status as a participant in the National Disability Insurance Scheme; or
 - (d) make a further request under subsection (3).
- (5) If:
- (a) information or one or more reports are requested under subsection (3); and
 - (b) the information and each such report are not received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;
- the CEO may revoke the participant's status as a participant in the National Disability Insurance Scheme.
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- (6) However, the CEO must not revoke the participant's status as a participant in the National Disability Insurance Scheme under subsection (5) if the CEO is satisfied that it was reasonable for the participant, or the other person mentioned in paragraph (3)(a), not to have complied with the request made by the CEO within that period.
- (6A) In deciding for the purposes of subsection (6) whether or not it was reasonable for a participant or other person not to have complied with a request within a particular period, the CEO must have regard to the following matters:
- (a) the length of that period;
 - (b) any previous failures by the participant to comply with a request for information made under this Act;
 - (c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;
 - (d) the length of time since the CEO was last provided with information relevant to the decision whether or not to revoke the participant's status as a participant;
 - (e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;
 - (f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;
 - (g) any other matters the CEO considers relevant.

Notice of decisions

- (7) The CEO must give the participant written notice of a revocation under subsection (1) or (5), stating the date on which the revocation takes effect.

Section 30A does not limit this section

- (8) Section 30A does not limit this section.

31 At the end of Part 1 of Chapter 3

Add:

30A Requirement to consider status of certain participants

Circumstances in which CEO must consider participant's status

- (1) If a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection applies in relation to a participant, the CEO must:
 - (a) decide whether or not the participant meets the early intervention requirements; and
 - (b) if the CEO decides under paragraph (a) that the participant does not meet the early intervention requirements—decide whether or not the participant meets the disability requirements; and
 - (c) if the CEO decides under paragraph (b) that the participant does not meet the disability requirements—revoke the participant's status as a participant in the National Disability Insurance Scheme.
- (2) The National Disability Insurance Scheme rules may prescribe requirements with which the CEO must comply, criteria that the CEO is to apply, or matters to which the CEO may, must or must not have regard, in making a decision under subsection (1).
- (3) Any such rules apply in addition to, and not instead of, National Disability Insurance Scheme rules prescribed for the purposes of subsection 27(1).

Requesting information and reports

- (4) The CEO may make one or more requests under subsection (5) for the purposes of making a decision under subsection (1).
- (5) The requests the CEO may make under this subsection are as follows:
 - (a) that the participant, or another person, provide information that is reasonably necessary for making the decision;
 - (b) subject to subsection (5A), that the participant do either or both of the following:
 - (i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

- (ii) undergo, whether or not at a particular place, a medical, psychiatric, psychological or other examination, conducted by an appropriately qualified person, and provide to the CEO the report, in the approved form, of the person who conducts the examination.

(5AA) A request under subsection (5) must be made in writing.

Note: A request may be rescinded or varied under subsection 33(3) of the *Acts Interpretation Act 1901*.

(5A) The CEO must not request that the participant undergo an assessment under subparagraph (5)(b)(i) or an examination under subparagraph (5)(b)(ii) unless the CEO is satisfied that the report of the assessment or examination would provide information that the CEO cannot otherwise reasonably obtain.

(6) If:

- (a) information or one or more reports are requested under subsection (5); and
- (b) the information and each such report are received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

the CEO must, within 14 days after the last information or report is received:

- (c) make the decision under subsection (1); or
- (d) make a further request under subsection (5).

(7) If:

- (a) information or one or more reports are requested under subsection (5); and
- (b) the information and each such report are not received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

the CEO must revoke the participant's status as a participant in the National Disability Insurance Scheme, unless the CEO is satisfied that it was reasonable for the participant, or the other person mentioned in paragraph (5)(a), not to have complied with the request made by the CEO within that period.

(7A) In deciding for the purposes of subsection (7) whether or not it was reasonable for a participant or other person not to have complied

with a request within a particular period, the CEO must have regard to the following matters:

- (a) the length of that period;
- (b) any previous failures by the participant to comply with a request for information made under this Act;
- (c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;
- (d) the length of time since the CEO was last provided with information relevant to the making of the decision under subsection (1);
- (e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;
- (f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;
- (g) any other matters the CEO considers relevant.

Notice of decisions

- (8) The CEO must give a participant written notice of the following:
 - (a) a decision of the CEO that the circumstance mentioned in subsection (1) applies in relation to the participant;
 - (b) a decision under paragraph (1)(a) or (b) in relation to the participant;
 - (c) a decision under paragraph (1)(c) or subsection (7) to revoke the participant's status as a participant in the National Disability Insurance Scheme.
- (9) The notice must state:
 - (a) any details prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and
 - (b) if paragraph (8)(c) applies—the date on which the revocation takes effect.

32 Division 2 of Part 2 of Chapter 3 (after the heading)

Insert:

Subdivision A—Facilitating preparation of participants’ plans

33 Before subsection 32(1)

Insert:

Initial plan

34 Subsection 32(2)

After “participant’s plan”, insert “under subsection (1)”.

35 At the end of section 32

Add:

Subsequent plans

- (3) The CEO must also facilitate the preparation of a plan for a participant if:
 - (a) the CEO decides under subparagraph 48(7)(b)(ii) or 49(1)(b)(ii) to prepare a new plan with the participant; or
 - (b) the CEO gives the participant notice under subsection 32B(2) that the participant is to have new framework plans.
- (4) The CEO must commence facilitating the preparation of the participant’s plan under subsection (3):
 - (a) unless paragraph (b) applies—as soon as practicable after the event mentioned in paragraph (3)(a) or (b) occurs; or
 - (b) if the National Disability Insurance Scheme rules specify a number of days for the purposes of this paragraph—within that number of days after the day the event mentioned in paragraph (3)(a) or (b) occurs.

Note: The CEO may suspend the preparation of a new framework plan if information or reports requested for the purposes of the undertaking of an assessment under section 32L are not received (see subparagraph 36(3)(b)(i)).

36 After section 32

Insert:

32A Kinds of plans

- (1) A *new framework plan* is a plan prepared in accordance with Subdivision B.
- (2) An *old framework plan* is a plan prepared in accordance with Subdivision C.

32B Participants that are to have new framework plans

- (1) The National Disability Insurance Scheme rules may specify:
 - (a) classes of participants that are to have new framework plans; and
 - (b) for each class so specified—the period within which the CEO must give notice under subsection (2) to participants in the class.
- (2) The CEO must, within the period specified for the purposes of paragraph (1)(b) for a class, give a participant in the class written notice that the participant is to have new framework plans.
- (3) The notice must include the details (if any) specified in the National Disability Insurance Scheme rules for the purposes of this subsection.

32BA Notice of impairments

Giving notice of impairments

- (1) The CEO must give a participant a notice in writing in accordance with subsection (2):
 - (a) as soon as practicable after the participant becomes a participant; or
 - (b) if a circumstance specified in the National Disability Insurance Scheme rules for the purposes of this paragraph applies in relation to the participant.
- (2) The notice must state:
 - (a) if the participant meets the disability requirements—the categories of impairments under subsection (3) that cover the

- impairments in relation to which the participant meets those requirements; and
- (b) if the participant meets the early intervention requirements because of subparagraph 25(1)(a)(i) or (ii)—the categories of impairments under subsection (3) that cover the impairments in relation to which the participant meets those requirements; and
 - (c) if the participant meets the early intervention requirements because of subparagraph 25(1)(a)(iii)—that the participant has developmental delay.
- (3) Each of the following is a category of impairments for the purposes of paragraphs (2)(a) and (b):
- (a) intellectual impairments;
 - (b) cognitive impairments;
 - (c) neurological impairments;
 - (d) sensory impairments;
 - (e) physical impairments;
 - (f) impairments to which a psychosocial disability is attributable.
- (4) A notice given under paragraph (1)(b) replaces any previous notice given under paragraph (1)(a) or (b) to the participant.

Varying notice of impairments

- (5) The CEO may vary a notice given under subsection (1) if:
- (a) either:
 - (i) the participant applies for the variation in accordance with subsection (6); or
 - (ii) circumstances specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph exist; and
 - (b) the CEO is satisfied that a statement in the notice is not, or is no longer, correct; and
 - (c) any other conditions specified in the National Disability Insurance Scheme rules for the purposes of this paragraph are met.
- (6) An application under subparagraph (5)(a)(i) must:
-

- (a) be in the form (if any) approved by the CEO; and
- (b) include any information, and be accompanied by any documents, required by the CEO; and
- (c) be made in accordance with any other requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph, which may include requirements as to the circumstances in which an application may, or may not, be made.

Subdivision B—Content of new framework plans

32C Application of this Subdivision

This Subdivision applies in relation to a plan for a participant if:

- (a) a new framework plan has at any time come into effect for the participant; or
- (b) the participant has been given a notice under subsection 32B(2) that the participant is to have new framework plans; or
- (c) the CEO starts to prepare the plan after the end of the following period starting on the commencement of this section:
 - (i) 5 years (subject to subparagraph (ii));
 - (ii) such shorter or longer period as is specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph.

Note: If this Subdivision does not apply in relation to a plan for a participant, see Subdivision C.

32D Matters that must be included in a participant's plan

Participant's statement of goals and aspirations

- (1) A participant's plan must include a statement (the ***participant's statement of goals and aspirations***) prepared by the participant that specifies:
 - (a) the goals, objectives and aspirations of the participant; and
 - (b) the environmental and personal context of the participant's living, including the participant's:

- (i) living arrangements; and
- (ii) informal community supports and other community supports; and
- (iii) social and economic participation.

Statement of participant supports

- (2) A participant's plan must include a statement (the ***statement of participant supports***), prepared with the participant and approved by the CEO, that specifies:
- (a) the participant's reasonable and necessary budget in accordance with sections 32E to 32K; and
 - (b) the general supports (if any) that will be provided to, or in relation to, the participant; and
 - (c) having regard to the needs assessment report for the plan, whichever of the following applies:
 - (i) that the participant meets the disability requirements;
 - (ii) that the participant meets the early intervention requirements;
 - (iii) that the participant meets both the disability requirements and the early intervention requirements; and
 - (d) the plan's maximum period of effect, starting on the day the plan is approved; and
 - (e) any circumstances in which the Agency must reassess the plan under Division 4; and
 - (f) the management of the funding for supports under the plan (see also Division 3); and
 - (g) the management of other aspects of the plan.

How general supports may be specified in plan

- (3) The general supports that will be provided under the National Disability Insurance Scheme may be specifically identified in the plan or described generally, whether by reference to a specified purpose or otherwise.

Time limits for approving statement of participant supports

- (4) The CEO must decide whether or not to approve the statement of participant supports:
- (a) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph (which may take account of section 36 (information and reports) and subsection 32L(7) (replacement assessments under section 32L)); or
 - (b) if there are no such rules—as soon as reasonably practicable, including what is reasonably practicable having regard to section 36 (information and reports) and subsection 32L(7) (replacement assessments under section 32L).
- (5) However, subsection (4) does not apply if the preparation of the participant's plan is suspended under subparagraph 36(3)(b)(i) (which deals with failure to provide information or reports for an assessment under section 32L).

Requirements for CEO in approving statement of participant supports

- (6) In deciding whether or not to approve a statement of participant supports under subsection (2), the CEO must:
- (a) have regard to the participant's statement of goals and aspirations; and
 - (b) for any general supports specified under paragraph (2)(b)—be satisfied:
 - (i) that the supports will be, or are likely to be, effective and beneficial for the participant, having regard to current good practice; and
 - (ii) of any other matters specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph; and
 - (c) have regard to the principle that a participant should manage the participant's plan to the extent that the participant wishes to do so; and
 - (d) have regard to the operation and effectiveness of any previous plans of the participant; and

- (e) have regard to whether section 46 (acquittal of NDIS amounts) was complied with in relation to any previous plan for the participant; and
- (f) be satisfied of any matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

Agency-managed funding—supports to be provided only by a registered NDIS provider

- (7) To the extent that the funding for supports under a participant's plan is managed by the Agency, the plan must provide that the supports are to be provided only by a registered NDIS provider.

Plan may deal with additional matters

- (8) A participant's plan may include additional matters, including such additional matters as are prescribed by the National Disability Insurance Scheme rules.

Note: For example, a participant's plan may include arrangements for ongoing contact with the Agency.

Statement of goals and aspirations to be recorded in writing

- (9) A participant's statement of goals and aspirations need not be prepared by the participant in writing, but if it is prepared other than in writing, the Agency must record it in writing.

Note: Section 38 requires a copy of a participant's plan to be provided to the participant.

32E Reasonable and necessary budget—entitlement to flexible funding or stated supports

- (1) A participant's reasonable and necessary budget must provide that funding will be provided under the plan to or in relation to the participant in accordance with subsections (2) and (3), so far as they are applicable.

Flexible funding

- (2) If the needs assessment report for the plan indicates that the participant needs at least some supports that are NDIS supports but not stated supports for the participant, the reasonable and necessary budget must provide:
- (a) that certain funding (*flexible funding*), up to a specified amount (the *total funding amount*), will be provided under the plan to or in relation to the participant for those supports; and
 - (b) that the flexible funding may be spent on any NDIS supports for the participant and only on such supports, subject to any restrictions under subsection 32F(6) that require the funding to be spent on particular supports.

Note 1: For additional rules about flexible funding, see section 32F.

Note 2: The total funding amount for flexible funding is worked out under section 32K.

Note 3: The reasonable and necessary budget may specify requirements relating to the acquisition or provision of supports (see section 32H).

Note 4: A debt may arise if funding is spent on supports that are not NDIS supports or if it is spent other than in accordance with the plan (see subsections 46(1) to (1B) (acquittal of NDIS amounts) and 182(3) (debts due to the Agency)).

Stated supports

- (3) If:
- (a) the needs assessment report for the plan indicates that the participant needs a particular support or class of supports; and
 - (b) the support, or each support in the class, is both an NDIS support and a stated support for the participant;
- the reasonable and necessary budget must provide, for each such support or class of supports:
- (c) that certain funding will be provided under the plan to or in relation to the participant for that support or class of supports; and
 - (d) that the funding provided for that support or class of supports may be spent:

- (i) only on the support, or supports in the class, for which the particular funding is provided; and
- (ii) only on supports that are NDIS supports for the participant.

Note 1: For additional rules about stated supports, see section 32G.

Note 2: The reasonable and necessary budget may specify requirements relating to the acquisition or provision of supports (see section 32H).

Note 3: A debt may arise if funding is spent on supports that are not NDIS supports or if it is spent other than in accordance with the plan (see subsections 46(1) to (1B) (acquittal of NDIS amounts) and 182(3) (debts due to the Agency)).

- (4) A support is a **stated support** for a participant if the support is declared by National Disability Insurance Scheme rules made for the purposes of this subsection to be a stated support:
- (a) for participants generally; or
 - (b) for a class of participants that includes the participant.

Note: The National Disability Insurance Scheme rules may declare a support for the purposes of this subsection by identifying a class of supports (see subsection 13(3) of the *Legislation Act 2003*).

32F Reasonable and necessary budget—flexible funding

- (1) This section applies if a participant’s reasonable and necessary budget provides that flexible funding is to be provided under the plan.

Funding periods for flexible funding

- (2) The reasonable and necessary budget must provide:
- (a) that the flexible funding will be provided under the plan during specified periods (each of which is a **funding period**); and
 - (b) when each funding period for that funding starts and ends; and
 - (c) the proportion of the total funding amount for flexible funding that will be provided under the plan during each of those funding periods.
- (3) For the purposes of paragraph (2)(b):

- (a) a funding period must be no more than 12 months; and
 - (b) the duration of a particular funding period may be different from the duration of any other funding period; and
 - (c) the first funding period for flexible funding must start on the day the plan comes into effect; and
 - (d) each other funding period for flexible funding must start immediately after the end of the immediately preceding funding period for that funding.
- (4) For the purposes of paragraph (2)(c), the proportion for a particular funding period may be nil.

Rolling over unspent funding

- (5) The reasonable and necessary budget must provide that the amount of flexible funding that will be provided during a funding period will be increased above the proportion provided for the funding period under paragraph (2)(c) by an amount equal to the amount by which:
- (a) the amount of flexible funding that could have been provided under the plan during the immediately preceding funding period; exceeds
 - (b) the amount of flexible funding that was actually provided.

Restriction on how flexible funding is spent

- (6) If the CEO is satisfied that a circumstance mentioned in subsection (7) exists, the reasonable and necessary budget may provide that the provision of flexible funding under the plan is subject to the restriction that one or more specified proportions of the flexible funding provided during specified funding periods may be spent only on specified NDIS supports for the participant.
- (7) For the purposes of subsection (6), the circumstances are as follows:
- (a) the participant would be likely to suffer physical, mental or financial harm if the flexible funding were not subject to the restriction;
 - (b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to any of the participant's plans;

- (c) a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Note: National Disability Insurance Scheme rules may be made in relation to this section under section 32J.

32G Reasonable and necessary budget—stated supports

- (1) This section applies if a participant’s reasonable and necessary budget provides that funding will be provided under the plan for a particular stated support or a particular class of stated supports.

Specifying either a total funding amount or requirements for provision or acquisition of stated supports

- (2) The reasonable and necessary budget must, for each stated support or class of stated supports, do at least one of the following:
- (a) provide that funding will only be provided under the plan for the support or class of supports up to an amount (the ***total funding amount***) specified for the purposes of this paragraph for the support or class of supports;
 - (b) specify requirements under subsection 32H(1) in relation to the acquisition or provision of the support or class of supports.

Note: The total funding amount for a stated support or class of stated supports is worked out under section 32K.

Funding periods for stated supports

- (3) Subject to subsection (4), the reasonable and necessary budget must, for each stated support or class of stated supports for which a total funding amount is specified, provide:
- (a) that funding will be provided under the plan for the support or class of supports during periods (each of which is a ***funding period***) specified for the support or class of supports; and
 - (b) when each funding period for the support or class of supports starts and ends; and
 - (c) the proportion of the total funding amount for the support or class of supports that will be provided under the plan during each funding period for the support or class of supports.

- (4) The National Disability Insurance Scheme rules may provide that subsection (3) does not apply in relation to supports prescribed for the purposes of this subsection.
- (5) For the purposes of paragraph (3)(b):
 - (a) a funding period must be no more than 12 months; and
 - (b) the duration of a particular funding period may be different from the duration of any other funding period; and
 - (c) the first funding period for a stated support or class of stated supports must start on the day the plan comes into effect; and
 - (d) each other funding period for a stated support or class of stated supports must start immediately after the end of the immediately preceding funding period for that support or class of supports.

Rolling over unspent funding

- (6) If the reasonable and necessary budget provides as mentioned in subsection (3), it must also provide that the amount of funding that will be provided during a funding period for a stated support or class of stated supports will be increased above the proportion provided for the funding period under paragraph (3)(c) by an amount equal to the amount by which:
 - (a) the amount of funding that could have been provided for that stated support or class of stated supports under the plan during the immediately preceding funding period; exceeds
 - (b) the amount of funding that was actually provided for that stated support or class of stated supports.

Note: National Disability Insurance Scheme rules may be made in relation to this section under section 32J.

32H Reasonable and necessary budget—requirements relating to acquisition or provision of supports

- (1) A participant's reasonable and necessary budget may provide that flexible funding, or funding for stated supports, will be provided under the plan for particular supports specified in the plan only if specified requirements are complied with in relation to the acquisition or provision of the supports.

- (2) Requirements specified under subsection (1) may include the following:
- (a) a requirement that the supports be provided by a specified person or persons in a specified class;
 - (b) a requirement that a specified process be undertaken before the supports are acquired or provided;
 - (c) a requirement that specified conditions be satisfied in relation to the participant before the supports are acquired or provided;
 - (d) a requirement to comply with any requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

Note: National Disability Insurance Scheme rules may be made in relation to this section under section 32J.

32J Reasonable and necessary budget—National Disability Insurance Scheme rules

The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of section 32F, 32G or 32H, including but not limited to:

- (a) requirements with which the CEO must comply; and
- (b) methods or criteria that the CEO is to apply; and
- (c) matters that the CEO may, must or must not take into account;

in making a decision under any of those sections.

32K Reasonable and necessary budget—working out total funding amounts

- (1) The following amounts specified in the reasonable and necessary budget must be worked out by applying the information in the needs assessment report for the plan, in so far as the report relates to the participant's need for NDIS supports arising from impairments in relation to which the participant meets the disability requirements or the early intervention requirements, in accordance with the applicable method specified in the National Disability Insurance Scheme rules for the purposes of this subsection:

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- (a) the total funding amount for flexible funding (see paragraph 32E(2)(a));
- (b) the total funding amount for a stated support or class of stated supports (see paragraph 32G(2)(a)).

Note: In making National Disability Insurance Scheme rules for the purposes of this subsection, the Minister must have regard to the objects and principles of this Act (see in particular the principles set out in subsections 4(5), (9A) and (11)) and the financial sustainability of the National Disability Insurance Scheme: see subsection 209(3).

- (3A) The Minister must also be satisfied that those rules adequately take account of the variety of factors that may affect a participant's need for NDIS supports.

Note: Examples of those factors include environmental factors, and a participant's need for NDIS supports arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements being impacted by another impairment in relation to which the participant does not meet either of those requirements.

- (4) Without limiting subsection (1), National Disability Insurance Scheme rules made for the purposes of that subsection may relate to how to take into account:
- (a) lump sum compensation payments that specifically include an amount for the cost of supports; and
 - (b) lump sum compensation payments that do not specifically include an amount for the cost of supports; and
 - (c) periodic compensation payments that the CEO is satisfied include an amount for the cost of supports; and
 - (d) amounts that a participant or prospective participant did not receive by way of a compensation payment because he or she entered into an agreement to give up his or her right to compensation; and
 - (e) supports in respect of personal injury that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law.
- (5) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901* or subsection 209(1A) of this Act, National Disability Insurance Scheme rules made for the purposes of subsection (1) of this section may make different provision in relation to:
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- (a) different classes of participants; and
- (b) for the purposes of paragraph (1)(b) of this section—different classes of stated supports.

32L Assessment of participant’s need for supports

CEO to arrange assessment of participant’s need for supports

- (1) The CEO must arrange for an assessment of a participant’s disability support needs to be undertaken as soon as practicable after the CEO commences the preparation of a plan for a participant.

What an assessment covers

- (2) The assessment must be undertaken using the assessment tool, and in accordance with any other requirements (including requirements for the purpose of assessing whether a participant’s disability support needs arise from impairments in relation to which the participant meets the disability requirements or the early intervention requirements), specified in the National Disability Insurance Scheme rules for the purposes of this subsection.
- (4) The assessment must:
 - (a) have regard to any information and reports requested under subsection 36(2) for the purposes of the assessment; and
 - (b) may have regard to any other information held in the records of the Agency that relates to the person.

Needs assessment reports

- (5) A report of the assessment must be prepared and given to the CEO as soon as practicable after the assessment is completed.
- (6) The report must:
 - (a) identify the participant’s disability support needs arising from impairments in relation to which the participant meets the disability requirements or the early intervention requirements; and

- (b) include any information, and meet any requirements, specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

Note 1: The time at which the disability requirements or the early intervention requirements need to be met for the purposes of this section is the time the assessment is completed.

Note 2: A participant's disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.

- (6A) The CEO must give the participant a copy of the report as soon as practicable after the CEO receives the report.

Replacement assessments

- (7) If:

- (a) an assessment (the *existing assessment*) has been undertaken under subsection (1) or paragraph (c) of this subsection in connection with a plan; and
- (b) in deciding whether or not to approve a statement of participant supports for the plan, the CEO is satisfied that another assessment (the *replacement assessment*) of the participant's need for supports should be undertaken;

then:

- (c) the CEO must arrange for the replacement assessment to be undertaken; and
- (d) subsections (2) to (6) apply in relation to the replacement assessment in the same way as they applied in relation to the existing assessment; and
- (e) the replacement assessment is taken to replace the existing assessment; and
- (f) the needs assessment report prepared for the replacement assessment is taken to replace the needs assessment report prepared for the existing assessment.

Note: In reviewing a decision to approve a statement of participant supports, a reviewer or the Administrative Appeals Tribunal has all the powers of the CEO in making the original decision and must therefore arrange for a replacement assessment to be undertaken if satisfied as

mentioned in paragraph (b) (subject to any applicable National Disability Insurance Scheme rules).

- (7A) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of paragraph (7)(b), including by prescribing:
- (a) circumstances in which the CEO must or must not decide under that paragraph that another assessment should be undertaken; or
 - (b) requirements with which the CEO must comply, methods or criteria that the CEO is to apply, or matters that the CEO may, must or must not take into account, in making a decision under that paragraph whether another assessment should be undertaken.

National Disability Insurance Scheme rules

- (9) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901* or subsection 209(1A) of this Act, National Disability Insurance Scheme rules made for the purposes of this section may make different provision for different classes of participants.

Note: In making National Disability Insurance Scheme rules for the purposes of this section, the Minister must have regard to the objects and principles of this Act (see in particular the principles set out in subsections 4(5), (9A) and (11)) and the financial sustainability of the National Disability Insurance Scheme: see subsection 209(3).

Subdivision C—Content of old framework plans

32M Application of this Subdivision

This Subdivision applies in relation to a plan for a participant unless Subdivision B applies in relation to the plan.

Note: For when Subdivision B applies in relation to a plan, see section 32C.

37 Before subsection 33(1)

Insert:

Participant's statement of goals and aspirations

38 Before subsection 33(2)

Insert:

Statement of participant supports

39 After subsection 33(2)

Insert:

Total funding amounts, funding component amounts and funding periods

(2A) In addition to the matters mentioned in paragraphs (2)(a) to (e), the statement of participant supports must:

- (a) specify that funding will be provided under the plan to or in relation to the participant, for all reasonable and necessary supports funded under the plan taken as a whole, up to a specified amount (the ***total funding amount***) worked out under subsection (2B); and
- (b) in accordance with any requirements determined under subsection (2E) for the purposes of this paragraph, categorise the reasonable and necessary supports specified under paragraph (2)(b) into one or more groups of supports identified in the statement; and
- (c) specify that funding will be provided under the plan to or in relation to the participant, for supports in each group identified under paragraph (b) of this subsection, up to an amount (a ***funding component amount***) specified in the statement for the group that is worked out in accordance with any requirements determined under subsection (2E) for the purposes of this paragraph; and
- (d) specify that funding will be provided under the plan to or in relation to the participant for reasonable and necessary supports during specified periods (each of which is a ***funding period***).

Note: For paragraph (b), if the statement specifies only a single reasonable and necessary support or class of such supports, the support or class may be categorised and identified as a single group.

- (2B) For the purposes of paragraph (2A)(a), the total funding amount specified in a statement of participant supports must be an amount equal to:
- (a) if the statement specifies more than one funding component amount—the sum of those amounts; or
 - (b) if the statement specifies a single funding component amount—that amount.
- (2C) For the purposes of paragraph (2A)(d), the statement must:
- (a) specify funding periods for funding for either:
 - (i) all reasonable and necessary supports funded under the plan, taken as a whole; or
 - (ii) each group of supports identified under paragraph (2A)(b); and
 - (b) specify when each funding period starts and ends; and
 - (c) specify, for each funding period:
 - (i) if funding periods are specified as mentioned in subparagraph (a)(i) of this subsection—the proportion of the total funding amount that will be provided as funding under the plan, during the funding period, for reasonable and necessary supports; or
 - (ii) if funding periods are specified as mentioned in subparagraph (a)(ii) of this subsection—the proportion of the funding component amount for the group of supports to which the funding period relates that will be provided as funding under the plan, during the funding period, for supports in the group; and
 - (d) if funding periods are specified as mentioned in subparagraph (a)(i) of this subsection—specify that the amount of funding for reasonable and necessary supports that will be provided during a funding period will be increased above the proportion specified for the funding period under subparagraph (c)(i) of this subsection by an amount equal to the amount by which:
 - (i) the amount of funding that could have been provided under the plan for reasonable and necessary supports during the immediately preceding funding period; exceeds

- (ii) the amount of funding that was actually provided for such supports; and
 - (e) if funding periods are specified as mentioned in subparagraph (a)(ii) of this subsection—specify that the amount of funding, for supports in a group to which a funding component amount relates, that will be provided during a funding period for that group will be increased above the proportion specified for the funding period under subparagraph (c)(ii) of this subsection by an amount equal to the amount by which:
 - (i) the amount of funding that could have been provided under the plan for supports in that group during the immediately preceding funding period for that group; exceeds
 - (ii) the amount of funding that was actually provided for supports in that group.
- (2D) For the purposes of paragraph (2C)(b):
- (a) a funding period must be no more than 12 months; and
 - (b) the duration of a particular funding period may be different from the duration of any other funding period; and
 - (c) without limiting paragraph (b) of this subsection, if the funding periods are specified as mentioned in subparagraph (2C)(a)(ii), then the duration of the funding periods for one group of supports identified in the plan under paragraph (2A)(b) may be different from the duration of funding periods for any other group of supports identified in the plan under paragraph (2A)(b); and
 - (d) if funding periods are specified as mentioned in subparagraph (2C)(a)(i):
 - (i) the first funding period must start on a day worked out in accordance with any requirements determined under subsection (2E) for the purposes of this subparagraph; and
 - (ii) each other funding period must start immediately after the end of the immediately preceding funding period; and
 - (e) if funding periods are specified as mentioned in subparagraph (2C)(a)(ii):
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- (i) the first funding period for a group of supports must start on a day worked out in accordance with any requirements determined under subsection (2E) for the purposes of this subparagraph; and
- (ii) each other funding period for the group of supports must start immediately after the end of the immediately preceding funding period for that group.

(2E) The Minister may, by legislative instrument, determine:

- (a) requirements for categorising reasonable and necessary supports into groups for the purposes of paragraph (2A)(b); and
- (b) how to work out a funding component amount for a group of supports; and
- (c) how to work out when a first funding period is to start for the purposes of subparagraph (2D)(d)(i) or (e)(i); and
- (d) requirements with which the CEO must comply, methods or criteria that the CEO is to apply, and matters that the CEO may, must or must not take into account, in doing any of the following:
 - (i) working out a funding component amount;
 - (ii) specifying funding periods for the purposes of paragraph (2C)(a);
 - (iii) deciding any other matter for the purposes of subsection (2A), (2C) or (2D).

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(2F) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (2E) of this section may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

How supports may be specified in plan

40 Before subsection 33(4)

Insert:

Time limits for approving statement of participant supports

41 Before subsection 33(5)

Insert:

Requirements for CEO in approving statement of participant supports

42 At the end of subsection 33(5)

Add:

; and (g) have regard to whether section 46 (acquittal of NDIS amounts) was complied with in relation to any previous plan for the participant.

43 Before subsection 33(6)

Insert:

Agency-managed funding—supports to be provided only by a registered NDIS provider

44 Before subsection 33(7)

Insert:

Plan may deal with additional matters

45 Before subsection 33(8)

Insert:

Statement of goals and aspirations to be recorded in writing

46 Before paragraph 34(1)(a)

Insert:

(aa) the support is necessary to address needs of the participant arising from an impairment in relation to which the participant meets the disability requirements (see section 24) or the early intervention requirements (see section 25);

47 Paragraph 34(1)(f)

Repeal the paragraph, substitute:

- (f) the support is an NDIS support for the participant.

47A At the end of subsection 34(1)

Add:

Note: For the purposes of paragraph (aa):

- (a) the time at which the disability requirements or the early intervention requirements need to be met is the time the CEO decides to approve the statement of participant supports; and
- (b) a participant's disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.

48 Subsection 34(2)

Omit "(1)(a)", substitute "(1)(aa)".

49 At the end of subsection 35(4)

Add:

- ; and (d) supports in respect of personal injury that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law.

50 Before section 36

Insert:

Subdivision D—Information and reports

51 Section 36 (heading)

Repeal the heading, substitute:

36 Requesting information and reports

52 Subsection 36(1)

Repeal the subsection, substitute:

- (1) The CEO may make one or more requests under subsection (2) for any of the following purposes:
- (a) the undertaking of an assessment under section 32L for a participant;
 - (b) preparing a statement of participant supports for a participant;
 - (c) deciding whether to approve a statement of participant supports for a participant.

53 Paragraph 36(2)(a)

Omit “the purposes of preparing the statement of participant supports, or deciding whether to approve the statement of participant supports”, substitute “a purpose mentioned in paragraph (1)(a), (b) or (c)”.

53A After subsection 36(2)

Insert:

- (2A) A request under subsection (2) must be made in writing.

Note: A request may be rescinded or varied under subsection 33(3) of the *Acts Interpretation Act 1901*.

54 Subsection 36(3)

Repeal the subsection (including the note), substitute:

- (3) If a request under subsection (2) is made for a purpose mentioned in paragraph (1)(a):
- (a) the request must specify a period of at least 28 days for the information or reports to be received by the CEO; and
 - (b) if the CEO does not receive the information or reports within the period specified in the request—the CEO must:
 - (i) unless subparagraph (ii) applies—suspend the preparation of the new framework plan; or
 - (ii) if the CEO is satisfied that it was reasonable for the participant or the other person mentioned in paragraph (2)(a) not to have complied with the request within that period—make a further request under subsection (2).

Note: The period specified in the request may be varied (see subsection 33(3) of the *Acts Interpretation Act 1901*).

- (3A) In deciding for the purposes of subparagraph (3)(b)(ii) whether or not it was reasonable for a participant or other person not to have complied with a request within a particular period, the CEO must have regard to the following matters:
- (a) the length of that period;
 - (b) any previous failures by the participant to comply with a request for information made under this Act;
 - (c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;
 - (d) the length of time since the CEO was last provided with information relevant to the purpose mentioned in paragraph (1)(a), (b) or (c) for which the request was made;
 - (e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;
 - (f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;
 - (g) any other matters the CEO considers relevant.
- (4) If the CEO suspends the preparation of a new framework plan for a participant under subparagraph (3)(b)(i):
- (a) the CEO must give the participant written notice of the decision; and
 - (b) the statement of participant supports in any other plan that is in effect for the participant (whether an old framework plan or a new framework plan) is suspended from the day specified in the notice for the purposes of this paragraph until the day the CEO receives the information or reports requested; and
 - (c) the CEO must recommence the preparation of the new framework plan if the CEO subsequently receives the information or reports.
- (5) If a request under subsection (2) is made for a purpose mentioned in paragraph (1)(b) or (c), the CEO:
- (a) may prepare the statement of participant supports, or decide whether to approve a statement of participant supports,

before all the information and reports requested are received by the CEO; but

- (b) must give the participant or the other person mentioned in paragraph (2)(a) a reasonable opportunity to provide the information and reports.

Note: If information or reports requested for a purpose mentioned in paragraph (1)(b) or (c) are provided after the statement of participant supports is approved, the plan can be varied or can be reassessed and if necessary replaced.

55 Before section 37

Insert:

Subdivision E—When a plan is in effect etc.

56 Subsection 37(3)

Repeal the subsection, substitute:

- (3) A participant's plan ceases to be in effect at the earliest of the following times:
- (a) when the plan is replaced by another plan (see subsection (4));
 - (b) if the plan is a new framework plan—immediately after the end of the maximum period of effect specified in the plan under paragraph 32D(2)(d);
 - (c) in any case—when the participant ceases to be a participant.

Note: A new framework plan may be varied to change the period mentioned in paragraph (b) (see paragraph 47A(1AA)(d)).

- (4) For the purposes of paragraph (3)(a), if a plan (the *replacement plan*) comes into effect for a participant while another plan is in effect, the other plan is replaced by the replacement plan.

57 Before paragraph 41(1)(a)

Insert:

- (aa) as mentioned in paragraph 36(4)(b) (which deals with failure to provide information or reports for an assessment under section 32L); and

58 Paragraph 41(2)(a)

Repeal the paragraph, substitute:

- (a) a person is not entitled to be paid NDIS amounts so far as the amounts relate to supports that are acquired or provided during that period; and

59 At the end of section 41

Add:

- (3) The National Disability Insurance Scheme rules may specify circumstances in which specified supports are taken to be, or not to be, acquired or provided during the period of suspension for the purposes of subsection (2).

60 Paragraph 42(1)(a)

Omit “identified in”, substitute “funded under”.

61 Subsection 42(2)

After “paragraph”, insert “32D(2)(f) or”.

62 Subsection 43(2)

Omit “(3)”, substitute “(2A)”.

63 After subsection 43(2)

Insert:

- (2A) If the plan is a new framework plan:
 - (a) the CEO may, if satisfied that a circumstance mentioned in subsection (2C) exists, decide that:
 - (i) a person mentioned in subsection (2B) is to manage a particular proportion of flexible funding provided under the plan; or
 - (ii) a person mentioned in subsection (2B) is to manage funding provided under the plan for a particular stated support or class of stated supports; and
 - (b) the statement of participant supports in the plan must give effect to the decision.

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Note: The CEO may make more than one decision under subparagraph (a)(i) or (ii) for a particular plan if there is more than one person mentioned in subsection (2B) for whom such a decision can be made.

- (2AA) The statement of participant supports for a new framework plan must provide for the funding for supports under the plan to be wholly managed by the Agency if:
- (a) in the case the participant has made a plan management request covered by paragraph (1)(a) and the participant does not have a plan nominee—the participant has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:
 - (i) is punishable by imprisonment for 2 years or more; or
 - (ii) involves fraud or dishonesty; or
 - (b) in the case the participant has made a plan management request covered by paragraph (1)(a) and the participant has a plan nominee—the plan nominee has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:
 - (i) is punishable by imprisonment for 2 years or more; or
 - (ii) involves fraud or dishonesty.
- (2B) For the purposes of subparagraphs (2A)(a)(i) and (ii), the persons are as follows:
- (a) the Agency;
 - (b) the participant, if the participant has made a plan management request covered by paragraph (1)(a) and the participant does not have a plan nominee;
 - (c) if:
 - (i) the participant has a plan nominee; and
 - (ii) the participant has made a plan management request covered by paragraph (1)(a); and
 - (iii) the decision would be consistent with the terms of the plan nominee’s appointment;the plan nominee;
 - (d) a registered plan management provider, if the participant has made a plan management request covered by paragraph (1)(b) that nominates the provider.
-

- (2C) For the purposes of paragraph (2A)(a), the circumstances are as follows:
- (a) the participant would be likely to suffer physical, mental or financial harm were the CEO to not make the decision;
 - (b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant's previous plans;
 - (c) a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.
- (2D) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of paragraph (2A)(a), including but not limited to:
- (a) requirements with which the CEO must comply; and
 - (b) methods or criteria that the CEO is to apply; and
 - (c) matters that the CEO may, must or must not take into account;
- in making any decision under paragraph (2A)(a).

63A Paragraph 43(3)(c)

After "paragraph 44(1)(a)", insert "or (aa)".

64 Paragraph 43(3)(d)

After "44(1)(b)", insert "or (c)".

65 After subsection 43(4)

Insert:

- (4A) If:
- (a) a participant makes a plan management request covered by paragraph (1)(b); and
 - (b) subsection 44(2AA) applies in relation to the registered plan management provider;
- the statement of participant supports in the plan may provide for the funding for supports under the plan to be managed by the Agency to the extent covered by that subsection.

65A Paragraph 43(6)(d)

After “paragraph 44(2A)(a)”, insert “or (aa)”.

66 Paragraph 43(6)(e)

After “44(2A)(b)”, insert “or (c)”.

67 Subsection 43(7)

Repeal the subsection, substitute:

(7) The following provisions have effect:

- (a) paragraph (2A)(b) does not apply to funding to the extent that subsection (2AA), (3), (4) or (6) applies to the funding;
- (b) subsection (3) or (4) does not apply to funding to the extent that subsection (5) or (6) applies to the funding;
- (c) subsection (5) does not apply to funding to the extent that paragraph (2A)(b) applies to the funding.

67A After paragraph 44(1)(a)

Insert:

- (aa) the participant has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:
 - (i) is punishable by imprisonment for 2 years or more; or
 - (ii) involves fraud or dishonesty; or

68 At the end of subsection 44(1)

Add:

- ; or (c) the CEO is satisfied that section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if the participant were to manage the funding for supports under the plan to a particular extent.

69 After subsection 44(2)

Insert:

- (2AA) For the purposes of paragraph 43(4A)(b), this subsection applies in relation to a registered plan management provider if the CEO is satisfied that section 46 (acquittal of NDIS amounts) would be

unlikely to be complied with if the provider were to manage the funding for supports under the plan to a particular extent.

69A After paragraph 44(2A)(a)

Insert:

- (aa) the plan nominee has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:
 - (i) is punishable by imprisonment for 2 years or more; or
 - (ii) involves fraud or dishonesty; or

70 At the end of subsection 44(2A)

Add:

- ; or (c) the CEO is satisfied that section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if the plan nominee were to manage the funding for supports under the plan to a particular extent.

71 Before subsection 44(3)

Insert:

National Disability Insurance Scheme rules relating to unreasonable risk

72 Subsection 44(3)

Omit “is to have regard”, substitute “is, or is not, to have regard”.

73 At the end of section 44

Add:

- (4) The National Disability Insurance Scheme rules may prescribe circumstances in which the management of funding for supports under a plan to a particular extent by a participant, a registered plan management provider or a plan nominee is taken to present an unreasonable risk to a participant.

National Disability Insurance Scheme rules relating to compliance with section 46

- (5) The National Disability Insurance Scheme rules may prescribe criteria the CEO is to apply and matters to which the CEO is, or is not, to have regard in considering whether section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if any of the following were to manage the funding for supports under a plan to any extent:
- (a) the participant;
 - (b) a registered plan management provider;
 - (c) a plan nominee.

73A Section 45 (at the end of the heading)

Add “—general”.

74 At the end of section 45

Add:

- (4) The Agency must not pay an amount under the National Disability Insurance Scheme to any person in respect of a participant’s plan if:
- (a) the plan is a new framework plan that provides that flexible funding will be provided under the plan and the payment would result in any of the following events occurring:
 - (i) the total amount of flexible funding provided under the plan exceeding the total funding amount specified in the plan under paragraph 32E(2)(a);
 - (ii) the total amount of flexible funding provided under the plan during a funding period exceeding the amount of funding that is to be provided under the plan during the funding period; or
 - (b) the plan is a new framework plan that provides that funding will be provided under the plan for a stated support, or class of stated supports, and the payment would result in any of the following events occurring:
 - (i) the total amount of funding provided under the plan for the stated support or class of stated supports exceeding

- any total funding amount specified in the plan under paragraph 32G(2)(a);
- (ii) the total amount of funding provided under the plan for the stated support or class of stated supports during a funding period for the support or class of supports exceeding the amount of funding that is to be provided under the plan during the funding period for the support or class of supports; or
- (c) the plan is an old framework plan and the payment would result in any of the following events occurring:
- (i) the total amount of funding provided under the plan for reasonable and necessary supports exceeding the total funding amount specified in the plan;
 - (ii) the total amount of funding provided under the plan for reasonable and necessary supports in a group of supports to which a funding component amount relates exceeding that funding component amount;
 - (iii) if the plan specifies funding periods for all reasonable and necessary supports funded under the plan, taken as a whole—the total amount of funding provided under the plan for such supports during a funding period exceeding the amount of funding for such supports that is to be provided under the plan during the funding period;
 - (iv) if the plan specifies funding periods for one or more groups of reasonable and necessary supports—the total amount of funding provided under the plan for supports in such a group during a funding period for that group exceeding the amount of funding for supports in that group that is to be provided under the plan during the funding period.
- (5) Subsection (4) does not apply in relation to the payment of an amount if the CEO is satisfied that:
- (a) the relevant event would occur because the participant has experienced fraud or financial exploitation; or
 - (b) making the payment is necessary to prevent or lessen an imminent threat to an individual’s life, health or safety; or

- (c) the participant has been unable to request a variation or reassessment of the participant's plan because of one or more of the participant's impairments or a lack of decision-making support; or
- (d) the participant has requested a variation of the participant's plan covered by subparagraph 47A(1)(d)(i) or (1AB)(j)(i) (crisis or emergency funding as a result of a significant change to the participant's support needs), and neither of the following apply:
 - (i) the CEO has made a decision on the request to vary the plan and the variation has taken effect;
 - (ii) the CEO has made a decision on the request not to vary the plan (including because of the operation of subsection 47A(5)); or
- (e) a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph exists.

74A After section 45

Insert:

45A Payment of amounts payable under the National Disability Insurance Scheme—need for a claim

- (1) An amount is not payable under the National Disability Insurance Scheme in respect of the acquisition or provision of a support under a participant's plan unless the CEO is satisfied that a claim for the payment has been made to the CEO in accordance with subsections (2), (3) and (5).
- (2) A claim may be made only by:
 - (a) the person who, under the statement of supports in the plan, is to manage the funding for the support, unless paragraph (b) applies; or
 - (b) if the person mentioned in paragraph (a) is the Agency—the person who provides the support to the participant.
- (3) A claim must:
 - (a) be made in the approved form (if any); and

- (b) include any information, and be accompanied by any documents, required by the CEO.

Note: Strict compliance with any approved form is not required—see section 25C of the *Acts Interpretation Act 1901*.

- (4) The CEO may treat a claim that does not meet the requirements of subsection (3) as having been made in accordance with that subsection if the CEO is satisfied that it is appropriate to do so.
- (5) A claim must be made in accordance with subsection (3) before the end of the following period starting on the day the support is provided to the participant:
 - (a) unless paragraph (b) of this subsection applies—2 years;
 - (b) if the National Disability Insurance Scheme rules prescribe a shorter period for that kind of claim—that period.
- (6) The CEO may treat a claim made after the end of the applicable period as having been made in accordance with subsection (5) if the CEO is satisfied that:
 - (a) there are exceptional circumstances applying to the claim that justify the claim being made after the end of the applicable period; and
 - (b) the claim was made within a reasonable period having regard to those circumstances.
- (7) A claim may be withdrawn by the person who makes the claim. The CEO is not required to take any action in relation to a claim that is withdrawn.

75 Subsection 46(1)

Repeal the subsection, substitute:

Requirement to spend money only on NDIS supports and in accordance with plan

- (1) A participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant:
 - (a) may spend the money only on NDIS supports for the participant; and
 - (b) must spend the money in accordance with the participant's plan (subject to paragraph (a)).

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- Note 1: A failure to comply with this subsection (including due to the operation of subsection (1A) or (1B)) may lead to a variation of the participant's plan under section 47A:
- (a) to change the management of the funding for supports under the plan (see sections 43 and 74); or
 - (b) for a new framework plan—to specify a proportion of flexible funding that may be spent only on specified NDIS supports for the participant (or to change such a proportion); or
 - (c) for any plan—to reduce the duration of funding periods for particular funding under the plan and the amount of funding that will be provided during any particular funding period.

Note 2: See also subsection 182(3) (debts due to the Agency).

(1A) If:

- (a) a participant acquires a support for themselves or a support is provided to a participant; and
- (b) either:
 - (i) the support is not an NDIS support for the participant; or
 - (ii) the participant's plan is not complied with in connection with the acquisition or provision of the support; and
- (c) a payment is made under the National Disability Insurance Scheme in relation to the support, whether to the participant or another person;

then the participant is taken for the purposes of subsection (1):

- (d) to have received an NDIS amount equal to the payment; and
- (e) if subparagraph (b)(i) of this subsection applies—to have spent that money other than on NDIS supports for the participant; and
- (f) if subparagraph (b)(ii) of this subsection applies—to have not spent that money in accordance with the participant's plan.

(1B) If:

- (a) a person (the *first person*) other than a participant acquires a support for a participant or provides a support to a participant; and
 - (b) either:
 - (i) the support is not an NDIS support for the participant; or
 - (ii) the participant's plan is not complied with in connection with the acquisition or provision of the support; and
-

- (c) a payment is made under the National Disability Insurance Scheme in relation to the support, whether to the first person or any other person;
- then the first person is taken for the purposes of subsection (1):
- (d) to have received an NDIS amount on behalf of the participant that is equal to the payment; and
 - (e) if subparagraph (b)(i) of this subsection applies—to have spent that money other than on NDIS supports for the participant; and
 - (f) if subparagraph (b)(ii) of this subsection applies—to have not spent that money in accordance with the participant’s plan.

Requirements relating to retention of records

76 Paragraph 46B(2)(b)

Omit “reasonable and necessary supports specified in”, substitute “supports (other than general supports) funded under”.

77 Subparagraph 47A(1)(a)(i)

Omit “subsection (1A)”, substitute “subsection (1AA) (for a new framework plan) or (1A) (for an old framework plan)”.

78 After subsection 47A(1)

Insert:

Permitted variations—new framework plans

- (1AA) For the purposes of subparagraph (1)(a)(i), the following variations of a new framework plan are covered:
- (a) a variation of the participant’s reasonable and necessary budget covered by subsection (1AB);
 - (b) a variation relating to the general supports (if any) that will be provided to or in relation to the participant under the plan;
 - (c) a variation of the statement of participant supports included in the plan in relation to the management of:
 - (i) the funding for supports under the plan; or
 - (ii) other aspects of the plan;

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- (d) a variation of the maximum period of effect specified in the plan under paragraph 32D(2)(d);
- (e) a variation of the circumstances in which the Agency must reassess the plan under this Division.

Note 1: A statement of participant supports in a participant's plan must give effect to the plan management request of a participant except in certain circumstances (see subsection 43(2)).

Note 2: In varying the participant's plan in relation to the statement of participant supports, the CEO must have regard to the matters set out in subsection (2A).

(1AB) For the purposes of paragraph (1AA)(a), the following variations of a participant's reasonable and necessary budget are covered:

- (a) a variation of:
 - (i) the total funding amount for flexible funding; or
 - (ii) the total funding amount for a stated support or class of stated supports;for the purposes of dealing with a variation of the maximum period of effect specified in the plan under paragraph 32D(2)(d);
 - (b) a variation to provide for a total funding amount for a stated support or class of stated supports;
 - (c) a variation of the number or duration of the funding periods for flexible funding, or for a stated support or class of stated supports;
 - (d) a variation of the proportion of the total funding amount for flexible funding, or for a stated support or class of stated supports, that will be provided under the plan during one or more funding periods;
 - (e) a variation to provide for:
 - (i) funding periods for a stated support or class of stated supports (disregarding paragraph 32G(5)(c) for this purpose); and
 - (ii) the proportion of the total funding amount for the stated support or class of stated supports that will be provided under the plan during each funding period;
 - (f) a variation of a restriction provided for under subsection 32F(6);
-

- (g) if the CEO is satisfied that a circumstance mentioned in subsection 32F(7) exists—a variation to provide for a restriction under subsection 32F(6);
- (h) if the CEO is satisfied that none of the circumstances mentioned in subsection 32F(7) exist—a variation to remove a restriction imposed under subsection 32F(6);
- (i) a variation to provide for, change, add or remove a requirement under subsection 32H(1) relating to the acquisition or provision of supports;
- (j) a variation of the participant’s reasonable and necessary budget if:
 - (i) the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant’s support needs; or
 - (ia) the CEO is satisfied that the participant requires funding because the participant has experienced fraud or financial exploitation; or
 - (ib) the CEO is satisfied that the variation is necessary to prevent or lessen a threat to the participant’s life, health or safety (whether current or future); or
 - (ii) after the participant’s plan comes into effect, the CEO receives information in response to a request that had been made under subsection 36(2) or 50(2) in relation to the plan (other than a request made under subsection 50(2) for the purposes of varying the plan on the CEO’s own initiative), and the variation relates to that information; or
 - (iii) the CEO is satisfied that a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph exists in relation to the participant.

Note: Information mentioned in subparagraph (j)(ii) could relate to a support such as an item of assistive technology or a home modification.

Permitted variations—old framework plans

79 Subsection 47A(1A)

Omit “a participant’s” (first occurring), substitute “an old framework”.

80 Paragraph 47A(1A)(a)

Repeal the paragraph, substitute:

- (a) a variation of the plan's reassessment date or the circumstances in which the Agency must reassess the plan under this Division;
 - (ab) if the statement of participant supports included in the plan specifies one or more funding component amounts—a variation of the categorisation of the reasonable and necessary supports, specified under paragraph 33(2)(b), into one or more groups of supports;
 - (ac) for the purposes of dealing with a variation covered by paragraph (ab) of this subsection—a variation of one or more funding component amounts, or the number of those amounts, specified in the statement of participant supports, other than a variation that would result in an increase in the total funding amount for the plan;
 - (ad) if the statement of participant supports included in the plan specifies funding periods for all reasonable and necessary supports funded under the plan, taken as a whole—the following variations of the statement:
 - (i) a variation of the number or duration of such funding periods;
 - (ii) a variation of the proportion of the total funding amount that will be provided as funding under the plan for reasonable and necessary supports during one or more funding periods;
 - (ae) if the statement of participant supports included in the plan specifies funding periods for one or more groups of reasonable and necessary supports—the following variations of the statement:
 - (i) a variation of the number or duration of the funding periods for such a group;
 - (ii) a variation of the proportion of the funding component amount for such a group that will be provided as funding under the plan, during one or more funding periods that group, for reasonable and necessary supports in that group;
 - (ag) a variation relating to the general supports (if any) that will be provided to or in relation to the participant under the plan;
-

81 Subsection 47A(1A) (note 1)

After “mentioned”, insert “in”.

82 After subsection 47A(1A)

Insert:

(1B) To avoid doubt:

- (a) a variation covered by any of paragraphs (1A)(ab) to (ae) must be made in accordance with subsections 33(2A) to (2D) and any determination in force for the purposes of subsection 33(2E); and
- (b) a total funding amount for an old framework plan cannot be varied except by a variation covered by paragraph (1A)(d) of this section.

Conditions not limited

(1C) The fact that a paragraph in subsection (1AA), (1AB) or (1A) covers only certain kinds of variations does not limit the power under paragraph (1)(b) for the National Disability Insurance Scheme rules to prescribe conditions that have the effect of limiting the kinds of variations that may be made under subsection (1).

83 After subsection 47A(2)

Insert:

Requirements for CEO—new framework plans

- (2A) In varying a new framework plan in relation to the statement of participant supports, the CEO must:
- (a) have regard to the participant’s statement of goals and aspirations; and
 - (b) be satisfied as mentioned in paragraph 32D(6)(b) in relation to any general supports to be provided; and
 - (c) have regard to the principle that a participant should manage the participant’s plan to the extent that the participant wishes to do so; and
 - (d) have regard to the operation and effectiveness of the plan and any previous plans of the participant; and

- (e) have regard to whether section 46 (acquittal of NDIS amounts) was complied with in relation to the plan and any previous plans of the participant; and
- (f) be satisfied of any matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

84 Subsection 47A(3) (at the end of the heading)

Add “—old framework plans”.

85 Subsection 47A(3)

Omit “the participant’s” (first occurring), substitute “an old framework”.

86 At the end of subsection 47A(3)

Add:

- ; and (g) have regard to whether section 46 (acquittal of NDIS amounts) was complied with in relation to the plan and any previous plans of the participant.

87 At the end of subsection 48(1)

Add:

Note: This section applies subject to section 49B (no reassessment of old framework plan if participant to have new framework plans).

88 Subsection 48(3) (note)

Omit “Note”, substitute “Note 1”.

89 At the end of subsection 48(3)

Add:

Note 2: Section 49B (no reassessment of old framework plan if participant to have new framework plans) may prevent the CEO from making a decision under paragraph (b) of this subsection.

90 Subparagraphs 48(7)(b)(ii) and 49(1)(b)(ii)

After “subsection”, insert “32D(2) or”.

91 At the end of subsection 49(1)

Add:

Note: This section applies subject to section 49B (no reassessment of old framework plan if participant to have new framework plans).

92 At the end of section 49A

Add:

Note: This section applies subject to section 49B (no reassessment of old framework plan if participant to have new framework plans).

93 After section 49A

Insert:

49B No reassessment of old framework plan if participant to have new framework plans

Despite sections 48 to 49A, the CEO must not conduct a reassessment of an old framework plan if the participant has been given a notice under subsection 32B(2) that the participant is to have new framework plans.

94 Subsection 73B(1) (note)

Omit “subsection 33(6), which provides”, substitute “subsections 32D(7) and 33(6), which provide”.

95 Subsection 74(3)

Omit “(4) and (5)”, substitute “(3A) to (5)”.

96 After subsection 74(3)

Insert:

(3A) If the plan is a new framework plan:

- (a) the CEO may, if satisfied that a circumstance mentioned in subsection (3C) exists, decide that:
 - (i) a person mentioned in subsection (3B) is to manage a particular proportion of flexible funding provided under the plan; or

- (ii) a person mentioned in subsection (3B) is to manage funding provided under the plan for a particular stated support or class of stated supports; and
- (b) the statement of participant supports in the plan must give effect to the decision.

Note: The CEO may make more than one decision under subparagraph (a)(i) or (ii) for a particular plan if there is more than one person mentioned in subsection (3B) for whom such a decision can be made.

- (3B) For the purposes of subparagraphs (3A)(a)(i) and (ii), the persons are as follows:
 - (a) the Agency;
 - (b) the person mentioned in subsection (1), if the person has made a request covered by paragraph (2)(a);
 - (c) a registered plan management provider, if the person mentioned in subsection (1) has made a request covered by paragraph (2)(b) that nominates the provider.
- (3C) For the purposes of paragraph (3A)(a), the circumstances are as follows:
 - (a) the participant would be likely to suffer physical, mental or financial harm were the CEO to not make the decision;
 - (b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant's previous plans;
 - (c) a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.
- (3D) Paragraph (3A)(b) does not apply to funding to the extent that subsection (4) or (4A) applies to the funding.

97 Paragraph 74(4)(b)

Repeal the paragraph, substitute:

- (b) to a particular extent, if the CEO is satisfied:
 - (i) that management of the plan to that extent would present an unreasonable risk to the participant; or
 - (ii) that management of the plan to that extent would permit the person to manage matters that are prescribed by the National Disability Insurance Scheme rules as being matters that must not be managed by the person; or

- (iii) that section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if the person were to manage the funding for supports under the plan to that extent.

98 After subsection 74(4)

Insert:

(4A) If:

- (a) a person mentioned in subsection (1) has made a request covered by paragraph (2)(b); and
- (b) the CEO is satisfied that the management of the funding for supports under the plan to a particular extent by the registered plan management provider nominated by the person would present an unreasonable risk to the participant; the statement of participant supports in the participant's plan must not provide that the nominated provider is to manage the funding for supports under the plan to that extent.

99 Subsection 74(6)

Repeal the subsection, substitute:

- (6) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of this section, including but not limited to:
 - (a) requirements with which the CEO must comply; and
 - (b) methods or criteria that the CEO is to apply; and
 - (c) matters that the CEO may, must or must not take into account;in making any decision under this section.

Note: For example, National Disability Insurance Scheme rules could be made under this subsection that apply for the purposes of making a decision under paragraph (5)(a) whether a child is capable of making decisions for himself or herself.

100 Subsection 99(1) (table item 3, column 2)

Omit "section 30", substitute "subsection 30(1) or (5), paragraph 30A(1)(c) or subsection 30A(7)".

100A Subsection 99(1) (after table item 3)

Insert:

- | | | | |
|----|---|--------------------|-----|
| 3A | a decision to vary, or not to vary, a notice given under subsection 32BA(1) | subsection 32BA(5) | CEO |
|----|---|--------------------|-----|

101 Subsection 99(1) (table item 4, column 2)

After “subsection”, insert “32D(2) or”.

102 Subsection 99(1) (after table item 4)

Insert:

- | | | | |
|----|---|--------------------------|-----|
| 4A | a decision to suspend the preparation of a new framework plan for a participant | subparagraph 36(3)(b)(i) | CEO |
|----|---|--------------------------|-----|

103 Subparagraph 101(2)(a)(i)

After “subsection”, insert “32D(2) or”.

103A After paragraph 118(1)(b)

Insert:

(ba) to prevent, detect, investigate and respond to misuse or abuse of, or criminal activity involving, the National Disability Insurance Scheme (whether systemic or otherwise) where this relates to:

- (i) claims for payment under the National Disability Insurance Scheme, the payment of NDIS amounts or the use of funding provided under the National Disability Insurance Scheme; or
- (ii) information provided to the Agency by or in relation to a participant or prospective participant, including in connection with access requests, a person’s continued status as a participant, the preparation, variation, reassessment or replacement of a participant’s plan or the management of the funding for supports under a participant’s plan; or

- (iii) the management of the funding for supports under a participant's plan by, or the duties or obligations of, a nominee or person who may do a thing because of section 74, including the appointment, or the suspension or cancellation of the appointment, of a nominee or the making or revocation of a determination under paragraph 74(1)(b);

103B At the end of subsection 118(2)

Add:

- ; and (c) ensure the financial sustainability of the National Disability Insurance Scheme.

104 At the end of subsection 120(2)

Add:

- Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

105 At the end of section 125B

Add:

- Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

105A At the end of section 127

Add:

Appointment of Board members other than Chair—Indigenous Persons

- (7) In appointing Board members other than the Chair, the Minister must also ensure that at least one Board member other than the Chair is an Indigenous person (whether or not the Chair is an Indigenous person).

105B After subsection 129(5) (before the note)

Insert:

- (6) In appointing a person under subsection (2) to act as a Board member other than the Chair, the Minister must ensure that at least one Board member other than the Chair is an Indigenous person (whether or not the Chair is an Indigenous person).

106 Paragraph 144(1)(c)

Omit “provides reasonable and necessary”, substitute “funds or provides”.

107 At the end of subsection 172(3)

Add:

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

107A At the end of subsection 174(1)

Add:

; and (c) publish a copy of the report on a website maintained by the Agency within 45 days after the end of the period to which the report relates.

107B After section 175

Insert:

175A Monthly summary of statistics

- (1) The Agency must, before the end of the 15th day after the end of a calendar month of a year, prepare and publish a statement of:
- (a) the following statistics for the calendar month of the year:
 - (i) the total amount of paid supports for participants in the calendar month;
 - (ii) the total number of participants in the National Disability Insurance Scheme as at the last day of the calendar month;
 - (iii) the average annualised payment per participant for the period of 12 months ending at the end of the calendar month, including any participants who had an initial plan approved during that 12-month period;

- (iv) the average annualised payment per participant for the period of 12 months ending at the end of the calendar month, excluding any participants who had an initial plan approved during that 12-month period; and
- (b) the following statistics for the same calendar month (the *relevant month*) of the previous year:
 - (i) the total amount of paid supports for participants in the relevant month;
 - (ii) the total number of participants in the National Disability Insurance Scheme as at the last day of the relevant month;
 - (iii) the average annualised payment per participant for the period of 12 months ending at the end of the relevant month, including any participants who had an initial plan approved during that 12-month period.
- (2) The statement must be published on a website maintained by the Agency.
- (3) If the 15th day after the end of a calendar month is not a business day, the statement may be published on the next business day.
- (4) The total amount of paid supports for participants in a calendar month includes cash payments, in-kind payments and an allowance for supports provided but not yet paid.
- (5) This section applies in relation to calendar months starting on or after the commencement of this section.

108 Section 179

Omit “reasonable and necessary”.

109 At the end of section 180C

Add:

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

110 At the end of subsection 181J(2)

Add:

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Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

111 At the end of subsection 181N(4)

Add:

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

112 At the end of subsection 181Y(8)

Add:

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the instrument (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

112A Paragraphs 195(a) and (b)

Repeal the paragraphs, substitute:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false or misleading statement or representation; or
 - (ii) failing or omitting to comply with this Act, the regulations or the National Disability Insurance Scheme rules; and
- (b) there are special circumstances (other than financial hardship alone) that the CEO is satisfied make waiver appropriate; and

113 At the end of subsection 209(1)

Add:

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to National Disability Insurance Scheme rules (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

114 Subsection 209(2)

Omit “section 14”, substitute “subsection 14(2)”.

**115 Subsection 209(8) (table item 1, column headed
“Description”, before paragraph (aa))**

Insert:

(aaa) subsections 10(1) and (4), paragraph 10(6)(a), subparagraph 10(6)(d)(iv), paragraph 10(7)(c) and subsection 10(8);

**116 Subsection 209(8) (table item 1, column headed
“Description”, after paragraph (c))**

Insert:

(ca) subsection 29(3);

(caa) paragraph 30(6A)(f);

(cb) subsections 30A(1) and (2) and paragraphs 30A(7A)(f) and (9)(a);

(cba) subsection 32B(1);

(cbb) subparagraph 32C(c)(ii);

(cc) subparagraph 32D(6)(b)(ii), paragraph 32D(6)(f) and subsection 32D(8);

(cd) subsection 32E(4);

(ce) paragraph 32F(7)(c);

(cf) subsection 32G(4);

(cg) paragraph 32H(2)(d);

(ch) section 32J;

(cha) subsection 32K(1);

(ci) subsections 32L(2), (6) and (7A);

**117 Subsection 209(8) (table item 1, column headed
“Description”, paragraph (ea))**

Repeal the paragraph, substitute:

(ea) paragraph 36(3A)(f);

(eaa) subsection 41(3);

(eab) paragraph 43(2C)(c) and subsection 43(2D);

(eac) subparagraph 44(1)(b)(ii) and subsections 44(3), (4) and (5);

**117A Subsection 209(8) (table item 1, column headed
“Description”, before paragraph (eb))**

Insert:

(ead) paragraph 45A(5)(b);

118 Subsection 209(8) (table item 1, column headed “Description”, paragraph (eb))

After “paragraph 47A(1)(b)”, insert “, subparagraph 47A(1AB)(j)(iii), paragraph 47A(2A)(f)”.

119 Subsection 209(8) (table item 1, column headed “Description”, paragraph (h))

Repeal the paragraph, substitute:

(h) paragraph 74(3C)(c), subparagraph 74(4)(b)(ii) and subsection 74(6);

120 Subsection 209(8) (table item 2, column headed “Description”, paragraph (a))

Repeal the paragraph.

121 Subsection 209(8) (table item 3, column headed “Description”, after paragraph (a))

Insert:

(ab) paragraph 32(4)(b);

(ac) paragraph 32D(4)(a);

122 Subsection 209(8) (table item 4, column headed “Description”, after paragraph (a))

Insert:

(aa) subsection 32B(3);

(ab) paragraph 32BA(1)(b), subparagraph 32BA(5)(a)(ii) and paragraphs 32BA(5)(c) and (6)(c);

122A After subsection 209(6)

Insert:

(6A) A failure to comply with subsection (4), (5) or (6) does not invalidate the making of National Disability Insurance Scheme rules if the Minister reasonably believed, when making those rules:

(a) for Category A National Disability Insurance Scheme rules:

(i) that sections 209A, 209B and 209C, as applicable, were complied with in relation to the making of the rules; and

(ii) that each host jurisdiction had agreed to the making of the rules; or

- (b) for Category B National Disability Insurance Scheme rules relating to an area, law or program of a host jurisdiction:
 - (i) that section 209D was complied with in relation to the making of the rules; and
 - (ii) that the host jurisdiction had agreed to the making of the rules; or
- (c) for Category C National Disability Insurance Scheme rules:
 - (i) that section 209D was complied with in relation to the making of the rules; and
 - (ii) that the Commonwealth and a majority of host jurisdictions had agreed to the making of the rules.

122B Subsections 209(8A) to (8C)

Repeal the subsections.

122C After section 209

Insert:

209A Process for seeking agreement to Category A rules—normal process

- (1) In seeking the agreement of a host jurisdiction for the purposes of section 209 to the making of Category A National Disability Insurance Scheme rules, the Minister must (subject to subsection 209B(2)):
 - (a) give a notice in writing to the Disability Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed rules to that Disability Minister.
- (2) The Disability Minister for a host jurisdiction may, before the end of the 14-day period, give the Minister and each other Disability Minister for a host jurisdiction:
 - (a) a notice in writing that that host jurisdiction agrees to the making of the rules; or

- (b) a notice in writing that that host jurisdiction does not agree to the making of the rules.
- (3) A notice under paragraph (2)(b) must set out reasons why the host jurisdiction does not agree to the making of the rules.
- (4) Those reasons must be given having regard to the objects of this Act and the principles in section 4.
- (5) A notice under paragraph (2)(b) is taken:
 - (a) never to have been given if it does not comply with subsection (3); and
 - (b) not to have been invalidly given only because it does not comply with subsection (4).
- (6) If the Disability Minister for a host jurisdiction does not, before the end of the 14-day period, inform the Minister whether the host jurisdiction agrees to the making of the rules, then the host jurisdiction is taken to have agreed to the making of the rules.
- (7) If the Disability Minister for a host jurisdiction gives the Minister a notice under paragraph (2)(b) before the end of the 14-day period, the Minister may before the end of 7 days after the end of that period either:
 - (a) do both of the following:
 - (i) give a notice in writing to the Disability Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of a different version of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this subparagraph is given;
 - (ii) provide a copy of that different version to each of those Disability Ministers; or
 - (b) if the Minister is of the opinion that the dispute resolution process set out in section 209C should apply in relation to the rules—give a notice in writing stating that opinion to the Prime Minister and to each Disability Minister for a host jurisdiction.

- (8) If the Minister gives notice, and provides a copy, of rules under paragraph (7)(a), then subsections (2) to (7) apply in relation to those rules as if:
- (a) notice of those rules had been given under paragraph (1)(a) and a copy of those rules had been provided under paragraph (1)(b); and
 - (b) the 14-day period for the purposes of those subsections were the 14-day period mentioned in subparagraph (7)(a)(i).

209B Process for seeking agreement to certain Category A rules where no substantial financial or policy implications

- (1) This section applies if the Minister:
- (a) is proposing to make National Disability Insurance Scheme rules for the purposes of section 32K or 32L; and
 - (b) considers that the rules do not have any substantial financial or policy implications for the National Disability Insurance Scheme.
- (2) The Minister may, instead of complying with subsection 209A(1):
- (a) give a notice in writing to the Disability Minister for each host jurisdiction that the Minister:
 - (i) is proposing to make the rules; and
 - (ii) considers that the rules do not have any substantial financial or policy implications for the National Disability Insurance Scheme; and
 - (b) provide a copy of the proposed rules to that Disability Minister.
- (3) The Disability Minister for a host jurisdiction may, before the end of 7 days after the day the notice is given, give the Minister and each other Disability Minister for a host jurisdiction a notice in writing that that host jurisdiction does not agree to the making of the rules.
- (4) A notice under subsection (3) must set out reasons why the host jurisdiction does not agree to the making of the rules.
- (5) Those reasons must be given having regard to:
- (a) the objects of this Act and the principles in section 4; and

- (b) whether the rules have any substantial financial or policy implications for the National Disability Insurance Scheme.
- (6) A notice under subsection (3) is taken:
 - (a) never to have been given if it does not comply with subsection (4); and
 - (b) not to have been invalidly given only because it does not comply with subsection (5).
- (7) If no Disability Minister for a host jurisdiction gives a notice under subsection (3) in relation to the rules, then each host jurisdiction is taken to have agreed to the making of the rules.
- (8) If the Disability Minister for a host jurisdiction gives the Minister a notice under subsection (3) before the end of the 7-day period, the Minister may before the end of 7 days after the end of that period either:
 - (a) do both of the following:
 - (i) give a notice in writing to the Disability Minister for each host jurisdiction that the Minister is proposing to make a different version of the rules, if the Minister considers that the different version does not have any substantial financial or policy implications for the National Disability Insurance Scheme;
 - (ii) provide a copy of that different version to each of those Disability Ministers; or
 - (b) if the Minister is of the opinion that the dispute resolution process set out in section 209C should apply in relation to the rules—give a notice in writing stating that opinion to the Prime Minister and to each Disability Minister for a host jurisdiction.
- (9) If the Minister gives notice, and provides a copy, of rules under paragraph (8)(a), then subsections (3) to (8) apply in relation to those rules as if notice of those rules had been given under paragraph (2)(a) and a copy of those rules had been provided under paragraph (2)(b).

209C Dispute resolution process for Category A rules

- (1) This section sets out a dispute resolution process for the making of Category A National Disability Insurance Scheme rules.
- (2) The Prime Minister may, within 14 days after the day on which the Prime Minister is given a notice under paragraph 209A(7)(b) or 209B(8)(b) in relation to proposed Category A National Disability Insurance Scheme rules:
 - (a) give a notice in writing to the First Minister of each host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this paragraph is given; and
 - (b) provide a copy of the proposed rules to each First Minister.
- (3) The First Minister for a host jurisdiction may, before the end of the 14-day period, give the Prime Minister and each other First Minister for a host jurisdiction:
 - (a) a notice in writing that that host jurisdiction agrees to the making of the rules; or
 - (b) a notice in writing that that host jurisdiction does not agree to the making of the rules.
- (4) A notice under paragraph (3)(b) must set out reasons why the host jurisdiction does not agree to the making of the rules.
- (5) Those reasons must be given having regard to:
 - (a) the objects of this Act and the principles in section 4; and
 - (b) if notice was given under paragraph 209B(2)(a) or subparagraph 209B(8)(a)(i) in relation to the rules—whether the rules have any substantial financial or policy implications for the National Disability Insurance Scheme.
- (6) A notice under paragraph (3)(b) is taken:
 - (a) never to have been given if it does not comply with subsection (4); and
 - (b) not to have been invalidly given only because it does not comply with subsection (5).

- (7) If the First Minister for a host jurisdiction does not, before the end of the 14-day period, give the Prime Minister a notice under paragraph (3)(a) or (b), then the First Minister is taken for the purposes of subsections (8) and (9) to have given the Prime Minister a notice under paragraph (3)(a) that the host jurisdiction agrees to the making of the rules.
- (8) Each host jurisdiction is taken to have agreed to the making of the rules if a majority of the First Ministers of the host jurisdictions give the Prime Minister a notice under paragraph (3)(a) in relation to the rules before the end of the 14-day period.
- (9) If a majority of the First Ministers of the host jurisdictions do not give the Prime Minister notices under paragraph (3)(a) in relation to the rules before the end of the 14-day period, the Prime Minister may, before the end of 7 days after the end of the 14-day period:
- (a) give a notice in writing to the First Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of a different version of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this paragraph is given; and
 - (b) provide a copy of that different version to each of those First Ministers.
- (10) If the Prime Minister gives notice, and provides a copy, of rules under paragraphs (9)(a) and (b), then subsections (3) to (9) apply in relation to those rules as if:
- (a) notice of those rules had been given under paragraph (2)(a) and a copy of those rules had been provided under paragraph (2)(b); and
 - (b) the 14-day period for the purposes of those subsections were the 14-day period mentioned in paragraph (9)(a).

209D Process for seeking agreement to Category B rules and Category C rules

- (1) In seeking the agreement of a host jurisdiction for the purposes of section 209 to the making of Category B National Disability Insurance Scheme rules or Category C National Disability Insurance Scheme rules, the Minister must:
-

- (a) give a notice (the *original notice*) in writing to one host jurisdiction Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed rules to that host jurisdiction Minister.
- (2) If, immediately before the end of that 28-day period:
- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the rules; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3);
- then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the rules.
- (3) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the rules:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the rules, then, at the end of that period, that host jurisdiction is taken to have so agreed.

122D At the end of Part 5 of Chapter 7

Add:

211 Information about consultation to be included in explanatory statements

- (1) A description of the nature of consultation undertaken in relation to a legislative instrument made under this Act that is required by paragraph 15J(2)(d) of the *Legislation Act 2003* to be contained in an explanatory statement for the instrument must:

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- (a) describe the nature of the consultation; and
- (b) describe in general terms the persons, bodies or organisations who were consulted; and
- (c) contain a summary of the views expressed by those persons, bodies or organisations.

Note: For this purpose consultation includes, but is not limited to, consultation undertaken for the purposes of section 209 of this Act. See also sections 17 and 19 of the *Legislation Act 2003*.

- (2) The description must not identify a person, body or organisation, or reveal the views of a person, body or organisation, except with the agreement of the person, body or organisation.

Part 2—Consequential amendments

Legislation (Exemptions and Other Matters) ***Regulation 2015***

123 Section 12 (after table item 42AB)

Insert:

42AC Each of the following:

- (a) National Disability Insurance Scheme rules, within the meaning of the *National Disability Insurance Scheme Act 2013*;
- (b) any other instrument made under that Act

Part 3—Application and transitional provisions

124 NDIS supports

- (1) This item applies until the commencement of the first National Disability Insurance Scheme rules made for the purposes of subsection 10(1) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule.
- (2) Section 10 of that Act has effect as if a reference in that section to the National Disability Insurance Scheme rules were a reference to rules made under item 138 of this Schedule.

125 Access requests

Sections 21, 26 and 28 of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to a person who makes an access request on or after that commencement.

126 Meeting the disability requirements or the early intervention requirements

- (1) Sections 24, 25 and 27 of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to:
 - (a) a person who makes an access request on or after that commencement, for the purposes of deciding whether the person meets the access criteria on or after that commencement; and
 - (b) any person who is a participant on or after that commencement, for the purposes of deciding whether the person meets the disability requirements or the early intervention requirements on or after that commencement.
- (2) Paragraph (1)(b) applies whether the person becomes a participant before, on or after the commencement of this Schedule.
- (3) National Disability Insurance Scheme rules made for the purposes of section 27 of the *National Disability Insurance Scheme Act 2013* that were in force immediately before the commencement of this Schedule

continue in force (and may be dealt with) as if made for the purposes of that section as amended by this Schedule.

127 Status of person as a participant

Sections 29, 30 and 30A of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to a person who is a participant on or after that commencement, whether the person becomes a participant before, on or after that commencement.

128 Transition to new framework plans

Subsections 32(3) and (4) and 32B(2), and section 32C, of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to a person who is a participant on or after that commencement, whether the person becomes a participant before, on or after that commencement.

128A Notice of impairments

- (1) Paragraph 32BA(1)(a) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a person who makes an access request on or after 1 January 2025.
- (2) Paragraph 32BA(1)(b) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a person who is a participant on or after that commencement, whether the person becomes a participant before, on or after that commencement.

129 Old framework plans—content and approval of statement of participant supports

- (1) Subject to subitem (3), sections 33, 34 and 35 of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to a statement of participant supports included in an old framework plan for a participant if the statement is approved or varied on or after that commencement.
- (2) Subitem (1) applies:
 - (a) whether the participant becomes a participant; and

- (b) in the case of a variation—whether the plan comes into effect;
before, on or after that commencement.
- (3) Subsection 33(2A) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a statement of participant supports included in an old framework plan for a participant if:
- (a) the statement is approved on or after the commencement (the **determination commencement**) of the first determination made under subsection 33(2E) of that Act (as inserted by this Schedule); and
 - (b) the decision to approve the statement is not covered by subitem (4).
- (4) This subitem covers the following decisions made on or after the determination commencement:
- (a) a decision made by a reviewer under subsection 100(6) of the *National Disability Insurance Scheme Act 2013* on review of a decision made by a decision-maker before the determination commencement;
 - (b) a decision, made by the Administrative Appeals Tribunal, on review of a decision made by a reviewer under that subsection:
 - (i) before the determination commencement; or
 - (ii) on or after the determination commencement, if the decision reviewed by the reviewer was made by a decision-maker before the determination commencement.
- (5) Subitem (3) applies whether the participant becomes a participant before, on or after the determination commencement.

130 When a plan ceases to be in effect

Subsection 37(3) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a participant's plan, whether the plan comes into effect before, on or after that commencement.

131 Suspension of plans

Paragraph 41(2)(a) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a suspension of a statement of participant supports in a participant's plan that starts on or after that commencement.

132 Circumstances in which persons must not manage funding

Subsections 43(3), (4A), (5) and (6), and 44(1), (2AA) and (2A), of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to a person who is a participant on or after that commencement:

- (a) whether the person became a participant; and
- (b) whether the plan came into effect; and
- (c) whether any relevant plan management request was made; and
- (d) in the case of subsections 43(4A) and 44(2AA)—whether the registered plan management provider was registered or nominated; and
- (e) in the case of subsections 43(5) and (6) and 44(2A)—whether the plan nominee is appointed; and
- (f) in the case of paragraph 44(1)(aa)—whether the participant is convicted of the offence;
- (g) in the case of paragraph 44(2A)(aa)—whether the plan nominee is convicted of the offence;

before, on or after that commencement.

132A Claims

- (1) Section 45A of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to payments made on or after that commencement, subject to subitem (2).
- (2) Without limiting subsection 45A(5) of that Act, a claim in respect of a support provided to a participant before the commencement of this Schedule is taken to be made in accordance with that subsection if the claim is made in accordance with subsection 45A(3) of that Act before the end of 12 months starting on that commencement.

133 Acquittal of NDIS amounts

Section 46 of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to:

- (a) a participant who receives an NDIS amount, including because of subsection 46(1A) of that Act, on or after that commencement; or
- (b) a person who receives an NDIS amount on behalf of a participant, including because of subsection 46(1B) of that Act, on or after that commencement;

whether the participant becomes a participant before, on or after that commencement.

134 Garnishee orders

Paragraph 46B(2)(b) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to the making of an order in the nature of a garnishee order on or after that commencement.

135 Varying old framework plans

- (1) Paragraphs 47(1A)(a) and (ag), and subsection 47A(3), of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to the variation of an old framework plan on or after commencement, whether the plan comes into effect before, on or after that commencement.
- (2) Paragraphs 47A(1A)(ab) to (af), and subsection 47A(1B), of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to the variation of an old framework plan if subsection 33(2A) of that Act applied in relation to the approval of the plan (see subitems 129(3) to (5)).

136 No reassessment of certain old framework plans

Section 49B of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to an old framework plan on and after commencement whether the plan comes into effect before, on or after that commencement.

137 Children

- (1) Subsections 74(4) and (4A) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, apply in relation to person who is a participant on or after that commencement:
 - (a) whether the person became a participant; and
 - (b) whether the plan came into effect; and
 - (c) whether any relevant plan management request was made; and
 - (d) in the case of subsection 74(4A)—whether the registered plan management provider was registered or nominated;before, on or after that commencement.
- (2) National Disability Insurance Scheme rules made for the purposes of subsection 74(6) of the *National Disability Insurance Scheme Act 2013* that were in force immediately before the commencement of this Schedule continue in force (and may be dealt with) as if made for the purposes of that section as amended by this Schedule.

137A Appointment of Indigenous persons to the Board of the Agency

- (1) Subsection 127(7) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to an appointment made under subsection 127(1) of that Act on or after that commencement.
- (2) Subsection 129(6) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to an appointment made under subsection 129(2) of that Act on or after that commencement.

137B Waiver in special circumstances

Section 195 of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to:

- (a) debts that arise on or after that commencement; and
- (b) debts that arose before that commencement and are outstanding at that commencement.

138 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.
- (2) Without limiting subitem (1), rules made under this item before the end of the period of 12 months starting on the day this Schedule commences may provide that provisions of this Schedule, or any other Act or instrument, have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.
- (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of an Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).

139 Transitional rules to apply for certain provisions until Category A rules commence

- (1) This item applies in relation to a provision covered by subitem (2) until the commencement of the first National Disability Insurance Scheme rules made for the purposes of the provision.
- (2) The following provisions of the *National Disability Insurance Scheme Act 2013* are covered by this subitem:
 - (a) subsection 32B(1);
 - (b) subparagraph 32C(c)(ii);
 - (c) subsection 32E(4);
 - (d) subsection 32K(1);
 - (e) subsection 32L(2);

- (f) subsection 32L(6);
 - (g) subsection 32L(7A).
- (3) The provision has effect as if a reference in the provision to the National Disability Insurance Scheme rules were a reference to rules made under item 138 of this Schedule.
- (4) The following provisions of the *National Disability Insurance Scheme Act 2013* apply (subject to subitems (5) to (8) of this item) in relation to the making of rules under item 138 for the purposes of a provision covered by subitem (2) of this item in the same way as those provisions apply in relation to the making of Category A National Disability Insurance Scheme rules:
- (a) subsections 209(1A), (2), (3), (4) and (6A);
 - (b) sections 209A to 209C.
- (5) Subitem (6) applies if:
- (a) the Minister proposes to make rules under item 138 for the purposes of a provision covered by subitem (2) of this item; and
 - (b) the Prime Minister gives notice, and provides a copy, of the rules under paragraphs 209C(2)(a) and (b), or (9)(a) and (b), of the *National Disability Insurance Scheme Act 2013* (as those paragraphs apply because of subitem (4) of this item); and
 - (c) a majority of the First Ministers of the host jurisdictions do not give the Prime Minister notices under paragraph 209C(3)(a) of that Act (as that paragraph applies because of subitem (4) of this item) in relation to the rules before the end of 14 days beginning on the day the notice mentioned in paragraph (b) of this subitem was given.
- (6) The Prime Minister may, before the end of 7 days after the end of the 14-day period, give the Minister written notice under this subitem that the Prime Minister considers that the Minister should not be prevented from making the rules and, if the Prime Minister does so, each host jurisdiction is taken to have agreed to the making of the rules.
- (7) To avoid doubt:
- (a) subsections 209C(6) and (7) of the *National Disability Insurance Scheme Act 2013* apply in working out whether
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Schedule 1 Main amendments

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there is a majority for the purposes of paragraph (5)(c) of this item in the same way as they apply in working out whether there is a majority for the purposes of subsection 209C(8) or (9) of that Act; and

(b) subitem (6) of this item does not limit subsection 209C(9) of that Act (as it applies because of subitem (4)).

(8) Subparagraph 209(6A)(a)(i) of the *National Disability Insurance Scheme Act 2013* applies as mentioned in subitem (4) as if:

(a) a reference in that subparagraph to a provision of that Act included a reference to that provision as it applies because of that subitem; and

(b) that subparagraph included a reference to this item, in addition to the provisions referred to in that subparagraph.

(9) A reference in this item to a provision of the *National Disability Insurance Scheme Act 2013* is a reference to that provision as in force on and after the commencement of this Schedule.

Schedule 2—Quality and safeguards amendments

Part 1—Amendments

National Disability Insurance Scheme Act 2013

1 Before subsection 73U(5) (after the heading)

Insert:

- (4A) An approval is subject to such conditions as are specified in the National Disability Insurance Scheme rules for the purposes of this subsection.

2 After subsection 73U(5)

Insert:

- (5A) Without limiting subsection (4A) or (5), a condition specified under either of those subsections may have the effect of requiring an approved quality auditor to not:
- (a) employ or engage, or continue to employ or engage, a person against whom a banning order has been made; or
 - (b) have, or continue to have, such a person as a member of the approved quality auditor's key personnel.

3 Subsection 73U(6)

Repeal the subsection (not including the heading), substitute:

- (6) The Commissioner may, in writing, vary an approval given under subsection (1) by:
- (a) imposing new conditions on the approval; or
 - (b) varying or removing existing conditions (other than conditions specified under subsection (4A)).

4 After subsection 73U(9)

Insert:

National Disability Insurance Scheme rules relating to approved quality auditors

- (9A) The National Disability Insurance Scheme rules may prescribe requirements with which the Commissioner must comply, criteria that the Commissioner is to apply, or matters to which the Commissioner may, must or must not have regard, in deciding the following:
- (a) whether to give, or refuse to give, an approval under subsection (1);
 - (b) whether or not to make an approval given under subsection (1) subject to conditions;
 - (c) whether or not to vary or revoke an approval given under subsection (1).

5 At the end of subsection 73ZN(9)

Add:

- ; and (d) if the banning order is against a person who is employed or otherwise engaged by an approved quality auditor or is a member of the key personnel of an approved quality auditor—notify the approved quality auditor of the order as soon as possible.

6 After paragraph 201A(1)(i)

Insert:

- (ia) subsections 73U(4A) and (9A) (approved quality auditors);

7 Subsections 202B(1) and (2)

Repeal the subsections, substitute:

- (1) The Commissioner may, in writing, delegate the Commissioner's powers and functions under Division 8 of Part 3A of Chapter 4 (compliance and enforcement) to APS employees in the Commission in accordance with the following table:

Delegation of regulatory powers

Item	The Commissioner may delegate the following powers and functions ...	to the following APS employees in the Commission ...
1	any of the powers and functions under that Division, including: (a) powers under the Regulatory Powers Act in relation to the provisions of this Act; and (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a)	an SES employee, or an acting SES employee, in the Commission
2	a power or function under subsection 73ZL(2) or (3) (infringement notices), including: (a) powers under Part 5 of the Regulatory Powers Act in relation to the provisions of this Act; and (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a)	an APS employee in the Commission who holds, or performs the duties of, an Executive Level 2, or equivalent, position
3	a power or function under section 73ZM (compliance notices)	an APS employee in the Commission who holds, or performs the duties of, an Executive Level 1 or 2, or equivalent, position

Note 1: The expressions **SES employee**, **acting SES employee** and **APS employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

- (2) Before delegating a power or function under subsection (1) to an APS employee covered by item 2 or 3 of the table in that subsection, the Commissioner must have regard to:
- (a) if the power or function is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is

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sufficiently senior for the employee to exercise the power or perform the function; or

- (b) otherwise—whether the employee has appropriate qualifications or expertise to exercise the power or perform the function.

8 Subsection 209(8) (table item 4, column headed “Description”, after paragraph (k))

Insert:

(ka) subsections 73U(4A) and (9A);

Part 2—Application and transitional provisions

9 Conditions of approval—approved quality auditors

Subsection 73U(4A) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to an approval of a person or body to be an approved quality auditor, whether the approval is given before, on or after that commencement.

10 Notification of banning orders

Paragraph 73ZN(9)(d) of the *National Disability Insurance Scheme Act 2013*, as in force on and after the commencement of this Schedule, applies in relation to a banning order made on or after that commencement.

11 Delegation of regulatory powers

A delegation made under subsection 202B(1) of the *National Disability Insurance Scheme Act 2013* that was in force immediately before the commencement of this Schedule continues in force (and may be dealt with) as if it had been made under that subsection as amended by this Schedule.

[Minister's second reading speech made in—
House of Representatives on 27 March 2024
Senate on 24 June 2024]

(47/24)
