

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Disability Insurance Scheme
Bill 2012**

No. , 2012

(Families, Housing, Community Services and Indigenous Affairs)

**A Bill for an Act to establish the National Disability
Insurance Scheme, and for related purposes**

Contents

Chapter 1—Introduction	1
Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	2
Part 2—Objects and principles	4
3 Objects of Act.....	4
4 General principles guiding actions under this Act.....	5
5 General principles guiding actions of people who may do acts or things on behalf of others.....	6
6 Agency may provide support and assistance.....	7
7 Provision of notice, approved form or information under this Act etc.	7
Part 3—Simplified outline	8
8 Simplified outline.....	8
Part 4—Definitions	10
9 Definitions.....	10
10 Definition of <i>host jurisdiction</i>	16
11 Definitions relating to compensation.....	16
Part 5—Ministerial Council	18
12 Ministerial Council functions etc.....	18
Chapter 2—Assistance for people with disability and others	19
13 Agency may provide coordination, strategic and referral services etc. to people with disability.....	19
14 Agency may provide funding to persons or entities.....	19
15 Agency may provide information.....	19
16 Agency may assist in relation to doing things under Chapter.....	20
17 National Disability Insurance Scheme rules.....	20
Chapter 3—Participants and their plans	21
Part 1—Becoming a participant	21
18 Person may make a request to become a participant.....	21
19 Matters relating to access requests.....	21
20 CEO must consider and decide access requests.....	22

21	When a person meets the access criteria	22
22	Age requirements.....	23
23	Residence requirements	24
24	Disability requirements.....	25
25	Early intervention requirements	25
26	Requests that the CEO may make.....	26
27	National Disability Insurance Scheme rules relating to disability requirements and early intervention requirements	27
28	When a person becomes a participant.....	28
29	When a person ceases to be a participant.....	28
30	Revocation of participant status.....	29
Part 2—Participants’ plans		30
Division 1—Principles relating to plans		30
31	Principles relating to plans	30
Division 2—Preparing participants’ plans		31
32	CEO must facilitate preparation of participant’s plan.....	31
33	Matters that must be included in a participant’s plan	31
34	Reasonable and necessary supports	33
35	National Disability Insurance Scheme rules for statement of participant supports	34
36	Information and reports for the purposes of preparing and approving a participant’s plan	35
37	When plan is in effect	36
38	Copy of plan to be provided	36
39	Agency must comply with the statement of participant supports	36
40	Effect of temporary absence on plans	36
41	Suspension of plans	37
Division 3—Managing the funding for supports under participants’ plans		38
42	Meaning of <i>managing the funding for supports</i> under a participant’s plan	38
43	Choice for the participant in relation to plan management	38
44	Circumstances in which participant must not manage plan to specified extent	40
45	Payment of NDIS amounts	40
46	Acquittal of NDIS amounts	41
Division 4—Reviewing and changing participants’ plans		42
47	Participant may change participant’s statement of goals and aspirations at any time	42

48	Review of participant’s plan	42
49	Outcome of review	43
50	Information and reports for the purposes of reviewing a participant’s plan	43
Chapter 4—Administration		45
Part 1—General matters		45
Division 1—Participants and prospective participants		45
51	Requirement to notify change of circumstances	45
52	Requirements relating to notices	45
53	Power to obtain information from participants and prospective participants to ensure the integrity of the National Disability Insurance Scheme	45
54	Written notice of requirement	46
Division 2—Other persons		47
55	Power to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme	47
56	Written notice of requirement	48
57	Offence—refusal or failure to comply with requirement	48
Division 3—Interaction with other laws		49
58	Obligations not affected by State or Territory laws	49
59	Interaction with Commonwealth laws	49
Part 2—Privacy		50
60	Protection of information held by the Agency etc.	50
61	Offence—unauthorised access to protected information	50
62	Offence—unauthorised use or disclosure of protected information	51
63	Offence—soliciting disclosure of protected information	51
64	Offence—offering to supply protected information	52
65	Protection of certain documents etc. from production to court etc.	52
66	Disclosure of information by CEO	53
67	National Disability Insurance Scheme rules for exercise of CEO’s disclosure powers	54
68	Part does not affect the operation of the <i>Freedom of Information Act 1982</i>	54
Part 3—Registered providers of supports		55
69	Application to be a registered provider of supports	55
70	Registered providers of supports	55

71	When a person or entity ceases to be a registered provider of supports	56
72	Revocation of approval as a registered provider of supports	56
73	National Disability Insurance Scheme rules for registered providers of supports	57
Part 4—Children		59
74	Children	59
75	Definition of <i>parental responsibility</i>	60
76	Duty to children.....	61
77	Revocation of determinations under section 74.....	62
Part 5—Nominees		63
Division 1—Functions and responsibilities of nominees		63
78	Actions of plan nominee on behalf of participant	63
79	Actions of correspondence nominee on behalf of participant.....	64
80	Duty of nominee to participant	64
81	Giving of notices to correspondence nominee	65
82	Compliance by correspondence nominee	66
83	Nominee to inform Agency of matters affecting ability to act as nominee.....	67
84	Statement by plan nominee regarding disposal of money.....	68
85	Right of nominee to attend with participant.....	69
Division 2—Appointment and cancellation or suspension of appointment		70
86	Appointment of plan nominee	70
87	Appointment of correspondence nominee	70
88	Provisions relating to appointments.....	70
89	Circumstances in which the CEO must cancel appointment of nominees	71
90	General circumstances in which CEO may cancel or suspend appointment of nominees.....	72
91	Suspension etc. of appointment of nominees in cases of severe physical, mental or financial harm.....	73
92	Other matters relating to cancellation or suspension of appointment.....	74
93	National Disability Insurance Scheme rules may prescribe requirements etc.....	75
94	CEO’s powers of revocation.....	75
Division 3—Other matters relating to nominees		76
95	CEO’s powers to give notices to participant.....	76
96	Notification of nominee where notice is given to participant	76

97	Protection of participant against liability for actions of nominee	76
98	Protection of nominee against criminal liability	76
Part 6—Review of decisions		77
99	Reviewable decisions	77
100	Review of reviewable decisions	78
101	Variation of reviewable decision before review completed.....	79
102	Withdrawal of request for review	80
103	Applications to the Administrative Appeals Tribunal	80
Chapter 5—Compensation payments		81
Part 1—Requirement to take action to obtain compensation		81
104	CEO may require person to take action to obtain compensation.....	81
105	Consequences of failure to comply with a requirement to take action to obtain compensation.....	82
Part 2—Agency may recover compensation fixed after NDIS amounts have been paid		83
106	Recovering past NDIS amounts from certain judgements	83
107	Recovering past NDIS amounts from consent judgements and settlements	84
108	Debts resulting from section 106 or 107.....	85
Part 3—Recovery from compensation payers and insurers		86
109	CEO may send preliminary notice to potential compensation payer or insurer.....	86
110	Offence—potential compensation payer or insurer	87
111	CEO may send recovery notice to compensation payer or insurer.....	87
112	Preliminary notice or recovery notice suspends liability to pay compensation	89
113	Compensation payer’s or insurer’s payment to Agency discharges liability to participant.....	89
114	Offence—making compensation payment after receiving preliminary notice or recovery notice	90
115	Liability to pay the Agency if there is a contravention of section 114.....	91
Part 4—CEO may disregard certain payments		92
116	CEO may disregard certain payments	92

Chapter 6—National Disability Insurance Scheme Launch Transition Agency	93
Part 1—National Disability Insurance Scheme Launch Transition Agency	93
117 Establishment	93
118 Functions of the Agency	93
119 Powers of the Agency	94
120 Charging of fees	94
121 Minister may give directions to the Agency	95
122 Agency does not have privileges and immunities of the Crown	96
Part 2—Board of the Agency	97
Division 1—Establishment and functions	97
123 Establishment	97
124 Functions of the Board	97
125 Minister may give the Board a statement setting out strategic guidance for the Agency	97
Division 2—Members of the Board	99
126 Membership	99
127 Appointment of Board members	99
128 Term of appointment	100
129 Acting appointments	100
130 Remuneration and allowances	102
131 Leave of absence	102
132 Outside employment	102
133 Resignation of Board members	103
134 Termination of appointment of Board members	103
135 Other terms and conditions of Board members	104
Division 3—Meetings of the Board	105
136 Convening meetings	105
137 Presiding at meetings	105
138 Quorum	105
139 Voting at meetings	106
140 Conduct of meetings	106
141 Minutes	106
142 Decisions without meetings	106

Part 3—Independent Advisory Council	108
Division 1—Establishment and function	108
143 Establishment	108
144 Function of the Advisory Council	108
145 Advice of the Advisory Council	109
Division 2—Members of the Advisory Council	110
146 Membership.....	110
147 Appointment of members of the Advisory Council.....	110
148 Term of appointment	111
149 Acting appointments.....	111
150 Remuneration and allowances	112
151 Leave of absence	113
152 Disclosure of interests to the Minister	113
153 Disclosure of interests to the Advisory Council	113
154 Resignation of members of the Advisory Council.....	114
155 Termination of appointment of members of the Advisory Council	114
156 Other terms and conditions of members of the Advisory Council	115
Division 3—Procedures of the Advisory Council	116
157 Procedures of the Advisory Council.....	116
Part 4—Chief Executive Officer and staff etc.	117
Division 1—Chief Executive Officer	117
158 Establishment	117
159 Functions of the CEO	117
160 Appointment of the CEO.....	117
161 Acting appointments.....	118
162 Remuneration and allowances	118
163 Leave of absence	118
164 Outside employment.....	119
165 Disclosure of interests	119
166 Resignation of the CEO.....	119
167 Termination of appointment of the CEO	119
168 Other terms and conditions of the CEO.....	120
Division 2—Staff etc.	121
169 Staff.....	121
170 Services of other persons to be made available to the Agency	121
171 Consultants	121

Part 5—Reporting and planning	122
Division 1—Reporting	122
Subdivision A—Reporting by Board members	122
172 Annual report.....	122
173 Giving certain information to the Ministerial Council.....	123
174 Quarterly report to the Ministerial Council	124
Subdivision B—Reporting by the Agency	125
175 Giving information requested by Commonwealth, State or Territory Ministers.....	125
Subdivision C—Reporting by the Minister	125
176 Giving certain information to the Ministerial Council.....	125
Division 2—Planning	127
177 Corporate plan	127
Part 6—Finance	128
178 Payments to the Agency by the Commonwealth	128
179 Payments to the Agency by the host jurisdictions	128
180 Application of money by the Agency	128
Part 7—Miscellaneous	130
181 Taxation.....	130
Chapter 7—Other matters	131
Part 1—Debt recovery	131
Division 1—Debts	131
182 Debts due to the Agency.....	131
Division 2—Methods of recovery	132
183 Legal proceedings.....	132
184 Arrangement for payment of debt.....	132
185 Recovery of amounts from financial institutions	133
Division 3—Information relating to debts	135
186 Power to obtain information from a person who owes a debt to the Agency.....	135
187 Power to obtain information about a person who owes a debt to the Agency.....	135
188 Written notice of requirement.....	135
189 Offence—refusal or failure to comply with requirement.....	136
Division 4—Non-recovery of debts	137
190 CEO may write off debt.....	137

191	Power to waive Agency’s right to recover debt	138
192	Waiver of debt arising from error	138
193	Waiver of small debt	138
194	Waiver in relation to settlements	139
195	Waiver in special circumstances	140
Part 2—General matters		141
196	Method of notification by CEO	141
197	CEO not required to make a decision	141
198	Protection of participant against liability for actions of persons.....	141
199	Protection against criminal liability	141
200	Evidentiary effect of CEO’s certificate.....	142
201	Delegation by the Minister	142
202	Delegation by the CEO.....	142
203	Application of Act to unincorporated bodies.....	143
204	Time frames for decision making	144
Part 3—Constitutional matters		145
205	Act binds Crown.....	145
206	Alternative constitutional basis.....	145
207	Concurrent operation of State laws.....	146
Part 4—Review of the Act		147
208	Review of operation of Act	147
Part 5—Legislative instruments		148
209	The National Disability Insurance Scheme rules	148
210	Regulations.....	150

1 **A Bill for an Act to establish the National Disability**
2 **Insurance Scheme, and for related purposes**

3 The Parliament of Australia enacts:

4 **Chapter 1—Introduction**

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *National Disability Insurance Scheme*
9 *Act 2012*.

Section 2

1 **2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 12	The day after this Act receives the Royal Assent.	
3. Chapters 2 and 3	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Chapter 4, Part 1, Division 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Chapter 4, Part 1, Divisions 2 and 3	The day after this Act receives the Royal Assent.	
6. Chapter 4, Parts 2 and 3	The day after this Act receives the Royal Assent.	
7. Chapter 4, Parts 4, 5 and 6	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the	

Section 2

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	Royal Assent, they commence on the day after the end of that period.	
8. Chapter 5	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
9. Chapters 6 and 7	The day after this Act receives the Royal Assent.	

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

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.
7

Section 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Part 2—Objects and principles

3 Objects of Act

- (1) The objects of this Act are to:
- (a) provide for the National Disability Insurance Scheme in Australia; and
 - (b) support the independence and social and economic participation of people with disability; and
 - (c) provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch; and
 - (d) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and
 - (e) facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and
 - (f) promote the provision of high quality and innovative supports to people with disability; and
 - (g) raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability; and
 - (h) give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities.
- (2) These objects are to be achieved by:
- (a) providing the foundation for governments to work together to develop and implement the National Disability Insurance Scheme launch; and
 - (b) adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability.
- (3) In giving effect to the objects of the Act, regard is to be had to:
- (a) the progressive implementation of the National Disability Insurance Scheme; and

1 (b) the need to ensure the financial sustainability of the National
2 Disability Insurance Scheme.

3 **4 General principles guiding actions under this Act**

- 4 (1) People with disability have the same right as other members of
5 Australian society to realise their potential for physical, social,
6 emotional and intellectual development.
- 7 (2) People with disability should be supported to participate in and
8 contribute to social and economic life to the extent of their ability.
- 9 (3) People with disability and their families and carers should have
10 certainty that people with disability will receive the care and
11 support they need over their lifetime.
- 12 (4) People with disability should be supported to exercise choice and
13 control in the pursuit of their goals and the planning and delivery
14 of their supports.
- 15 (5) People with disability should be supported to receive reasonable
16 and necessary supports, including early intervention supports.
- 17 (6) People with disability have the same right as other members of
18 Australian society to respect for their worth and dignity and to live
19 free from abuse, neglect and exploitation.
- 20 (7) People with disability have the same right as other members of
21 Australian society to pursue any grievance.
- 22 (8) People with disability have the same right as other members of
23 Australian society to be able to determine their own best interests,
24 including the right to exercise informed choice and engage as equal
25 partners in decisions that will affect their lives, to the full extent of
26 their capacity.
- 27 (9) People with disability should be supported in all their dealings and
28 communications with the Agency so that their capacity to exercise
29 choice and control is maximised in a way that is appropriate to
30 their circumstances and cultural needs.
- 31 (10) People with disability should have their privacy and dignity
32 respected.
-

Section 5

- 1 (11) Reasonable and necessary supports for people with disability
2 should:
- 3 (a) support people with disability to pursue their goals and
4 maximise their independence; and
- 5 (b) support the capacity of people with disability to undertake
6 activities that enable them to participate in the community
7 and in employment.
- 8 (12) The role of families, carers and other significant persons in the
9 lives of people with disability is to be acknowledged and respected.
- 10 (13) People with disability should be supported to receive supports
11 outside the National Disability Insurance Scheme, and be assisted
12 to coordinate these supports with the supports provided under the
13 National Disability Insurance Scheme.
- 14 (14) Innovation, quality, continuous improvement, contemporary best
15 practice and effectiveness in the provision of supports to people
16 with disability are to be promoted.
- 17 (15) It is the intention of the Parliament that the Ministerial Council, the
18 Minister, the Board, the CEO and any other person or body is to
19 perform functions and exercise powers under this Act in
20 accordance with these principles, having regard to:
- 21 (a) the progressive implementation of the National Disability
22 Insurance Scheme; and
- 23 (b) the need to ensure the financial sustainability of the National
24 Disability Insurance Scheme.

25 **5 General principles guiding actions of people who may do acts or**
26 **things on behalf of others**

- 27 It is the intention of the Parliament that, if this Act requires or
28 permits an act or thing to be done by or in relation to a person with
29 disability by another person, the act or thing is to be done, so far as
30 practicable, in accordance with both the general principles set out
31 in section 4 and the following principles:
- 32 (a) people with disability should be involved in decision making
33 processes that affect them, and where possible make
34 decisions for themselves;

- 1 (b) people with disability should be encouraged to engage in the
2 life of the community;
3 (c) the judgements and decisions that people with disability
4 would have made for themselves should be taken into
5 account;
6 (d) the cultural and linguistic circumstances of people with
7 disability should be taken into account;
8 (e) the supportive relationships, friendships and connections with
9 others of people with disability should be recognised.

10 **6 Agency may provide support and assistance**

- 11 (1) The Agency may provide support and assistance (including
12 financial assistance) to prospective participants and participants in
13 relation to doing things or meeting obligations under, or for the
14 purposes of, this Act.

15 Note: For example, the Agency might assist a participant to prepare the
16 participant's statement of goals and aspirations by assisting the
17 participant to clarify his or her goals, objectives and aspirations.

- 18 (2) However, subsection (1) does not permit or require the Agency to
19 fund legal assistance for prospective participants or participants in
20 relation to review of decisions made under this Act.

21 **7 Provision of notice, approved form or information under this Act**
22 **etc.**

- 23 (1) The contents of any notice, approved form or information given
24 under this Act, the regulations or the National Disability Insurance
25 Scheme rules to a person with disability must be explained by the
26 giver of the notice, approved form or information to the maximum
27 extent possible to the person in the language, mode of
28 communication and terms which that person is most likely to
29 understand.

- 30 (2) An explanation given under subsection (1) must be given both
31 orally and in writing if reasonably practicable.

Section 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Part 3—Simplified outline

8 Simplified outline

The following is a simplified outline of this Act:

This Act provides for the National Disability Insurance Scheme.

The National Disability Insurance Scheme comprises:

- (a) the provision of services or activities that are in the nature of coordination, strategic or referral services or activities (Chapters 2 and 3); and
- (b) funding for persons or entities to enable them to assist people with disability to participate in economic and social life (Chapter 2); and
- (c) individual plans under which reasonable and necessary supports will be funded for certain people, called participants (Chapter 3).

This Act includes administrative provisions supporting the operation of the National Disability Insurance Scheme (Chapters 4 and 5), such as:

- (a) provisions to ensure the National Disability Insurance Scheme's integrity, including limited powers to obtain information, and requirements relating to protection of information; and
- (b) provisions relating to children; and
- (c) provisions for nominees; and
- (d) provisions for review of decisions; and
- (e) provisions about the treatment of compensation.

1 This Act also provides for the establishment of the National
2 Disability Insurance Scheme Launch Transition Agency
3 (Chapter 6).

4 The functions of the Agency include delivering the National
5 Disability Insurance Scheme.

6 The Agency also has more general functions, such as:

- 7 (a) developing and enhancing the disability sector,
8 including by facilitating innovation, research and
9 contemporary best practice in the sector; and
10 (b) building community awareness of disabilities and
11 the social contributors to disabilities.

12 Chapter 6 also:

- 13 (a) establishes the Board of the Agency; and
14 (b) establishes an Independent Advisory Council; and
15 (c) provides for the Chief Executive Officer and staff
16 of the Agency; and
17 (d) provides for reporting and financial matters.

18 Chapter 7 includes provisions relating to general matters, such as:

- 19 (a) debts; and
20 (b) review of the Act; and
21 (c) legislative instruments.
22

Section 9

1 **Part 4—Definitions**
2

3 **9 Definitions**

4 In this Act:

5 ***access request*** has the meaning given by section 18.

6 ***Advisory Council*** means the Independent Advisory Council
7 established by section 143.

8 ***Agency*** means the National Disability Insurance Scheme Launch
9 Transition Agency established by section 117.

10 ***Board*** means the Board of the Agency established by section 123.

11 ***Board member*** means a member of the Board (and includes the
12 Chair).

13 ***CAC Act*** means the *Commonwealth Authorities and Companies*
14 *Act 1997*.

15 ***carer*** means an individual who:

- 16 (a) provides personal care, support and assistance to another
17 individual who needs it because that other individual is a
18 person with disability; and
19 (b) does not provide the care, support and assistance:
20 (i) under a contract of service or a contract for the
21 provision of services; or
22 (ii) in the course of doing voluntary work for a charitable,
23 welfare or community organisation; or
24 (iii) as part of the requirements of a course of education or
25 training.

26 ***centrelink program*** has the same meaning as in the *Human*
27 *Services (Centrelink) Act 1997*.

28 ***CEO*** means the Chief Executive Officer of the Agency.

29 ***Chair*** means the Chair of the Board.

1 ***child*** means a person who is under 18 years of age.

2 ***COAG*** means the Council of Australian Governments.

3 ***community care*** has the same meaning as in the *Aged Care Act*
4 *1997*.

5 ***compensation*** has the meaning given by section 11.

6 ***Convention on the Rights of Persons with Disabilities*** means the
7 Convention on the Rights of Persons with Disabilities, done at
8 New York on 30 March 2007.

9 Note: The text of the Convention is set out in Australian Treaty Series 2008
10 No. 12 ([2008] ATS 12). In 2012, the text of a Convention in the
11 Australian Treaty Series was accessible through the Australian
12 Treaties Library on the AustLII website (www.austlii.edu.au).

13 ***correspondence nominee*** means a person who is appointed as the
14 correspondence nominee of a participant under section 87.

15 ***developmental delay*** means a delay in the development of a child
16 under 6 years of age that:

- 17 (a) is attributable to a mental or physical impairment or a
18 combination of mental and physical impairments; and
19 (b) results in substantial reduction in functional capacity in one
20 or more of the following areas of major life activity:
21 (i) self-care;
22 (ii) receptive and expressive language;
23 (iii) cognitive development;
24 (iv) motor development; and
25 (c) results in the need for a combination and sequence of special
26 interdisciplinary or generic care, treatment or other services
27 that are of extended duration and are individually planned
28 and coordinated.

29 ***early intervention supports*** means supports that are identified in
30 the National Disability Insurance Scheme rules as early
31 intervention supports.

32 ***enters into an agreement to give up his or her right to***
33 ***compensation***: a participant or prospective participant ***enters into***

Section 9

1 ***an agreement to give up his or her right to compensation*** if he or
2 she:

3 (a) enters into an agreement to waive his or her right to
4 compensation; or

5 (b) enters into an agreement to withdraw his or her claim for
6 compensation.

7 ***entity*** means a partnership or an unincorporated association.

8 ***entry***, in relation to a person and a residential care service, has the
9 same meaning as in the *Aged Care Act 1997*.

10 ***Finance Minister*** means the Minister administering the *Financial*
11 *Management and Accountability Act 1997*.

12 ***financial institution*** means a corporation that is an ADI for the
13 purposes of the *Banking Act 1959*.

14 ***general supports*** has the meaning given by subsection 13(2).

15 ***grace period*** has the meaning given by subsection 40(2).

16 ***holder***, in relation to a visa, has the same meaning as in the
17 *Migration Act 1958*.

18 ***host jurisdiction*** has the meaning given by section 10.

19 ***managing the funding for supports*** under a participant's plan has
20 the meaning given by section 42.

21 ***medicare program*** has the same meaning as in the *Human Services*
22 *(Medicare) Act 1973*.

23 ***meets the access criteria*** has the meaning given by section 21.

24 ***meets the age requirements*** has the meaning given by section 22.

25 ***meets the disability requirements*** has the meaning given by
26 section 24.

27 ***meets the early intervention requirements*** has the meaning given
28 by section 25.

1 ***meets the residence requirements*** has the meaning given by
2 section 23.

3 ***Ministerial Council*** means a body:

- 4 (a) that consists of Ministers of the Commonwealth, States and
5 Territories; and
6 (b) that has been designated by COAG as having responsibilities
7 relating to the National Disability Insurance Scheme.

8 ***National Disability Insurance Scheme*** means:

- 9 (a) the arrangements set out in Chapter 2; and
10 (b) the arrangements set out in Chapter 3 in relation to people
11 who meet the residence requirements because of their
12 residence in a prescribed area and meet the age requirements
13 (if any) in relation to a prescribed area; and
14 (c) the arrangements referred to in paragraph (b) as they apply
15 when those arrangements are not limited on the basis of
16 residence in a prescribed area.

17 ***National Disability Insurance Scheme launch*** means:

- 18 (a) the arrangements set out in Chapter 2; and
19 (b) the arrangements set out in Chapter 3 in relation to people
20 who meet the residence requirements because of their
21 residence in a prescribed area and meet the age requirements
22 (if any) in relation to the prescribed area.

23 ***National Disability Insurance Scheme rules*** means the rules
24 mentioned in section 209.

25 ***NDIS amount*** means an amount paid under the National Disability
26 Insurance Scheme in respect of reasonable and necessary supports
27 funded under a participant's plan.

28 ***nominee*** means the correspondence nominee of a participant or the
29 plan nominee of a participant.

30 ***officer*** means:

- 31 (a) a member of the staff of the Agency under section 169; or
32 (b) a person assisting the Agency under section 170.

Section 9

1 **parent**: without limiting who is a parent of anyone for the purposes
2 of this Act, a person is the **parent** of another person if the other
3 person is a child of the person within the meaning of the *Family*
4 *Law Act 1975*.

5 **parental responsibility** has the meaning given by section 75.

6 **participant** means a person who is a participant in the National
7 Disability Insurance Scheme launch (see sections 28, 29 and 30).

8 **participant's impairment** means an impairment in relation to
9 which the participant meets the disability requirements, or the early
10 intervention requirements, to any extent.

11 **participant's statement of goals and aspirations** has the meaning
12 given by subsection 33(1).

13 **permanent visa** has the same meaning as in the *Migration Act*
14 *1958*.

15 **plan**, for a participant, means the participant's plan that is in effect
16 under section 37.

17 **plan management request** has the meaning given by subsection
18 43(1).

19 **plan nominee** means a person who is appointed as the plan
20 nominee of a participant under section 86.

21 **prescribed area** means an area prescribed by the National
22 Disability Insurance Scheme rules for the purposes of paragraph
23 22(2)(a) or subsection 23(3).

24 **Principal Member** means the Principal Member of the Advisory
25 Council.

26 **prospective participant** means a person in relation to whom an
27 access request has been made but not yet decided.

28 **prospective participant's impairment** means an impairment in
29 relation to which the prospective participant claims to meet the
30 disability requirements, or the early intervention requirements, to
31 any extent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

protected information means:

- (a) information about a person that is or was held in the records of the Agency; or
- (b) information to the effect that there is no information about a person held in the records of the Agency.

protected SCV holder: a person is a ***protected SCV holder*** if:

- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
- (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the 2 years immediately before 26 February 2001, and returned to Australia after that day.

recoverable amount has the meaning given by sections 106 and 107.

registered plan management provider means a registered provider of supports who is approved in relation to managing the funding for supports under plans as mentioned in paragraph 70(1)(a).

registered provider of supports means a person approved under section 70 as a registered provider of supports.

residential care service has the same meaning as in the *Aged Care Act 1997*.

reviewable decision has the meaning given by section 99.

review date of a participant's plan means the date specified in the plan under paragraph 33(2)(c).

reviewer has the meaning given by subsection 100(5).

special category visa has the same meaning as in the *Migration Act 1958*.

statement of participant supports has the meaning given by subsection 33(2).

supports includes general supports.

Section 10

1 **10 Definition of *host jurisdiction***

2 The Minister may, by legislative instrument, specify that a State or
3 Territory is a ***host jurisdiction***, with the agreement of that State or
4 Territory.

5 Note: Section 42 (disallowance) of the *Legislative Instruments Act 2003*
6 does not apply to the instrument (see subsection 44(1) of that Act).

7 **11 Definitions relating to compensation**

8 (1) In this Act:

9 ***compensation*** means a payment (with or without admission of
10 liability) in respect of:

- 11 (a) compensation or damages in respect of personal injury; or
12 (b) personal injury, under a scheme of insurance or
13 compensation under a Commonwealth, State or Territory
14 law, including a payment under a contract entered into under
15 such a scheme; or
16 (c) personal injury, in settlement of a claim for damages or a
17 claim under such an insurance scheme;

18 that is wholly or partly in respect of the cost of supports that may
19 be provided to a participant (whether or not specifically identified
20 as such). It does not matter whether the payment is made directly
21 to the person who sustained the personal injury or to another
22 person in respect of that person.

23 (2) A payment referred to in subsection (1) may be:

- 24 (a) in the form of a lump sum or in the form of a series of
25 periodic payments; and
26 (b) made within or outside Australia.

27 (3) In this Act, a reference to an insurer who is, under a contract of
28 insurance, liable to indemnify a compensation payer or a potential
29 compensation payer includes a reference to an authority of a State
30 or Territory:

- 31 (a) that is liable to indemnify a compensation payer or a
32 potential compensation payer against such a liability, whether
33 under a contract, law or otherwise; or

Section 11

1
2
3
4
5

(b) that determines to make a payment to indemnify a compensation payer or a potential compensation payer against such a liability, whether or not the authority is liable to do so.

Section 12

1 **Part 5—Ministerial Council**
2

3 **12 Ministerial Council functions etc.**

4 (1) The Ministerial Council is to:

- 5 (a) consider policy matters that relate to the National Disability
6 Insurance Scheme or arise under this Act; and
7 (b) advise the Minister about such matters; and
8 (c) make recommendations to COAG about such matters.

9 (2) The advice and recommendations must not relate to a particular
10 individual.

11 (3) The Minister must consult the Ministerial Council about policy
12 matters that relate to the National Disability Insurance Scheme or
13 arise under this Act.
14

Chapter 2—Assistance for people with disability and others

13 Agency may provide coordination, strategic and referral services etc. to people with disability

- (1) The Agency may provide general supports to, or in relation to, people with disability who are not participants.

Note: Chapter 3 deals with the provision of general supports to, or in relation to, participants.

- (2) In this Act:

general support means:

- (a) a service provided by the Agency to a person; or
- (b) an activity engaged in by the Agency in relation to a person; that is in the nature of a coordination, strategic or referral service or activity, including a locally provided coordination, strategic or referral service or activity.

14 Agency may provide funding to persons or entities

The Agency may provide assistance in the form of funding for persons or entities:

- (a) for the purposes of enabling those persons or entities to assist people with disability to:
 - (i) realise their potential for physical, social, emotional and intellectual development; and
 - (ii) participate in social and economic life; and
- (b) otherwise in the performance of the Agency's functions.

15 Agency may provide information

- (1) The Agency may provide information about the following:
- (a) matters relevant to the National Disability Insurance Scheme;
 - (b) the functions of the Agency.

Section 16

1 (2) The Agency must use its best endeavours to provide timely and
2 accurate information to people with disability and other people in
3 order to assist them in making informed decisions about matters
4 relevant to the National Disability Insurance Scheme.

5 **16 Agency may assist in relation to doing things under Chapter**

6 The Agency may provide support and assistance to people in
7 relation to doing things under, or for the purposes of, this Chapter.

8 **17 National Disability Insurance Scheme rules**

9 The National Disability Insurance Scheme rules may prescribe
10 matters for and in relation to this Chapter.
11

1 **Chapter 3—Participants and their plans**

2 **Part 1—Becoming a participant**
3

4 **18 Person may make a request to become a participant**

5 A person may make a request (an *access request*) to the Agency to
6 become a participant in the National Disability Insurance Scheme
7 launch.

8 Note: Once a person becomes a participant, the CEO must commence to
9 facilitate the preparation of his or her plan (see section 32).

10 **19 Matters relating to access requests**

11 (1) An access request must:

- 12 (a) be in the form (if any) approved by the CEO; and
13 (b) include any information, and be accompanied by any
14 documents, required by the CEO; and
15 (c) certify that it includes all the information, and is
16 accompanied by all the documents, required as mentioned in
17 paragraph (b) that are in the possession or control of the
18 person.

19 Note: The CEO is not required to make a decision on the access request if
20 this section is not complied with (see section 197).

21 (2) If:

- 22 (a) a person has made an access request; and
23 (b) the CEO decides that the person does not meet the access
24 criteria, or is taken to have so decided because of subsection
25 21(3);

26 the person may make another access request at any time, unless at
27 that time either of the following has been commenced, but not
28 finally determined:

- 29 (c) a review (the *initial review*) under subsection 100(5) of the
30 CEO's decision;
31 (d) a review under section 103 of a decision on the initial review.

Section 20

1 **20 CEO must consider and decide access requests**

2 If a person (the *prospective participant*) makes an access request,
3 the CEO must, within 21 days of receiving the access request:

- 4 (a) decide whether or not the prospective participant meets the
5 access criteria; or
6 (b) make one or more requests under subsection 26(1).

7 **21 When a person meets the access criteria**

8 (1) A person *meets the access criteria* if:

- 9 (a) the CEO is satisfied that the person meets the age
10 requirements (see section 22); and
11 (b) the CEO is satisfied that, at the time of considering the
12 request, the person meets the residence requirements (see
13 section 23); and
14 (c) the CEO is satisfied that, at the time of considering the
15 request:
16 (i) the person meets the disability requirements (see
17 section 24); or
18 (ii) the person meets the early intervention requirements
19 (see section 25).

20 (2) If the CEO is not satisfied as mentioned in subsection (1), the
21 person *meets the access criteria* if the CEO is satisfied of the
22 following:

- 23 (a) at the time of considering the request, the person satisfies the
24 requirements in relation to residence prescribed as mentioned
25 in subsection 23(3) (whether or not the person also satisfies
26 the requirements mentioned in subsection 23(1));
27 (b) the person:
28 (i) was receiving supports at the time of considering the
29 request or, if another time is prescribed by the National
30 Disability Insurance Scheme rules for the purposes of
31 this subparagraph, at that other time; and
32 (ii) received the supports throughout the period (if any)
33 prescribed by the National Disability Insurance Scheme
34 rules for the purposes of this subparagraph; and

- 1 (iii) received the supports under a program prescribed by the
2 National Disability Insurance Scheme rules for the
3 purposes of this subparagraph;
- 4 (c) if the person becomes a participant, the person would not be
5 entitled to receive the supports referred to in paragraph (b), or
6 equivalent supports.
- 7 (3) The CEO is taken to have decided that the prospective participant
8 does not meet the access criteria if:
- 9 (a) the CEO does not do a thing referred to in paragraph 20(a) or
10 (b) within the 21-day period referred to in section 20; or
- 11 (b) if subsection 26(2) applies—the CEO does not do one of the
12 things referred to in that subsection within the 14-day period
13 referred to in that subsection.
- 14 Note 1: The periods may be extended under National Disability Insurance
15 Scheme rules made under section 204.
- 16 Note 2: Notice of a decision that the CEO is taken to have made must be given
17 because of subsection 100(1) and will be automatically reviewed
18 because of subsection 100(5).

19 **22 Age requirements**

- 20 (1) A person *meets the age requirements* if:
- 21 (a) the person was aged under 65 when the access request in
22 relation to the person was made; and
- 23 (b) if the National Disability Insurance Scheme rules for the
24 purposes of this paragraph prescribe that on a prescribed date
25 or a date in a prescribed period the person must be a
26 prescribed age—the person is that age on that date.
- 27 (2) Without limiting paragraph (1)(b), National Disability Insurance
28 Scheme rules made for the purposes of that paragraph:
- 29 (a) may prescribe that a person must be a prescribed age on a
30 prescribed date or a date in a prescribed period only if the
31 person resides in a prescribed area of Australia; and
- 32 (b) may prescribe different ages and different dates in relation to
33 different areas of Australia.

Section 23

1 **23 Residence requirements**

2 (1) A person *meets the residence requirements* if the person:

3 (a) resides in Australia; and

4 (b) is one of the following:

5 (i) an Australian citizen;

6 (ii) the holder of a permanent visa;

7 (iii) a special category visa holder who is a protected SCV
8 holder; and

9 (c) satisfies the other requirements in relation to residence that
10 are prescribed by the National Disability Insurance Scheme
11 rules.

12 (2) In deciding whether or not a person resides in Australia, regard
13 must be had to:

14 (a) the nature of the accommodation used by the person in
15 Australia; and

16 (b) the nature and extent of the family relationships the person
17 has in Australia; and

18 (c) the nature and extent of the person's employment, business
19 or financial ties with Australia; and

20 (d) the nature and extent of the person's assets located in
21 Australia; and

22 (e) the frequency and duration of the person's travel outside
23 Australia; and

24 (f) any other matter relevant to determining whether the person
25 intends to remain permanently in Australia.

26 (3) Without limiting paragraph (1)(c), National Disability Insurance
27 Scheme rules made for the purposes of that paragraph:

28 (a) may require that a person reside in a prescribed area of
29 Australia on a prescribed date or a date in a prescribed period
30 in order to meet the residence requirements; and

31 (b) may require that a person has resided in a prescribed area for
32 a prescribed period in order to meet the residence
33 requirements; and

34 (c) may require that a person continue to reside in a prescribed
35 area of Australia in order to meet the residence requirements.

1 **24 Disability requirements**

2 (1) A person *meets the disability requirements* if:

- 3 (a) the person has a disability that is attributable to one or more
4 intellectual, cognitive, neurological, sensory or physical
5 impairments or to one or more impairments attributable to a
6 psychiatric condition; and
7 (b) the impairment or impairments are, or are likely to be,
8 permanent; and
9 (c) the impairment or impairments result in substantially reduced
10 functional capacity to undertake, or psychosocial functioning
11 in undertaking, one or more of the following activities:
12 (i) communication;
13 (ii) social interaction;
14 (iii) learning;
15 (iv) mobility;
16 (v) self-care;
17 (vi) self-management; and
18 (d) the impairment or impairments affect the person's capacity
19 for social and economic participation; and
20 (e) the person's support needs in relation to his or her
21 impairment or impairments are likely to continue for the
22 person's lifetime.

23 (2) For the purposes of subsection (1), an impairment or impairments
24 that vary in intensity may be permanent, and the person's support
25 needs in relation to such an impairment or impairments may be
26 likely to continue for the person's lifetime, despite the variation.

27 **25 Early intervention requirements**

28 A person *meets the early intervention requirements* if:

- 29 (a) the person:
30 (i) has a disability that is attributable to one or more
31 intellectual, cognitive, neurological, sensory or physical
32 impairments or to one or more impairments attributable
33 to a psychiatric condition; or
34 (ii) is a child who has developmental delay; and
-

Section 26

- 1 (b) the CEO is satisfied that provision of early intervention
2 supports for the person is likely to reduce the person's future
3 needs for supports in relation to disability; and
4 (c) the CEO is satisfied that provision of early intervention
5 supports for the person is likely to:
6 (i) mitigate, alleviate or prevent the deterioration of the
7 functional capacity of the person to undertake
8 communication, social interaction, learning, mobility,
9 self-care or self-management; or
10 (ii) strengthen the sustainability of the informal supports
11 available to the person, including through building the
12 capacity of the person's carer.

13 **26 Requests that the CEO may make**

- 14 (1) The requests the CEO may make under this subsection after a
15 prospective participant has made an access request (see paragraph
16 20(b)) are as follows:
17 (a) that the prospective participant, or another person, provide
18 information that is reasonably necessary for deciding whether
19 or not the prospective participant meets the access criteria;
20 (b) that the prospective participant do either or both of the
21 following:
22 (i) undergo an assessment and provide to the CEO the
23 report, in the approved form, of the person who
24 conducts the assessment;
25 (ii) undergo a medical, psychiatric or psychological
26 examination (whether or not at a particular place), and
27 provide to the CEO the report, in the approved form, of
28 the person who conducts the examination.
29 (2) If:
30 (a) information or one or more reports are requested under
31 subsection (1); and
32 (b) the information and each such report are received by the
33 CEO within 28 days, or such longer period as is specified in
34 the request, after that information or report is requested;
35 the CEO must, within 14 days after the last information or report is
36 received:

- 1 (c) decide whether or not the prospective participant meets the
2 access criteria; or
3 (d) make a further request under subsection (1).
- 4 (3) If:
5 (a) information or one or more reports are requested under
6 subsection (1); and
7 (b) the information and each such report are not received by the
8 CEO within 28 days, or such longer period as is specified in
9 the request, after that information or report is requested;
10 the prospective participant is taken to have withdrawn the access
11 request, unless the CEO is satisfied that it was reasonable for the
12 prospective participant not to have complied with the request made
13 by the CEO within that period.

14 **27 National Disability Insurance Scheme rules relating to disability**
15 **requirements and early intervention requirements**

- 16 (1) The National Disability Insurance Scheme rules may prescribe
17 circumstances in which, or criteria to be applied in assessing
18 whether:
19 (a) one or more impairments are, or are likely to be, permanent
20 for the purposes of paragraph 24(1)(b); or
21 (b) one or more impairments result in substantially reduced
22 functional capacity of a person to undertake, or psychosocial
23 functioning of a person in undertaking, one or more activities
24 for the purposes of paragraph 24(1)(c); or
25 (c) one or more impairments affect a person's capacity for social
26 and economic participation for the purposes of paragraph
27 24(1)(d); or
28 (d) the provision of early intervention supports is likely to reduce
29 a person's future needs for supports in relation to disability
30 for the purposes of subparagraph 25(b); or
31 (e) the provision of early intervention supports is likely to
32 mitigate, alleviate or prevent the deterioration of a person's
33 functional capacity to undertake one or more of the activities
34 referred to in subparagraph 25(c)(i); or
35 (f) the provision of early intervention supports is likely to
36 strengthen the sustainability of the informal supports

Section 28

- 1 available to the person, including through building the
2 capacity of the person's carer for the purposes of
3 subparagraph 25(c)(ii).
- 4 (2) The National Disability Insurance Scheme rules may prescribe for
5 and in relation to the following:
- 6 (a) the persons who may conduct assessments for the purposes of
7 deciding whether a person meets the disability requirements
8 or the early intervention requirements;
- 9 (b) the kinds of assessments that may be conducted for those
10 purposes.

11 **28 When a person becomes a participant**

- 12 (1) A person becomes a participant in the National Disability
13 Insurance Scheme launch on the day the CEO decides that the
14 person meets the access criteria.
- 15 (2) The CEO must give written notice of the decision to the
16 participant, stating the date on which the person became a
17 participant.

18 **29 When a person ceases to be a participant**

- 19 (1) A person ceases to be a participant in the National Disability
20 Insurance Scheme launch when:
- 21 (a) the person dies; or
22 (b) the person is aged at least 65 years and has entered a
23 residential care service, or is being provided with community
24 care, on a permanent basis; or
25 (c) the person's status as a participant is revoked under
26 section 30; or
27 (d) the person notifies the CEO in writing that he or she no
28 longer wishes to be a participant.

29 Note: *Residential care service* and *community care* have the same meanings
30 as in the *Aged Care Act 1997*.

- 31 (2) A person is not entitled to be paid NDIS amounts so far as the
32 amounts relate to reasonable and necessary supports that would

1 otherwise have been funded in respect of a period after he or she
2 ceased to be a participant.

3 **30 Revocation of participant status**

- 4 (1) The CEO may revoke a person's status as a participant in the
5 National Disability Insurance Scheme launch if:
6 (a) the CEO is satisfied that the person does not meet the
7 residence requirements (see section 23); or
8 (b) the CEO is satisfied that the person does not meet at least one
9 of the following:
10 (i) the disability requirements (see section 24);
11 (ii) the early intervention requirements (see section 25).
- 12 (2) The CEO must give written notice of the decision to the
13 participant, stating the date on which the revocation takes effect.
14

1 **Part 2—Participants' plans**

2 **Division 1—Principles relating to plans**

3 **31 Principles relating to plans**

4 The preparation, review and replacement of a participant's plan,
5 and the management of the funding for supports under a
6 participant's plan, should so far as reasonably practicable:

- 7 (a) be individualised; and
8 (b) be directed by the participant; and
9 (c) where relevant, consider and respect the role of family, carers
10 and other persons who are significant in the life of the
11 participant; and
12 (d) where possible, strengthen and build capacity of families and
13 carers to support participants who are children; and
14 (e) consider the availability to the participant of informal support
15 and other support services generally available to any person
16 in the community; and
17 (f) support communities to respond to the individual goals and
18 needs of participants; and
19 (g) be underpinned by the right of the participant to exercise
20 control over his or her own life; and
21 (h) advance the inclusion and participation in the community of
22 the participant with the aim of achieving his or her individual
23 aspirations; and
24 (i) maximise the choice and independence of the participant; and
25 (j) facilitate tailored and flexible responses to the individual
26 goals and needs of the participant; and
27 (k) provide the context for the provision of disability services to
28 the participant and, where appropriate, coordinate the
29 delivery of disability services where there is more than one
30 disability service provider.
31

1 **Division 2—Preparing participants' plans**

2 **32 CEO must facilitate preparation of participant's plan**

- 3 (1) If a person becomes a participant, the CEO must facilitate the
4 preparation of the participant's plan.
- 5 (2) The CEO must commence facilitating the preparation of the plan
6 within 14 days after the person becomes a participant.

7 **33 Matters that must be included in a participant's plan**

- 8 (1) A participant's plan must include a statement (the *participant's*
9 *statement of goals and aspirations*) prepared by the participant
10 that specifies:
- 11 (a) the goals, objectives and aspirations of the participant; and
12 (b) the environmental and personal context of the participant's
13 living, including the participant's:
14 (i) living arrangements; and
15 (ii) informal community supports and other community
16 supports; and
17 (iii) social and economic participation.
- 18 (2) A participant's plan must include a statement (the *statement of*
19 *participant supports*), prepared with the participant and approved
20 by the CEO, that specifies:
- 21 (a) the general supports (if any) that will be provided to, or in
22 relation to, the participant; and
23 (b) the reasonable and necessary supports (if any) that will be
24 funded under the National Disability Insurance Scheme; and
25 (c) the date by which, or the circumstances in which, the Agency
26 must review the plan under Division 4; and
27 (d) the management of the funding for supports under the plan
28 (see also Division 3); and
29 (e) the management of other aspects of the plan.
- 30 (3) The supports that will be funded or provided under the National
31 Disability Insurance Scheme may be specifically identified in the

Section 33

- 1 plan or described generally, whether by reference to a specified
2 purpose or otherwise.
- 3 (4) The CEO must endeavour to decide whether or not to approve the
4 statement of participant supports as soon as reasonably practicable,
5 including what is reasonably practicable having regard to
6 section 36 (information and reports).
- 7 (5) In deciding whether or not to approve a statement of participant
8 supports under subsection (2), the CEO must:
- 9 (a) have regard to the participant's statement of goals and
10 aspirations; and
- 11 (b) have regard to relevant assessments conducted in relation to
12 the participant; and
- 13 (c) be satisfied as mentioned in section 34 in relation to the
14 reasonable and necessary supports that will be funded and the
15 general supports that will be provided; and
- 16 (d) apply any methods and have regard to any criteria prescribed
17 by the National Disability Insurance Scheme rules in relation
18 to the reasonable and necessary supports that will be funded
19 and the manner in which they will be funded; and
- 20 (e) have regard to the principle that a participant should manage
21 his or her plan to the extent that he or she wishes to do so;
22 and
- 23 (f) have regard to the operation and effectiveness of any
24 previous plans of the participant.
- 25 (6) To the extent that the funding for supports under a participant's
26 plan is managed by the Agency, the plan must provide that the
27 supports are to be provided only by a registered provider of
28 supports.
- 29 (7) A participant's plan may include additional matters, including such
30 additional matters as are prescribed by the National Disability
31 Insurance Scheme rules.
- 32 Note: For example, a participant's plan may include arrangements for
33 ongoing contact with the Agency.

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

4 Note: Section 38 requires a copy of a participant's plan to be provided to
5 him or her.

6 **34 Reasonable and necessary supports**

7 For the purposes of specifying, in a statement of participant
8 supports, the general supports that will be provided, and the
9 reasonable and necessary supports that will be funded, the CEO
10 must be satisfied of all of the following in relation to the funding or
11 provision of each such support:

- 12 (a) the support will assist the participant to pursue the goals,
13 objectives and aspirations included in the participant's
14 statement of goals and aspirations;
- 15 (b) the support will assist the participant to undertake activities,
16 so as to facilitate the participant's social and economic
17 participation;
- 18 (c) the support represents value for money in that the costs of the
19 support are reasonable, relative to both the benefits achieved
20 and the cost of alternative support;
- 21 (d) the support will be, or is likely to be, effective and beneficial
22 for the participant, having regard to current good practice;
- 23 (e) the funding or provision of the support takes account of what
24 it is reasonable to expect families, carers, informal networks
25 and the community to provide;
- 26 (f) the support is most appropriately funded or provided through
27 the National Disability Insurance Scheme, and is not more
28 appropriately funded or provided through other general
29 systems of service delivery or support services offered by a
30 person, agency or body, or systems of service delivery or
31 support services offered:
- 32 (i) as part of a universal service obligation; or
33 (ii) in accordance with reasonable adjustments required
34 under a law dealing with discrimination on the basis of
35 disability;

Section 35

- 1 (g) the support is not prescribed by the National Disability
2 Insurance Scheme rules as a support that will not be funded
3 or provided under the National Disability Insurance Scheme;
4 (h) the funding of the support complies with the methods or
5 criteria (if any) prescribed by the National Disability
6 Insurance Scheme rules for deciding the reasonable and
7 necessary supports that will be funded under the National
8 Disability Insurance Scheme.

9 **35 National Disability Insurance Scheme rules for statement of**
10 **participant supports**

- 11 (1) The National Disability Insurance Scheme rules may prescribe:
12 (a) a method for assessing, or criteria for deciding, the
13 reasonable and necessary supports or general supports that
14 will be funded or provided under the National Disability
15 Insurance Scheme; and
16 (b) reasonable and necessary supports or general supports that
17 will not be funded or provided under the National Disability
18 Insurance Scheme; and
19 (c) reasonable and necessary supports or general supports that
20 will or will not be funded or provided under the National
21 Disability Insurance Scheme for prescribed participants.
- 22 (2) The methods or criteria prescribed by the National Disability
23 Insurance Scheme rules for assessing or deciding the reasonable
24 and necessary supports that will be funded may include methods or
25 criteria relating to the manner in which the supports are to be
26 funded and by whom the supports so funded are to be provided.
- 27 (3) The methods or criteria prescribed by the National Disability
28 Insurance Scheme rules for assessing or deciding the general
29 supports that will be provided may include methods or criteria
30 relating to the manner in which the supports are to be provided.
- 31 (4) The methods or criteria prescribed by the National Disability
32 Insurance Scheme rules for assessing or deciding the reasonable
33 and necessary supports that will be funded under the National
34 Disability Insurance Scheme may include methods or criteria
35 relating to how to take into account:

- 1 (a) lump sum compensation payments that specifically include
2 an amount for the cost of supports; and
3 (b) lump sum compensation payments that do not specifically
4 include an amount for the cost of supports; and
5 (c) periodic compensation payments that the CEO is satisfied
6 include an amount for the cost of supports.
- 7 (5) The methods or criteria prescribed by the National Disability
8 Insurance Scheme rules for assessing or deciding the reasonable
9 and necessary supports that will be funded under the National
10 Disability Insurance Scheme may include methods or criteria
11 relating to how to take into account amounts that a participant or
12 prospective participant did not receive by way of a compensation
13 payment because he or she entered into an agreement to give up his
14 or her right to compensation.

15 **36 Information and reports for the purposes of preparing and**
16 **approving a participant's plan**

- 17 (1) For the purposes of preparing a statement of participant supports,
18 or deciding whether to approve a statement of participant supports,
19 the CEO may make one or more requests under subsection (2).
- 20 (2) The requests the CEO may make are as follows:
21 (a) that the participant, or another person, provide information
22 that is reasonably necessary for the purposes of preparing the
23 statement of participant supports, or deciding whether to
24 approve the statement of participant supports;
25 (b) that the participant do either or both of the following:
26 (i) undergo an assessment and provide to the CEO the
27 report, in the approved form, of the person who
28 conducts the assessment;
29 (ii) undergo a medical, psychiatric or psychological
30 examination (whether or not at a particular place), and
31 provide to the CEO the report, in the approved form, of
32 the person who conducts the examination.
- 33 (3) The CEO may prepare the statement of participant supports, or
34 decide whether to approve a statement of participant supports,
35 before all the information and reports requested under

Section 37

1 subsection (2) are received by the CEO, but must give the
2 participant a reasonable opportunity to provide them.

3 Note: If information or reports are provided after the plan is approved, the
4 plan can be reviewed and if necessary replaced.

5 **37 When plan is in effect**

6 (1) A participant's plan comes into effect when the CEO has:
7 (a) received the participant's statement of goals and aspirations
8 from the participant; and
9 (b) approved the statement of participant supports.

10 (2) A participant's plan cannot be varied after it comes into effect, but
11 can be replaced under Division 4.

12 Note: Under Division 4, a participant may request a review of his or her plan
13 at any time and may revise the participant's statement of goals and
14 aspirations at any time, which results in the replacement of the plan.

15 (3) A participant's plan ceases to be in effect at the earlier of the
16 following times:

17 (a) when it is replaced by another plan under Division 4;
18 (b) when the participant ceases to be a participant.

19 **38 Copy of plan to be provided**

20 The CEO must provide a copy of a participant's plan to the
21 participant within 7 days after the plan comes into effect.

22 **39 Agency must comply with the statement of participant supports**

23 The Agency must comply with the statement of participant
24 supports in a participant's plan.

25 **40 Effect of temporary absence on plans**

26 (1) A participant for whom a plan is in effect may be temporarily
27 absent from Australia for the grace period for the absence without
28 affecting the participant's plan.

29 (2) The *grace period* for a temporary absence of a participant is:

- 1 (a) 6 weeks beginning when the participant leaves Australia; or
2 (b) if the CEO is satisfied that it is appropriate for the grace
3 period to be longer than 6 weeks—such longer period as the
4 CEO decides, having regard to the criteria (if any) prescribed
5 by the National Disability Insurance Scheme rules for the
6 purposes of this paragraph.
- 7 (3) If a participant for whom a plan is in effect is temporarily absent
8 from Australia after the end of the grace period for the absence, the
9 participant's plan is suspended from the end of the grace period
10 until the participant returns to Australia.
- 11 (4) For the purposes of this section, a person's absence from Australia
12 is temporary if, throughout the absence, the person does not cease
13 to reside in Australia (within the meaning of paragraph 23(1)(a)).

14 **41 Suspension of plans**

- 15 (1) A statement of participant supports in a participant's plan is
16 suspended:
- 17 (a) as mentioned in subsection 40(3) (which deals with
18 temporary absence from Australia); and
19 (b) as mentioned in subsection 105(2) (which deals with
20 obtaining compensation).
- 21 (2) The effect of suspension of a statement of participant supports in a
22 participant's plan is that the plan remains in effect but, during the
23 period of suspension:
- 24 (a) the person is not entitled to be paid NDIS amounts, so far as
25 the amounts relate to reasonable and necessary supports that
26 would otherwise have been funded in respect of that period;
27 and
28 (b) the Agency is not required to provide or fund other supports
29 under the plan, but is not prevented from doing so if the CEO
30 considers it appropriate; and
31 (c) the participant is not entitled to request a review of the plan
32 under subsection 48(1).
33

Section 42

1 **Division 3—Managing the funding for supports under**
2 **participants' plans**

3 **42 Meaning of *managing the funding for supports* under a**
4 **participant's plan**

- 5 (1) For the purposes of this Act, *managing the funding for supports*
6 under a participant's plan means:
- 7 (a) purchasing the supports identified in the plan (including
8 paying any applicable indirect costs, such as taxes, associated
9 with the supports); and
 - 10 (b) receiving and managing any funding provided by the
11 Agency; and
 - 12 (c) acquitting any funding provided by the Agency.
- 13 (2) For the purposes of the statement of participant supports in a
14 participant's plan, in specifying the management of the funding for
15 supports under the plan as mentioned in paragraph 33(2)(d), the
16 plan must specify that such funding is to be managed wholly, or to
17 a specified extent, by:
- 18 (a) the participant; or
 - 19 (b) a registered plan management provider; or
 - 20 (c) the Agency; or
 - 21 (d) the plan nominee.

22 **43 Choice for the participant in relation to plan management**

- 23 (1) A participant for whom a plan is in effect or is being prepared may
24 make a request (a *plan management request*):
- 25 (a) that he or she manage the funding for supports under the plan
26 wholly or to the extent specified in the request; or
 - 27 (b) that the funding for supports under the plan be managed
28 wholly, or to the extent specified in the request, by a
29 registered plan management provider he or she nominates; or
 - 30 (c) that the funding for supports under the plan be managed
31 wholly, or to the extent specified in the request, by a person
32 specified by the Agency.

- 1 (2) A statement of participant supports in a participant's plan must
2 give effect to the plan management request other than as follows:
3 (a) if the participant is prevented from managing the funding for
4 supports under the plan to any extent by section 44—the
5 statement must make provision in accordance with
6 subsection (3) of this section;
7 (b) if the participant has a plan nominee—the statement must
8 provide that the funding for supports under the plan is to be
9 managed in accordance with the terms of the plan nominee's
10 appointment.
- 11 (3) If the participant is prevented from managing the funding for
12 supports under the plan wholly, or to a specified extent, by
13 section 44, the statement of participant supports in the plan must
14 provide that:
15 (a) the funding for supports under the plan is to be managed in
16 accordance with the plan management request, to the extent
17 that the participant is not prevented from managing it; and
18 (b) the remainder of the funding for supports under the plan is to
19 be managed by:
20 (i) a registered plan management provider specified by the
21 Agency; or
22 (ii) the Agency.
- 23 (4) If a participant does not make a plan management request, the
24 statement of participant supports in the plan must provide that the
25 funding for supports under the plan is to be managed by:
26 (a) a registered plan management provider specified by the
27 Agency; or
28 (b) the Agency.
- 29 (5) If the funding for supports under a participant's plan is to be
30 managed to any extent by a registered plan management provider
31 specified by the Agency, or by the Agency, the CEO must, so far
32 as reasonably practicable, have regard to the wishes of the
33 participant in specifying who is to manage the funding for supports
34 under the plan to that extent.

Section 44

1 **44 Circumstances in which participant must not manage plan to**
2 **specified extent**

- 3 (1) The statement of participant supports in a participant's plan must
4 not provide that the participant is to manage the funding for
5 supports under his or her plan to any extent if the participant is an
6 insolvent under administration.
- 7 (2) The statement of participant supports in a participant's plan must
8 not provide that the participant is to manage the funding for
9 supports under his or her plan to a particular extent if the CEO is
10 satisfied that management of the plan to that extent would:
11 (a) present an unreasonable risk to the participant; or
12 (b) permit the participant to manage matters that are prescribed
13 by the National Disability Insurance Scheme rules as being
14 matters that must not be managed by a participant.
- 15 (3) The National Disability Insurance Scheme rules may prescribe
16 criteria to which the CEO is to have regard in considering whether
17 a participant managing the funding for supports under the plan
18 would present an unreasonable risk to the participant.

19 **45 Payment of NDIS amounts**

- 20 (1) An NDIS amount that is payable to a participant, or to a person
21 who is managing the funding for supports under a participant's
22 plan, is to be paid:
23 (a) at the time or times determined by the CEO in accordance
24 with the National Disability Insurance Scheme rules; and
25 (b) in the manner (if any) prescribed by the National Disability
26 Insurance Scheme rules.
- 27 (2) Without limiting paragraph (1)(b), the National Disability
28 Insurance Scheme rules may provide that:
29 (a) an NDIS amount is to be paid to the credit of a bank account
30 nominated and maintained by the person to whom it is to be
31 paid; and
32 (b) an NDIS amount is not payable to the person until the person
33 nominates an account.

1 **46 Acquittal of NDIS amounts**

- 2 (1) A participant who receives an NDIS amount, or a person who
3 receives an NDIS amount on behalf of a participant, must spend
4 the money in accordance with the participant's plan.
- 5 (2) The National Disability Insurance Scheme rules may make
6 provision for and in relation to the retention of records of NDIS
7 amounts paid to participants and other persons, including requiring
8 that prescribed records be retained for a prescribed period.
9

1 **Division 4—Reviewing and changing participants' plans**

2 **47 Participant may change participant's statement of goals and**
3 **aspirations at any time**

4 (1) A participant may give the CEO a changed version of the
5 participant's statement of goals and aspirations at any time.

6 Note: The participant may also request a review of his or her plan at any
7 time under subsection 48(1) and the CEO may review a participant's
8 plan at any time under subsection 48(4).

9 (2) If a participant gives a changed version of the participant's
10 statement of goals and aspirations to the CEO, the plan is taken to
11 be replaced by a new plan comprising:

12 (a) the changed version of the participant's statement of goals
13 and aspirations; and

14 (b) the statement of participant supports in the existing plan.

15 (3) The Agency must provide a copy of the new plan to the participant
16 within 7 days of receiving the changed version of the participant's
17 statement of goals and aspirations.

18 **48 Review of participant's plan**

19 (1) A participant may request that the CEO conduct a review of the
20 participant's plan at any time.

21 (2) The CEO must decide whether or not to conduct the review within
22 14 days after receiving the request. If the CEO does not make a
23 decision within that period, he or she is taken to have decided not
24 to conduct the review.

25 Note 1: The period may be extended under National Disability Insurance
26 Scheme rules made under section 204.

27 Note 2: Notice of a decision that the CEO makes, or is taken to have made,
28 must be given because of subsection 100(1), and a decision the CEO is
29 taken to have made will be automatically reviewed because of
30 subsection 100(5).

31 (3) If the CEO decides to conduct a review under subsection (1), the
32 CEO must commence to facilitate the review within 14 days after

- 1 so deciding and must complete the review as soon as reasonably
2 practicable.
- 3 (4) The CEO may, on the CEO's initiative, conduct a review of a
4 participant's plan at any time.
- 5 (5) The CEO must conduct a review of a participant's plan before the
6 plan's review date and in the circumstances, if any, specified in the
7 plan.
- 8 (6) The CEO must conduct a review of a participant's plan in the
9 circumstances (if any) prescribed by the National Disability
10 Insurance Scheme rules.

11 **49 Outcome of review**

12 If the CEO conducts a review of a participant's plan under
13 section 48, the CEO must facilitate the preparation of a new plan
14 with the participant in accordance with Division 2.

15 Note 1: If the participant does not wish to change the participant's statement
16 of goals and aspirations, the statement remains unchanged and forms
17 part of the new plan.

18 Note 2: Because the new plan is prepared in accordance with Division 2, a
19 decision to approve the statement of participant supports in the plan
20 would be made under subsection 33(2) and be reviewable under
21 paragraph 99(d).

22 **50 Information and reports for the purposes of reviewing a** 23 **participant's plan**

- 24 (1) For the purposes of reviewing a participant's plan, the CEO may
25 make one or more requests under subsection (2).
- 26 (2) The requests the CEO may make are as follows:
- 27 (a) that the participant, or another person, provide information
28 that is reasonably necessary for the purposes of reviewing the
29 participant's plan; or
- 30 (b) that the participant do either or both of the following:
- 31 (i) undergo an assessment and provide to the CEO the
32 report, in the approved form, of the person who
33 conducts the assessment;

Chapter 3 Participants and their plans

Part 2 Participants' plans

Division 4 Reviewing and changing participants' plans

Section 50

1

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

2

3

4

5

(3) The CEO may review a participant's plan before all the information and reports requested under subsection (2) are received by the CEO, but must give the participant a reasonable opportunity to provide them.

6

7

8

9

Note: If information or reports are provided after the plan is reviewed, the plan can be reviewed again and if necessary replaced.

10

11

1 **Chapter 4—Administration**

2 **Part 1—General matters**

3 **Division 1—Participants and prospective participants**

4 **51 Requirement to notify change of circumstances**

- 5 (1) A participant or a prospective participant must notify the CEO if:
6 (a) an event or change of circumstances happens that affects, or
7 might affect, his or her access request, status as a participant
8 or plan; or
9 (b) the participant or prospective participant becomes aware that
10 such an event or change of circumstances is likely to happen.
- 11 (2) The participant or prospective participant must notify the CEO:
12 (a) in the manner set out in a written notice given to him or her
13 under section 52; and
14 (b) as soon as reasonably practicable after he or she becomes
15 aware that the event or change of circumstances has
16 happened or is likely to happen.

17 **52 Requirements relating to notices**

- 18 (1) The CEO must approve a manner of notification that a participant
19 or prospective participant is to use when notifying the CEO in
20 relation to an event or change of circumstances under section 51.
- 21 (2) The CEO must, by written notice, notify the participant or
22 prospective participant of the approved manner of notification.

23 **53 Power to obtain information from participants and prospective**
24 **participants to ensure the integrity of the National**
25 **Disability Insurance Scheme**

- 26 (1) If the CEO has reasonable grounds to believe that a participant or a
27 prospective participant has information, or has custody or control
28 of a document, that may be relevant to one or more of the matters

Section 54

1 mentioned in subsection (2), the CEO may require the participant
2 or prospective participant to give the information, or produce the
3 document, to the Agency.

- 4 (2) The matters are as follows:
- 5 (a) the monitoring of supports funded for, or provided to, a
6 participant;
 - 7 (b) whether NDIS amounts paid to the participant or to another
8 person have been spent in accordance with the participant's
9 plan;
 - 10 (c) determining whether the participant was not entitled to be
11 paid NDIS amounts because of the misleading statements or
12 fraud of any person;
 - 13 (d) whether the participant or other person has complied with
14 section 46;
 - 15 (e) whether the participant or prospective participant receives:
 - 16 (i) supports or funding through a statutory compensation
17 scheme or a statutory care or support scheme; or
 - 18 (ii) any other disability or early intervention supports.

19 **54 Written notice of requirement**

- 20 (1) A requirement under section 53 must be made by written notice
21 given to the person of whom the requirement is made.
- 22 (2) The notice must specify:
- 23 (a) the nature of the information or document that is required to
24 be given or produced; and
 - 25 (b) how the person is to give the information or produce the
26 document; and
 - 27 (c) the period within which the person is to give the information
28 or produce the document to the Agency; and
 - 29 (d) the officer to whom the information is to be given or the
30 document is to be produced; and
 - 31 (e) that the notice is given under this section.
- 32 (3) The period specified under paragraph (2)(c) must be at least 14
33 days beginning on the day on which the notice is given.
34

1 **Division 2—Other persons**

2 **55 Power to obtain information from other persons to ensure the**
3 **integrity of the National Disability Insurance Scheme**

4 (1) If the CEO has reasonable grounds to believe that a person other
5 than a participant or a prospective participant has information, or
6 has custody or control of a document, that may be relevant to one
7 or more of the matters mentioned in subsection (2), the CEO may
8 require the person to give the information, or produce the
9 document, to the Agency.

10 (2) The matters are as follows:

- 11 (a) whether a prospective participant meets the access criteria;
12 (b) whether a participant continues to meet the access criteria;
13 (c) whether a person purporting to act on a person's behalf for
14 the purposes of this Act has the authority to do so;
15 (d) the preparation or review of a participant's plan;
16 (e) the monitoring of supports funded for, or provided to, a
17 participant;
18 (f) whether NDIS amounts paid to the participant or to another
19 person have been spent in accordance with the participant's
20 plan;
21 (g) whether a participant or other person has complied with
22 section 46;
23 (h) whether a participant receives:
24 (i) supports or funding through a statutory compensation
25 scheme or a statutory care or support scheme; or
26 (ii) any other disability support;
27 (i) whether an applicant for approval as a registered provider of
28 supports meets the criteria for approval;
29 (j) whether a registered provider of supports continues to meet
30 the criteria for approval;
31 (k) the functions of the Agency.

Section 56

1 **56 Written notice of requirement**

- 2 (1) A requirement under section 55 must be made by written notice
3 given to the person of whom the requirement is made.
- 4 (2) The notice must specify:
- 5 (a) the nature of the information or document that is required to
6 be given or produced; and
- 7 (b) how the person is to give the information or produce the
8 document; and
- 9 (c) the period within which the person is to give the information
10 or produce the document to the Agency; and
- 11 (d) the officer to whom the information is to be given or the
12 document is to be produced; and
- 13 (e) that the notice is given under this section.
- 14 (3) The period specified under paragraph (2)(c) must be at least 14
15 days beginning on the day on which the notice is given.
- 16 (4) The notice may require the person to give the information by
17 appearing before a specified officer to answer questions.
- 18 (5) If the notice requires the person to appear before an officer, the
19 notice must specify a time and place at which the person is to
20 appear. The time must be at least 14 days after the notice is given.

21 **57 Offence—refusal or failure to comply with requirement**

- 22 (1) A person must not refuse or fail to comply with a requirement
23 under section 55 to give information or produce a document.

24 Penalty: 30 penalty units.

25 Note: If a body corporate is convicted of an offence against this subsection,
26 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
27 fine of up to 5 times the penalty stated above.

- 28 (2) Subsection (1) does not apply if the person has a reasonable
29 excuse.

30 Note: A defendant bears an evidential burden in relation to the matter in this
31 subsection: see subsection 13.3(3) of the *Criminal Code*.

32

1 **Division 3—Interaction with other laws**

2 **58 Obligations not affected by State or Territory laws**

3 (1) Subject to subsection (2), nothing in a law of a State or a Territory
4 prevents a person from:

- 5 (a) giving information; or
6 (b) producing a document; or
7 (c) giving evidence;

8 that the person is required to give or produce to the Agency or an
9 officer for the purposes of this Act.

10 (2) Despite subsection (1), a person is not required to give information,
11 produce a document or give evidence to the Agency or an officer
12 for the purposes of this Act if:

- 13 (a) the person would, apart from subsection (1), be prevented
14 from doing so under a law of a State or Territory; and
15 (b) the law of the State or Territory is prescribed by the National
16 Disability Insurance Scheme rules for the purposes of this
17 paragraph.

18 **59 Interaction with Commonwealth laws**

19 This Part does not require a person to give information or produce
20 a document to the extent that in doing so the person would
21 contravene a law of the Commonwealth.
22

Section 60

1 **Part 2—Privacy**
2

3 **60 Protection of information held by the Agency etc.**

4 (1) A person may obtain protected information for the purposes of this
5 Act.

6 (2) A person may:

- 7 (a) make a record of protected information; or
8 (b) disclose such information to any person; or
9 (c) otherwise use such information;

10 if:

11 (d) the making of the record, or the disclosure or use of the
12 information, by the person is made:

- 13 (i) for the purposes of this Act; or
14 (ii) for the purpose for which the information was disclosed
15 to the person under section 66; or
16 (iii) with the express or implied authorisation of the person
17 to whom the information relates; or

18 (e) the person believes on reasonable grounds that the making of
19 the record, or the disclosure or use of the information, by the
20 person is necessary to prevent or lessen a serious threat to an
21 individual's life, health or safety.

22 (3) Without limiting subsections (1) and (2), the obtaining, recording,
23 disclosure or use of information by a person is taken to be for the
24 purposes of this Act if the CEO believes, on reasonable grounds,
25 that it is reasonably necessary for one or more of the following
26 purposes:

- 27 (a) research into matters relevant to the National Disability
28 Insurance Scheme;
29 (b) actuarial analysis of matters relevant to the National
30 Disability Insurance Scheme;
31 (c) policy development.

32 **61 Offence—unauthorised access to protected information**

33 A person commits an offence if:

- 1 (a) the person obtains information; and
2 (b) the person is not authorised or required by or under this Act
3 to obtain the information; and
4 (c) the information is protected information.

5 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

6 Note: If a body corporate is convicted of an offence against this section,
7 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
8 fine of up to 5 times the pecuniary penalty stated above.

9 **62 Offence—unauthorised use or disclosure of protected**
10 **information**

11 A person commits an offence if:

- 12 (a) the person:
13 (i) makes a record of information; or
14 (ii) discloses information to any other person; or
15 (iii) otherwise makes use of information; and
16 (b) the person is not authorised or required by or under this Act
17 to make the record, disclosure or use of the information that
18 is made by the person; and
19 (c) the information is protected information.

20 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

21 Note: If a body corporate is convicted of an offence against this section,
22 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
23 fine of up to 5 times the pecuniary penalty stated above.

24 **63 Offence—soliciting disclosure of protected information**

25 A person (the *first person*) commits an offence if:

- 26 (a) the first person solicits the disclosure of information from an
27 officer or another person, whether or not any protected
28 information is actually disclosed; and
29 (b) the disclosure would be in contravention of this Part; and
30 (c) the information is protected information.

31 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Section 64

1 Note: If a body corporate is convicted of an offence against this section,
2 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
3 fine of up to 5 times the pecuniary penalty stated above.

4 **64 Offence—offering to supply protected information**

- 5 (1) A person commits an offence if:
6 (a) the person offers to supply (whether to a particular person or
7 otherwise) information about another person; and
8 (b) the person knows the information is protected information.

9 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

10 Note: If a body corporate is convicted of an offence against this subsection,
11 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
12 fine of up to 5 times the pecuniary penalty stated above.

- 13 (2) A person commits an offence if:
14 (a) the person holds himself or herself out as being able to
15 supply (whether to a particular person or otherwise)
16 information about another person; and
17 (b) the person knows the information is protected information.

18 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

19 Note: If a body corporate is convicted of an offence against this subsection,
20 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
21 fine of up to 5 times the pecuniary penalty stated above.

- 22 (3) Subsections (1) and (2) do not apply to an officer acting in the
23 performance or exercise of his or her duties, functions or powers
24 under this Act.

25 **65 Protection of certain documents etc. from production to court etc.**

26 A person must not, except for the purposes of this Act, be required:

- 27 (a) to produce any document in his or her possession because of
28 the performance or exercise of his or her duties, functions or
29 powers under this Act; or
30 (b) to disclose any matter or thing of which he or she had notice
31 because of the performance or exercise of such duties,
32 functions or powers;

1 to a court, tribunal, authority or person that has power to require
2 the production of documents or the answering of questions.

3 **66 Disclosure of information by CEO**

4 (1) Despite sections 62 and 65, the CEO may:

5 (a) if the CEO certifies that it is necessary in the public interest
6 to do so in a particular case or class of cases—disclose
7 information acquired by a person in the performance of his or
8 her functions or duties or in the exercise of his or her powers
9 under this Act to such persons and for such purposes as the
10 CEO determines; or

11 (b) disclose any such information:

12 (i) to the Secretary of a Department of State of the
13 Commonwealth, or to the head of an authority of the
14 Commonwealth, for the purposes of that Department or
15 authority; or

16 (ii) to a person who is expressly or impliedly authorised by
17 the person to whom the information relates to obtain it;
18 or

19 (iii) to the Chief Executive Centrelink for the purposes of a
20 centrelink program; or

21 (iv) to the Chief Executive Medicare for the purposes of a
22 medicare program; or

23 (v) to the chief executive (however described) of a
24 Department of State of a State or Territory, or to the
25 head of an authority of a State or Territory, for the
26 purposes of that Department or authority.

27 (2) In certifying for the purposes of paragraph (1)(a) or disclosing
28 information for the purposes of subparagraph (1)(b)(i) or (v), the
29 CEO must act in accordance with any National Disability
30 Insurance Scheme rules made for the purposes of section 67.

31 (3) Despite any other provision of this Part, the CEO may disclose
32 protected information to a participant's nominee if the protected
33 information:

34 (a) relates to the participant; and

35 (b) is or was held in the records of the Agency.

Section 67

1 **67 National Disability Insurance Scheme rules for exercise of CEO's**
2 **disclosure powers**

3 The National Disability Insurance Scheme rules may make
4 provision for and in relation to the exercise of either or both of the
5 following:

- 6 (a) the CEO's power to certify for the purposes of paragraph
7 66(1)(a);
8 (b) the CEO's power under subparagraph 66(1)(b)(i) or (v) to
9 disclose information to a person.

10 **68 Part does not affect the operation of the *Freedom of Information***
11 ***Act 1982***

12 The provisions of this Part that relate to the disclosure of
13 information do not affect the operation of the *Freedom of*
14 *Information Act 1982*.
15

Part 3—Registered providers of supports

69 Application to be a registered provider of supports

(1) A person or entity may apply in writing to the CEO to be a registered provider of supports in relation to either or both of the following:

- (a) managing the funding for supports under plans;
- (b) the provision of supports.

Note 1: If the funding for supports under a plan is managed by the Agency, supports are to be provided only by a registered provider of supports (see subsection 33(6)).

Note 2: A registered plan management provider of supports may in certain circumstances manage the funding for supports under a plan (see subsection 42(2)).

(2) The application 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.

Note: The CEO is not required to make a decision on the application if this subsection is not complied with (see section 197).

70 Registered providers of supports

(1) The CEO must approve a person or entity as a registered provider of supports in relation to either or both of the following:

- (a) managing the funding for supports under plans;
- (b) the provision of supports;

if:

- (c) the person or entity (the *applicant*) makes an application under section 69; and
- (d) the CEO is satisfied that the applicant meets the criteria prescribed by the National Disability Insurance Scheme rules.

(2) An approval of a person or entity as a registered provider of supports must be by written instrument.

Section 71

- 1 (3) The instrument may specify that the person or entity is a registered
2 provider of supports in respect of:
3 (a) a class of supports specified in the instrument; or
4 (b) a class of person specified in the instrument.
- 5 (4) The instrument may specify that it ceases to be in effect on a
6 specified day.

7 **71 When a person or entity ceases to be a registered provider of**
8 **supports**

- 9 A person or entity ceases to be a registered provider of supports on
10 the earlier of the following days:
11 (a) if the instrument approving the person or entity as a
12 registered provider of supports is revoked under section 72—
13 the day on which the revocation takes effect;
14 (b) if the instrument specifies that it ceases to be in effect on a
15 specified day—that day.

16 **72 Revocation of approval as a registered provider of supports**

- 17 (1) The CEO must revoke an instrument approving a person or entity
18 as a registered provider of supports if the CEO is satisfied that:
19 (a) the person or entity no longer meets the criteria prescribed by
20 the National Disability Insurance Scheme rules for the
21 purposes of paragraph 70(1)(d); or
22 (b) the application by the person or entity for approval contained
23 information that was false or misleading in a material
24 particular.
- 25 (2) Before deciding to revoke the instrument, the CEO must notify the
26 person or entity that revocation is being considered. The notice
27 must be in writing and must:
28 (a) include the CEO's reasons for considering the revocation;
29 and
30 (b) invite the person or entity to make submissions, in writing, to
31 the CEO within 28 days after receiving the notice; and

- 1 (c) inform the person or entity that if no submissions are made
2 within that period, any revocation may take effect as early as
3 7 days after the end of the period referred to in paragraph (b).
- 4 (3) In deciding whether to revoke the instrument, the CEO must
5 consider any submissions given to the CEO within the period
6 referred to in paragraph (2)(b).
- 7 (4) The CEO must notify the person or entity, in writing, of the
8 decision.
- 9 (5) The notice under subsection (4) must be given within 28 days after
10 the end of the period for making submissions. If the notice is not
11 given within this period, the CEO is taken to have decided not to
12 revoke the instrument.

13 **73 National Disability Insurance Scheme rules for registered**
14 **providers of supports**

- 15 (1) The National Disability Insurance Scheme rules may make
16 provision in connection with the approval of persons or entities as
17 registered providers of supports, including by prescribing criteria
18 relating to:
- 19 (a) compliance with prescribed safeguards; and
20 (b) compliance with prescribed quality assurance standards and
21 procedures; and
22 (c) qualifications of persons or entities or employees of persons
23 or entities.
- 24 (2) The National Disability Insurance Scheme rules may make
25 provision in connection with registered providers of supports,
26 including by prescribing:
- 27 (a) the consequences of registered providers of supports failing
28 to comply with this Act, the regulations or the National
29 Disability Insurance Scheme rules; and
30 (b) requirements with which registered providers of supports
31 must comply, including in relation to the following:
- 32 (i) governance;
33 (ii) business practice;
34 (iii) accounting practice; and

Section 73

- 1 (c) the obligations of registered providers of supports in relation
- 2 to the monitoring of compliance; and
- 3 (d) the process for handling complaints involving registered
- 4 providers of supports; and
- 5 (e) auditing requirements in relation to registered providers of
- 6 supports.
- 7

1 **Part 4—Children**
2

3 **74 Children**

4 (1) If this Act requires or permits a thing to be done by or in relation to
5 a child, the thing is to be done by or in relation to:

6 (a) the person who has, or the persons who jointly have, parental
7 responsibility for the child; or

8 (b) if the CEO is satisfied that this is not appropriate—a person
9 determined in writing by the CEO.

10 (2) If a person mentioned in subsection (1) makes a plan management
11 request for a participant who is a child, the person may request:

12 (a) that the person manage the plan wholly or to the extent
13 specified in the request; or

14 (b) that the plan be managed wholly, or to the extent specified in
15 the request, by a registered plan management provider
16 nominated by the person to manage the plan; or

17 (c) that the plan be managed wholly, or to the extent specified in
18 the request, by the Agency or a person specified by the
19 Agency.

20 (3) The statement of participant supports in the plan must give effect
21 to the plan management request, except as mentioned in
22 subsections (4) and (5).

23 (4) The statement of participant supports in a participant's plan must
24 not provide that the person referred to in paragraph (2)(a) is to
25 manage the funding for supports under the participant's plan:

26 (a) to any extent, if the person is an insolvent under
27 administration; or

28 (b) to a particular extent, if the CEO is satisfied that management
29 of the plan to that extent would:

30 (i) present an unreasonable risk to the participant; or

31 (ii) permit the person to manage matters that are prescribed
32 by the National Disability Insurance Scheme rules as
33 being matters that must not be managed by the person.

Section 75

- 1 (5) Subsections (1) and (2) of this section do not have effect in relation
2 to a participant who is a child if:
3 (a) the CEO is satisfied that the child is capable of making
4 decisions for himself or herself; and
5 (b) the CEO is satisfied that it is appropriate in the circumstances
6 for those subsections not to apply to the child; and
7 (c) the CEO makes a determination that those subsections do not
8 apply to the child.
- 9 (6) The National Disability Insurance Scheme rules may prescribe
10 criteria to which the CEO is to have regard in deciding the
11 following:
12 (a) whether to make a determination under paragraph (1)(b);
13 (b) whether a person managing the funding for supports under a
14 participant's plan would present an unreasonable risk to the
15 participant as mentioned in paragraph (4)(b);
16 (c) whether a child is capable of making decisions for himself or
17 herself as mentioned in paragraph (5)(a);
18 (d) whether it is appropriate for subsections (1) and (2) not to
19 apply to a child as mentioned in paragraph (5)(b).
- 20 (7) A determination made under paragraph (5)(c) is not a legislative
21 instrument.

22 **75 Definition of *parental responsibility***

- 23 (1) For the purposes of this Act, a person has ***parental responsibility***
24 for a child if:
25 (a) the person is the child's parent and has not ceased to have
26 parental responsibility for the child because of an order made
27 under the *Family Law Act 1975* or a law of a State or
28 Territory; or
29 (b) under a parenting order (within the meaning of the *Family*
30 *Law Act 1975*):
31 (i) the child is to live with the person; or
32 (ii) the child is to spend time with the person; or
33 (iii) the person is responsible for the child's long-term or
34 day-to-day care, welfare and development.

- 1 (2) Despite subsection (1), if, under a law of the Commonwealth, a
2 State or a Territory, a person has guardianship of a child, that
3 person has *parental responsibility* for the child, unless the CEO
4 determines that one or more of the persons referred to in
5 subsection (1) instead have parental responsibility for the child.
- 6 (3) If subsection (1) would result in more than one person having
7 parental responsibility for a child, the CEO may determine that one
8 or more of those persons have parental responsibility for the child
9 for the purposes of this Act.
- 10 (4) The National Disability Insurance Scheme rules may prescribe
11 criteria to which the CEO is to have regard in deciding whether to
12 make a determination under subsection (2) or (3).
- 13 (5) A determination under subsection (2) or (3) must be in writing.
- 14 (6) A determination under subsection (2) or (3) is not a legislative
15 instrument.

16 **76 Duty to children**

- 17 (1) It is the duty of a person who may do a thing because of section 74
18 to ascertain the wishes of the child concerned and to act in a
19 manner that promotes the personal and social wellbeing of that
20 child.
- 21 (2) A person does not breach the duty imposed by subsection (1) by
22 doing a thing if, when the thing is done, the person reasonably
23 believes that:
24 (a) he or she has ascertained the wishes of the child in relation to
25 the thing; and
26 (b) the doing of the thing promotes the personal and social
27 wellbeing of the child.
- 28 (3) A person does not breach the duty imposed by subsection (1) by
29 refraining from doing a thing if, at the relevant time, the person
30 reasonably believes that:
31 (a) he or she has ascertained the wishes of the child in relation to
32 the thing; and

Section 77

- 1 (b) not doing the thing promotes the personal and social
2 wellbeing of the child.
- 3 (4) The National Disability Insurance Scheme rules may prescribe
4 other duties of a person who may do a thing in relation to a child
5 because of section 74, including duties requiring the person:
6 (a) to support decision-making by the child personally; or
7 (b) to have regard to, and give appropriate weight to, the views
8 of the child.

9 **77 Revocation of determinations under section 74**

- 10 (1) The CEO may, by written instrument, revoke a determination that
11 is in effect under paragraph 74(1)(b) in relation to a person if:
12 (a) the person requests the CEO in writing to do so; or
13 (b) the CEO is satisfied that it is no longer appropriate for the
14 determination to remain in effect.
- 15 (2) The CEO must give the person a copy of the instrument.
16

1 **Part 5—Nominees**

2 **Division 1—Functions and responsibilities of nominees**

3 **78 Actions of plan nominee on behalf of participant**

- 4 (1) Any act that may be done by a participant under, or for the
5 purposes of, this Act that relates to:
6 (a) the preparation, review or replacement of the participant's
7 plan; or
8 (b) the management of the funding for supports under the
9 participant's plan;
10 may be done by the participant's plan nominee, other than to the
11 extent specified in the instrument of appointment of the plan
12 nominee.

13 Note 1: For the appointment of plan nominees, see section 86.

14 Note 2: This subsection is subject to section 85 (which deals with the right of
15 the nominee to attend with a participant) and subsection (4) of this
16 section.

- 17 (2) Without limiting subsection (1), a request that may be made under
18 this Act by a participant may be made by the participant's plan
19 nominee on behalf of the participant.
- 20 (3) An act done by a participant's plan nominee because of this section
21 has effect, for the purposes of this Act (other than this Part), as if it
22 had been done by the participant.
- 23 (4) If, under this Act, the CEO gives a notice to a participant who has a
24 plan nominee, subsection (1) does not extend to an act that is
25 required by the notice to be done by the participant personally.
- 26 (5) If the participant's plan nominee was appointed on the initiative of
27 the CEO, the plan nominee may only do an act in relation to:
28 (a) the preparation, review or replacement of the participant's
29 plan; or
30 (b) the management of the funding for supports under the
31 participant's plan;

Section 79

1 if the nominee considers that the participant is not capable of doing
2 the act.

3 **79 Actions of correspondence nominee on behalf of participant**

4 (1) Any act that may be done by a participant under, or for the
5 purposes of, this Act may be done by the participant's
6 correspondence nominee, other than an act that relates to:

7 (a) the preparation, review or replacement of the participant's
8 plan; or

9 (b) the management of the funding for supports under the
10 participant's plan.

11 Note 1: For the appointment of correspondence nominees, see section 87.

12 Note 2: This subsection is subject to section 85 (which deals with the right of
13 the nominee to attend with a participant) and subsection (4) of this
14 section.

15 (2) Without limiting subsection (1), a request that may be made under
16 this Act by a participant may be made by the participant's
17 correspondence nominee on behalf of the participant.

18 (3) An act done by a participant's correspondence nominee because of
19 this section has effect, for the purposes of this Act (other than this
20 Part), as if it had been done by the participant.

21 (4) If, under this Act, the CEO gives a notice to a participant who has a
22 correspondence nominee, subsection (1) does not extend to an act
23 that is required by the notice to be done by the participant
24 personally.

25 **80 Duty of nominee to participant**

26 (1) It is the duty of a nominee of a participant to ascertain the wishes
27 of the participant and to act in a manner that promotes the personal
28 and social wellbeing of the participant.

29 (2) A nominee does not breach the duty imposed by subsection (1) by
30 doing an act if, when the act is done, the nominee reasonably
31 believes that:

32 (a) he or she has ascertained the wishes of the participant in
33 relation to the act; and

- 1 (b) the doing of the act promotes the personal and social
2 wellbeing of the participant.
- 3 (3) A nominee does not breach the duty imposed by subsection (1) by
4 refraining from doing an act if, at the relevant time, the nominee
5 reasonably believes that:
- 6 (a) he or she has ascertained the wishes of the participant in
7 relation to the act; and
- 8 (b) not doing the act promotes the personal and social wellbeing
9 of the participant.
- 10 (4) The National Disability Insurance Scheme rules may prescribe
11 other duties of a nominee, including duties requiring the nominee:
- 12 (a) to support decision-making by the participant personally; or
13 (b) to have regard to, and give appropriate weight to, the views
14 of the participant.

15 **81 Giving of notices to correspondence nominee**

- 16 (1) Any notice that the CEO is authorised or required by this Act to
17 give to a participant must be given by the CEO to the participant's
18 correspondence nominee.
- 19 (2) The notice:
- 20 (a) must, in every respect, be in the same form, and in the same
21 terms, as if it were being given to the participant; and
- 22 (b) may be given to the correspondence nominee personally, by
23 post or by any other means approved by the CEO.
- 24 (3) If:
- 25 (a) under subsection (1), the CEO gives a notice (the *nominee*
26 *notice*) to a participant's correspondence nominee; and
- 27 (b) the CEO has already given, or afterwards gives, the
28 participant a notice that:
- 29 (i) is expressed to be given under the same provision of this
30 Act as the nominee notice; and
- 31 (ii) makes the same requirement of the participant as the
32 nominee notice;

Section 82

1 section 82 ceases to have effect, or does not come into effect, as
2 the case requires, in relation to the nominee notice.

3 **82 Compliance by correspondence nominee**

- 4 (1) If, under section 81, a notice is given to a participant's
5 correspondence nominee, the following paragraphs have effect:
6 (a) for the purposes of this Act, other than this Part, the notice is
7 taken:
8 (i) to have been given to the participant; and
9 (ii) to have been so given on the day the notice was given to
10 the correspondence nominee;
11 (b) any requirement made of the participant to:
12 (i) inform the CEO of a matter; or
13 (ii) give information, or produce a document, to an officer;
14 may be satisfied by the correspondence nominee;
15 (c) any act done by the correspondence nominee for the purposes
16 of satisfying such a requirement has effect, for the purposes
17 of this Act, as if it had been done by the participant;
18 (d) if the correspondence nominee fails to satisfy such a
19 requirement, the participant is taken, for the purposes of this
20 Act, to have failed to comply with the requirement.
- 21 (2) To avoid doubt, for the purposes of this Act, the participant is
22 taken to have complied with a requirement if:
23 (a) the requirement imposes an obligation on the participant to
24 inform the CEO of a matter, or give information or produce a
25 document, within a specified period; and
26 (b) the correspondence nominee does so within that period.
- 27 (3) To avoid doubt, for the purposes of this Act, the participant is
28 taken not to have complied with a requirement if:
29 (a) the requirement imposes an obligation on the participant to
30 inform the CEO of a matter, or give information or produce a
31 document, within a specified period; and
32 (b) the correspondence nominee does not do so within that
33 period.

83 Nominee to inform Agency of matters affecting ability to act as nominee

- 1
2
- 3 (1) The CEO may give a nominee of a participant a written notice that
4 requires the nominee to inform the Agency if:
5 (a) either:
6 (i) an event or change of circumstances happens; or
7 (ii) the nominee becomes aware that an event or change of
8 circumstances is likely to happen; and
9 (b) the event or change of circumstances is likely to affect:
10 (i) the ability of the nominee to act as the plan nominee or
11 correspondence nominee of the participant (as the case
12 may be); or
13 (ii) the ability of the CEO to give notices to the nominee
14 under this Act; or
15 (iii) the ability of the nominee to comply with notices given
16 to the nominee by the CEO under this Act.
- 17 (2) A notice under subsection (1) must specify:
18 (a) how the nominee is to inform the Agency; and
19 (b) the period within which the nominee is to inform the Agency,
20 which must be a period of at least 14 days beginning on
21 whichever of the following days is applicable:
22 (i) the day on which the event or change of circumstances
23 happens;
24 (ii) the day on which the nominee becomes aware that the
25 event or change of circumstances is likely to happen.
- 26 (3) A notice under subsection (1) is not ineffective only because it
27 does not comply with paragraph (2)(a).
- 28 (4) This section extends to:
29 (a) acts, omissions, matters and things outside Australia, whether
30 or not in a foreign country; and
31 (b) all persons, irrespective of their nationality or citizenship.

Section 84

1 **84 Statement by plan nominee regarding disposal of money**

2 (1) The CEO may give the plan nominee of a participant a notice that
3 requires the nominee to give the Agency a statement about a matter
4 relating to the disposal by the nominee of an NDIS amount paid to
5 the nominee on behalf of the participant.

6 (2) A notice under subsection (1):

7 (a) must specify how the plan nominee is to give the statement to
8 the Agency; and

9 (b) must specify the period within which the plan nominee is to
10 give the statement to the Agency.

11 (3) A notice under subsection (1) is not ineffective only because it
12 does not comply with paragraph (2)(a).

13 (4) The period specified under paragraph (2)(b) must not end earlier
14 than 14 days after the day the notice is given.

15 (5) A statement given in response to a notice under subsection (1)
16 must be in accordance with a form approved by the CEO.

17 (6) A person commits an offence if:

18 (a) the person is a plan nominee; and

19 (b) the person refuses or fails to comply with a notice under
20 subsection (1).

21 Penalty: 30 penalty units.

22 (7) Subsection (6) does not apply if the person has a reasonable
23 excuse.

24 Note: A defendant bears an evidential burden in relation to the matter in this
25 subsection (see subsection 13.3(3) of the *Criminal Code*).

26 (8) An offence against subsection (6) is an offence of strict liability.

27 Note: For strict liability, see section 6.1 of the *Criminal Code*.

28 (9) This section extends to:

29 (a) acts, omissions, matters and things outside Australia, whether
30 or not in a foreign country; and

31 (b) all persons, irrespective of their nationality or citizenship.

1 **85 Right of nominee to attend with participant**

2 (1) If:

3 (a) under this Act, the CEO makes a request of a participant who
4 has a nominee; and

5 (b) the request is that the participant undergo an assessment or a
6 medical, psychiatric or psychological examination;

7 the nominee may accompany the participant while the assessment
8 or examination is being conducted:

9 (c) if the participant so wishes; and

10 (d) to the extent that the person conducting the assessment or
11 examination consents.

12 (2) If a participant's nominee is a body corporate, the last reference in
13 subsection (1) to the nominee is to be read as a reference to an
14 officer or employee of the nominee.
15

Section 86

1 **Division 2—Appointment and cancellation or suspension of**
2 **appointment**

3 **86 Appointment of plan nominee**

4 (1) The CEO may, in writing, appoint a person to be the *plan nominee*
5 of a participant for the purposes of this Act.

6 Note: The CEO must make the appointment in accordance with section 88.

7 (2) An appointment may be made:

8 (a) at the request of the participant; or

9 (b) on the initiative of the CEO.

10 (3) An appointment may limit the matters in relation to which the
11 person is the plan nominee of the participant.

12 **87 Appointment of correspondence nominee**

13 (1) The CEO may, in writing, appoint a person to be the
14 *correspondence nominee* of a participant for the purposes of this
15 Act.

16 Note: The CEO must make the appointment in accordance with section 88.

17 (2) An appointment may be made:

18 (a) at the request of the participant; or

19 (b) on the initiative of the CEO.

20 **88 Provisions relating to appointments**

21 (1) A person may be appointed as the plan nominee and the
22 correspondence nominee of the same participant.

23 (2) The CEO must not appoint a person as a nominee of a participant
24 under section 86 or 87 except:

25 (a) with the written consent of the person to be appointed; and

26 (b) after taking into consideration the wishes (if any) of the
27 participant regarding the making of the appointment.

- 1 (3) In appointing a person as a nominee of a participant under
2 section 86 or 87, the CEO must consider whether the person is able
3 to comply with section 80.
- 4 (4) In appointing a nominee of a participant under section 86 or 87, the
5 CEO must have regard to whether a person has guardianship of the
6 participant under a law of the Commonwealth, a State or a
7 Territory.
- 8 (5) The CEO must cause a copy of an appointment under section 86 or
9 87 to be given to:
- 10 (a) the nominee; and
11 (b) the participant.
- 12 (6) The National Disability Insurance Scheme rules may prescribe:
- 13 (a) persons who must not be appointed as nominees; and
14 (b) criteria to which the CEO is to have regard in considering the
15 appointment of a nominee.

16 **89 Circumstances in which the CEO must cancel appointment of**
17 **nominees**

18 *At the request of a participant*

- 19 (1) If:
- 20 (a) a person is appointed as a nominee of a participant under
21 section 86 or 87 at the request of the participant; and
22 (b) the participant requests the CEO to cancel the appointment;
23 the CEO must, as soon as practicable, cancel the appointment by
24 written instrument.
- 25 (2) A request under paragraph (1)(b) need not be made in writing. If
26 the request is not made in writing, the CEO must make a written
27 record of the request.

28 *Nominee no longer wishes to be a nominee*

- 29 (3) If:
- 30 (a) a person is appointed as a nominee of a participant under
31 section 86 or 87; and

Section 90

- 1 (b) the person informs the CEO in writing that the person no
2 longer wishes to be a nominee under that appointment;
3 the CEO must, as soon as practicable, cancel the appointment by
4 written instrument.

5 *Copy of instrument of cancellation to be given*

- 6 (4) If the appointment of a person as a nominee of a participant is
7 cancelled under this section, the CEO must give the person and
8 participant a copy of the instrument of cancellation.

9 **90 General circumstances in which CEO may cancel or suspend**
10 **appointment of nominees**

11 *At the request of a participant*

- 12 (1) If:
13 (a) a person is appointed as a nominee of a participant under
14 section 86 or 87 on the initiative of the CEO; and
15 (b) the participant requests the CEO to cancel the appointment;
16 the CEO may, by written instrument, cancel the appointment.
- 17 (2) A request under paragraph (1)(b) need not be made in writing. If
18 the request is not made in writing, the CEO must make a written
19 record of the request.
- 20 (3) If a request is made under paragraph (1)(b):
21 (a) the CEO must decide whether to cancel the appointment
22 within 14 days after receiving the request; and
23 (b) if the CEO decides not to cancel the appointment—the CEO
24 must give the person and participant written notice of the
25 CEO's decision.

26 *Ability to act as a nominee affected*

- 27 (4) The CEO may, by written instrument, suspend or cancel one or
28 more of a nominee's appointments if:
29 (a) the CEO gives the nominee a notice under section 83; and

Section 91

- 1 (b) the nominee informs the Agency that an event or change of
2 circumstances has happened or is likely to happen and is
3 likely to have an effect referred to in paragraph 83(1)(b).

4 *Failure to comply with a notice under section 83 or 84*

- 5 (5) The CEO may, by written instrument, suspend or cancel one or
6 more of a nominee's appointments if:
7 (a) the CEO gives the nominee a notice under section 83 or 84;
8 and
9 (b) the nominee does not comply with a requirement specified in
10 the notice.

11 *Copy of instrument of cancellation or suspension to be given*

- 12 (6) If the appointment of a person as a nominee of a participant is
13 cancelled or suspended under this section, the CEO must give the
14 person and participant a copy of the instrument of cancellation or
15 suspension.

16 **91 Suspension etc. of appointment of nominees in cases of severe**
17 **physical, mental or financial harm**

18 *Suspension of appointment*

- 19 (1) The CEO may, by written instrument, suspend the appointment of
20 a person as a nominee of a participant if the CEO has reasonable
21 grounds to believe that the person has caused, or is likely to cause,
22 severe physical, mental or financial harm to the participant.
- 23 (2) If the person's appointment is suspended under subsection (1), the
24 CEO must:
25 (a) give the person and participant a copy of the instrument of
26 suspension; and
27 (b) by written notice given to the person, request the person to
28 give the CEO, within 28 days after the notice is given, a
29 statement setting out reasons why the person's appointment
30 should not be cancelled by the CEO under this section.

Section 92

1

Cancellation of appointment following suspension

2

(3) If the person gives the CEO the statement within the 28-day period, the CEO may, by written instrument, cancel the person's appointment.

3

4

5

(4) The CEO must decide whether to cancel the person's appointment under subsection (3) as soon as practicable after receiving the statement.

6

7

8

(5) If the CEO decides not to cancel the person's appointment under subsection (3):

9

10

(a) the suspension of the person's appointment ends; and

11

(b) the CEO must give the person and participant written notice of the CEO's decision.

12

13

(6) If the person does not give the CEO the statement within the 28-day period, the CEO must, by written instrument, cancel the person's appointment as soon as practicable after that period ends.

14

15

16

Copy of instrument of cancellation to be given

17

(7) If the person's appointment is cancelled under this section, the CEO must give the person and participant a copy of the instrument of cancellation.

18

19

20

92 Other matters relating to cancellation or suspension of appointment

21

22

Cancellation of appointment

23

(1) If:

24

(a) the National Disability Insurance Scheme rules made for the purposes of subsection 46(2) apply in relation to a person who is a nominee; and

25

26

27

(b) the appointment of the person as a nominee is cancelled under section 89, 90 or 91;

28

29

those rules continue to apply in relation to the person as if the appointment had not been cancelled.

30

1

Suspension of appointment

2

(2) While a person's appointment as a nominee is suspended, the appointment has no effect for the purposes of this Act.

3

4

(3) If a person's appointment as a nominee of a participant is suspended under section 90 or 91, the CEO may appoint another person under section 86 or 87 to be the nominee of the participant for a period specified in the instrument of appointment.

5

6

7

8

93 National Disability Insurance Scheme rules may prescribe requirements etc.

9

10

The National Disability Insurance Scheme rules may prescribe:

11

(a) requirements with which the CEO must comply relating to the appointment of nominees or the cancellation or suspension of the appointment of nominees; and

12

13

14

(b) matters to which the CEO is to have regard in appointing nominees or cancelling or suspending the appointment of nominees.

15

16

17

94 CEO's powers of revocation

18

Nothing in this Part is an expression of a contrary intention for the purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.

19

20

1 **Division 3—Other matters relating to nominees**

2 **95 CEO's powers to give notices to participant**

3 Nothing in this Part is intended in any way to affect the CEO's
4 powers under other provisions of this Act to give notices to, or
5 make requirements of, a participant who has a nominee.

6 **96 Notification of nominee where notice is given to participant**

7 (1) If, under this Act (other than this Part), the CEO gives a notice to a
8 participant who has a correspondence nominee, the CEO may
9 inform the correspondence nominee of the giving of the notice and
10 of the terms of the notice.

11 (2) If, under this Act (other than this Part):

12 (a) the CEO gives a notice to a participant who has a plan
13 nominee; and

14 (b) the notice relates to the preparation, management or review
15 of the participant's plan;

16 the CEO must inform the plan nominee of the giving of the notice
17 and of the terms of the notice.

18 **97 Protection of participant against liability for actions of nominee**

19 Nothing in this Part renders a participant guilty of an offence
20 against this Act in relation to any act or omission of the
21 participant's nominee.

22 **98 Protection of nominee against criminal liability**

23 (1) A nominee of a participant is not subject to any criminal liability
24 under this Act in relation to:

25 (a) any act or omission of the participant; or

26 (b) anything done, in good faith, by the nominee in his or her
27 capacity as nominee.

28 (2) This section has effect subject to section 84 (which deals with a
29 statement by a plan nominee regarding the disposal of money).

1 **Part 6—Review of decisions**
2

3 **99 Reviewable decisions**

4 Each of the following decisions of the CEO is a *reviewable*
5 *decision*:

- 6 (a) a decision under paragraph 20(a), subsection 21(3) or
7 paragraph 26(2)(c) that a person does not meet the access
8 criteria;
- 9 (b) a decision under paragraph 26(2)(b) not to specify a period;
- 10 (c) a decision under section 30 to revoke a person's status as a
11 participant;
- 12 (d) a decision under subsection 33(2) to approve the statement of
13 participant supports in a participant's plan;
- 14 (e) a decision under paragraph 40(2)(b) not to extend a grace
15 period;
- 16 (f) a decision under subsection 48(2) not to review a
17 participant's plan;
- 18 (g) a decision under section 70 to refuse to approve a person or
19 entity as a registered provider of supports;
- 20 (h) a decision under section 72 to revoke an instrument
21 approving a person or entity as a registered provider of
22 supports;
- 23 (i) a decision under paragraph 74(1)(b) to make, or not to make,
24 a determination in relation to a person;
- 25 (j) a decision under paragraph 74(4)(c) not to make a
26 determination that subsections 74(1) and (2) do not apply to a
27 child;
- 28 (k) a decision under subsection 75(2) or (3) to make, or not to
29 make, a determination that a person has parental
30 responsibility for a child;
- 31 (l) a decision under section 86 to appoint a plan nominee;
- 32 (m) a decision under section 87 to appoint a correspondence
33 nominee;
- 34 (n) a decision under section 89, 90 or 91 to cancel or suspend, or
35 not to cancel or suspend, the appointment of a nominee;

Section 100

- 1 (o) a decision under section 104 to give a notice to require a
2 person to take reasonable action to claim or obtain
3 compensation;
4 (p) a decision under section 111 to give a notice that the CEO
5 proposes to recover an amount;
6 (q) a decision under section 116 not to treat the whole or part of
7 a compensation payment as not having been fixed by a
8 judgement or settlement.

9 **100 Review of reviewable decisions**

- 10 (1) The CEO must give written notice of a reviewable decision to each
11 person directly affected by the reviewable decision. The notice
12 must include a statement:
13 (a) that:
14 (i) the person may request the CEO to review the
15 reviewable decision; or
16 (ii) if the CEO is taken to have made the reviewable
17 decision because of subsection 21(3) or 48(2)—the
18 decision will be reviewed automatically; and
19 (b) that the person may seek further review under section 103.
- 20 (2) A person who is directly affected by a reviewable decision may
21 request the CEO to review the reviewable decision. If the person is
22 given a notice under subsection (1) the person must make the
23 request within 3 months after receiving the notice.
- 24 (3) A request may be made by:
25 (a) sending or delivering a written request to the CEO; or
26 (b) making an oral request, in person or by telephone or other
27 means, to the CEO.
- 28 (4) If a person makes an oral request in accordance with
29 paragraph (3)(b), the person receiving the oral request must:
30 (a) make a written record of the details of the request; and
31 (b) note on the record the day the request is made.
- 32 (5) If:

Section 101

- 1 (a) the CEO receives a request for review of a reviewable
2 decision; or
3 (b) the CEO is taken to have made a reviewable decision because
4 of subsection 21(3) or 48(2);
5 the CEO must cause the reviewable decision to be reviewed by a
6 person (the *reviewer*):
7 (c) to whom the CEO's powers and functions under this section
8 are delegated; and
9 (d) who was not involved in making the reviewable decision.
- 10 (6) The reviewer must, as soon as reasonably practicable, make a
11 decision:
12 (a) confirming the reviewable decision; or
13 (b) varying the reviewable decision; or
14 (c) setting aside the reviewable decision and substituting a new
15 decision.
- 16 (7) A request for review of a reviewable decision, or a requirement to
17 review a reviewable decision that the CEO is taken to have made,
18 does not affect the operation of the decision or prevent the taking
19 of action to implement the decision.
- 20 (8) A failure of the CEO to comply with subsection (1) does not affect
21 the validity of the reviewable decision or the right of a person
22 directly affected to request review of the decision.
- 23 (9) To the extent that this provision relates to a decision referred to in
24 paragraph 99(g) or (h), a reference in this section to a person
25 includes a reference to an entity.

26 **101 Variation of reviewable decision before review completed**

- 27 If:
28 (a) a request is made for review of a reviewable decision; and
29 (b) before a decision on the review is made, the reviewable
30 decision is varied;
31 the request for review is taken to be for review of the reviewable
32 decision as varied.

Section 102

1 **102 Withdrawal of request for review**

- 2 (1) A request for review of a reviewable decision may be withdrawn
3 by:
4 (a) sending or delivering a written notice to the CEO; or
5 (b) contacting the CEO and withdrawing the request orally,
6 whether in person, by telephone or by other means.
- 7 (2) If a request is withdrawn in accordance with paragraph (1)(b), the
8 person receiving the oral withdrawal must make a written record of
9 the details of the withdrawal and note on the record the day the
10 withdrawal is made.

11 **103 Applications to the Administrative Appeals Tribunal**

12 Applications may be made to the Administrative Appeals Tribunal
13 for review of a decision made by a reviewer under subsection
14 100(6).

15 Note: Under the *Administrative Appeals Tribunal Act 1975*, notice must be
16 given to persons whose interests are affected by a decision of the
17 reviewer.
18

1 **Chapter 5—Compensation payments**

2 **Part 1—Requirement to take action to obtain**
3 **compensation**
4

5 **104 CEO may require person to take action to obtain compensation**

- 6 (1) This section applies if:
- 7 (a) a participant or a prospective participant is, or in the CEO's
8 opinion may be, entitled to compensation in respect of a
9 personal injury; and
- 10 (b) the participant or prospective participant:
- 11 (i) has taken no action to claim or obtain the compensation;
12 or
- 13 (ii) has taken no reasonable action to claim or obtain the
14 compensation.
- 15 (2) The CEO may, by written notice, require the participant or
16 prospective participant to take the action specified in the notice
17 within the period specified in the notice. The action must be action
18 that is reasonable to enable the person to claim or obtain the
19 compensation.
- 20 (3) In considering whether it is reasonable to require a participant or
21 prospective participant to take an action, the CEO must have
22 regard to the following:
- 23 (a) the disability of the participant or prospective participant;
- 24 (b) the circumstances which give rise to the entitlement or
25 possible entitlement to compensation;
- 26 (c) any impediments the participant or prospective participant
27 may face in recovering compensation;
- 28 (d) any reasons given by the participant or prospective
29 participant as to why he or she has not claimed or obtained
30 compensation;
- 31 (e) the financial circumstances of the participant or prospective
32 participant;

Section 105

- 1 (f) the impact of the requirement to take the action on the
2 participant or prospective participant and his or her family.
- 3 (4) The CEO must not give a notice under subsection (2) requiring a
4 participant or prospective participant to take action to claim or
5 obtain compensation unless the CEO is satisfied that the participant
6 or prospective participant has reasonable prospects of success in
7 claiming or obtaining the compensation.
- 8 (5) The period specified by the CEO must be a period of at least 28
9 days after the day on which the notice is given.
- 10 (6) Even though a participant or a prospective participant has entered
11 into an agreement to give up his or her right to compensation, the
12 CEO may form the opinion that the participant or prospective
13 participant may be entitled to compensation if the CEO is satisfied
14 that the agreement is void, ineffective or unenforceable.

15 **105 Consequences of failure to comply with a requirement to take**
16 **action to obtain compensation**

- 17 (1) A participant or a prospective participant who is given a notice
18 under subsection 104(2) requiring him or her to take action (the
19 ***required action***) to claim or obtain compensation within a
20 specified period must take the required action within the period.
- 21 (2) If a participant does not take the required action within the period:
22 (a) if a plan is in effect for the participant—the plan is suspended
23 from the end of the specified period until the participant takes
24 the required action; or
25 (b) if a plan is not yet in effect for the participant—the CEO
26 must still comply with section 32 in relation to facilitating the
27 preparation of the participant’s plan, but the plan does not
28 come into effect until the participant takes the required
29 action.
- 30 (3) If a prospective participant does not take the required action, the
31 CEO is not prevented from deciding whether or not the prospective
32 participant meets the access criteria and facilitating the preparation
33 of the participant’s plan, but the plan does not come into effect
34 until the participant takes the required action.

1 **Part 2—Agency may recover compensation fixed**
2 **after NDIS amounts have been paid**
3

4 **106 Recovering past NDIS amounts from certain judgements**

5 (1) This section applies if:

- 6 (a) an amount of compensation is fixed under a judgement (other
7 than a consent judgement) given in respect of a personal
8 injury that has caused, to any extent, a participant's
9 impairment (whether or not the participant was a participant
10 at the time of the injury); and
11 (b) before the day of the judgement, NDIS amounts (the *past*
12 *NDIS amounts*) had been paid in respect of supports in
13 relation to the participant's impairment; and
14 (c) the judgement specifies a portion (the *past NDIS support*
15 *component*) of the amount of compensation to be a
16 component for supports of a kind funded or provided under
17 the National Disability Insurance Scheme.

18 (2) An amount (the *recoverable amount*) is payable by the participant
19 to the Agency. The recoverable amount is an amount equal to:

- 20 (a) unless subsection (4) or (5) applies—the sum of the past
21 NDIS amounts, reduced as mentioned in subsection (3) (if
22 applicable); or
23 (b) if subsection (4) or (5) applies—the amount worked out in
24 accordance with whichever of those subsections is
25 applicable.

26 (3) If:

- 27 (a) the judgement fixes the amount of compensation on the basis
28 that liability for the injury should be apportioned between the
29 participant and another person; and
30 (b) as a result, the amount of compensation is less than it would
31 have been if liability had not been so apportioned;

32 the sum of the past NDIS amounts is to be reduced by the
33 proportion corresponding to the proportion of liability that is
34 apportioned to the participant by the judgement.

Section 107

- 1 (4) If the recoverable amount would, apart from this subsection,
2 exceed the past NDIS support component, the recoverable amount
3 is taken to be the lesser of the sum of the past NDIS amounts and
4 the past NDIS support component.
- 5 (5) If the recoverable amount would, apart from this subsection,
6 exceed the difference (if any) between:
- 7 (a) the amount of compensation fixed by the judgement; and
 - 8 (b) the sum of the amounts (if any) payable in respect of the
9 amount of compensation under the following:
 - 10 (i) the *Health and Other Services (Compensation) Act*
11 *1995*;
 - 12 (ii) the *Health and Other Services (Compensation) Care*
13 *Charges Act 1995*;
 - 14 (iii) Part 3.14 of the *Social Security Act 1991*;
 - 15 (iv) a law of the Commonwealth, a State or a Territory,
16 prescribed by the National Disability Insurance Scheme
17 rules;
- 18 the recoverable amount is taken to be the amount of the difference.

19 **107 Recovering past NDIS amounts from consent judgements and**
20 **settlements**

- 21 (1) This section applies if:
- 22 (a) an amount of compensation is fixed under a consent
23 judgement or settlement in respect of a personal injury that
24 has caused, to any extent, a participant's impairment
25 (whether or not the participant was a participant at the time of
26 the injury); and
 - 27 (b) before the day of the consent judgement or settlement, NDIS
28 amounts (the *past NDIS amounts*) had been paid in respect
29 of supports in relation to the participant's impairment.
- 30 (2) An amount (the *recoverable amount*) is payable by the participant
31 to the Agency. The recoverable amount is an amount equal to:
- 32 (a) unless subsection (4) applies—the sum of the past NDIS
33 amounts, reduced as mentioned in subsection (3) (if
34 applicable); or

Section 108

- 1 (b) if subsection (4) applies—the amount worked out in
2 accordance with that subsection.
- 3 (3) If:
- 4 (a) the consent judgement or settlement fixes the amount of
5 compensation on the basis that liability for the injury should
6 be apportioned between the participant and another person;
7 and
- 8 (b) as a result, the amount of compensation is less than it would
9 have been if liability had not been so apportioned;
- 10 the sum of the past NDIS amounts is to be reduced by the
11 proportion corresponding to the proportion of liability that is
12 apportioned to the participant by the consent judgement or
13 settlement.
- 14 (4) If the recoverable amount would, apart from this subsection,
15 exceed the difference (if any) between:
- 16 (a) the amount of compensation fixed under the consent
17 judgement or settlement; and
- 18 (b) the sum of the amounts (if any) payable in respect of the
19 amount of compensation under the following:
- 20 (i) the *Health and Other Services (Compensation) Act*
21 *1995*;
- 22 (ii) the *Health and Other Services (Compensation) Care*
23 *Charges Act 1995*;
- 24 (iii) Part 3.14 of the *Social Security Act 1991*;
- 25 (iv) a law of the Commonwealth, a State or a Territory,
26 prescribed by the National Disability Insurance Scheme
27 rules;
- 28 the recoverable amount is taken to be the amount of the difference.

29 **108 Debts resulting from section 106 or 107**

30 An amount payable by a person under section 106 or 107 is a debt
31 due by the person to the Agency.
32

Section 109

1 **Part 3—Recovery from compensation payers and**
2 **insurers**
3

4 **109 CEO may send preliminary notice to potential compensation**
5 **payer or insurer**

- 6 (1) If:
7 (a) a participant or prospective participant makes a claim against
8 another person (the *potential compensation payer*) for
9 compensation; and
10 (b) the claim relates to the participant's or prospective
11 participant's impairment;
12 the CEO may give written notice to the potential compensation
13 payer, stating that the CEO may wish to recover an amount from
14 the potential compensation payer.
- 15 (2) If:
16 (a) a participant or prospective participant makes a claim against
17 another person (the *potential compensation payer*) for
18 compensation; and
19 (b) the claim relates to the participant's or prospective
20 participant's impairment; and
21 (c) an insurer may be liable, under a contract of insurance, to
22 indemnify the potential compensation payer against any
23 liability arising from the claim for compensation;
24 the CEO may give written notice to the insurer, stating that the
25 CEO may wish to recover an amount from the insurer.
- 26 (3) A notice under subsection (1) or (2) must contain:
27 (a) a statement of the potential compensation payer's or insurer's
28 obligation under subsection 110(1) or (2), as the case
29 requires; and
30 (b) a statement of the effect of section 111 (recovery) so far as it
31 relates to the notice.

1 **110 Offence—potential compensation payer or insurer**

- 2 (1) A person (the *potential compensation payer*) commits an offence
3 if:
4 (a) the potential compensation payer is given a notice under
5 subsection 109(1) in relation to a participant or prospective
6 participant; and
7 (b) before or after receiving the notice, the potential
8 compensation payer becomes liable to pay compensation to
9 the participant or prospective participant; and
10 (c) the potential compensation payer does not give written notice
11 to the CEO of the liability within 7 days after becoming
12 liable or receiving the notice, whichever is later.

13 **Penalty:** Imprisonment for 12 months or 60 penalty units, or both.

14 **Note:** If a body corporate is convicted of an offence against this section,
15 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
16 fine of up to 5 times the pecuniary penalty stated above.

- 17 (2) An insurer commits an offence if:
18 (a) the insurer is given a notice under subsection 109(2) in
19 relation to a claim by a participant or prospective participant;
20 and
21 (b) before or after receiving the notice, the insurer becomes
22 liable to indemnify the potential compensation payer, either
23 wholly or partly, in relation to the claim; and
24 (c) the insurer does not give written notice to the CEO of the
25 liability within 7 days of becoming liable or receiving the
26 notice, whichever is later.

27 **Penalty:** Imprisonment for 12 months or 60 penalty units, or both.

28 **Note:** If a body corporate is convicted of an offence against this section,
29 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
30 fine of up to 5 times the pecuniary penalty stated above.

31 **111 CEO may send recovery notice to compensation payer or**
32 **insurer**

- 33 (1) If:

Section 111

- 1 (a) one or more NDIS amounts have been paid to a person in
2 respect of a participant's impairment; and
3 (b) a person (the *compensation payer*):
4 (i) is liable to pay compensation to the participant in
5 relation to the impairment; or
6 (ii) if the compensation payer is an authority of a State or
7 Territory—has determined that a payment by way of
8 compensation is to be made to the participant in relation
9 to the impairment;

10 the CEO may give written notice to the compensation payer that
11 the CEO proposes to recover from the compensation payer the
12 amount specified in the notice.

13 (2) If:

- 14 (a) one or more NDIS amounts have been paid to a person in
15 respect of a participant's impairment; and
16 (b) an insurer is liable, under a contract of insurance, to
17 indemnify the compensation payer against any liability
18 arising from a claim of the participant for compensation;

19 the CEO may give written notice to the insurer that the CEO
20 proposes to recover from the insurer the amount specified in the
21 notice.

22 (3) If a compensation payer or insurer is given notice under
23 subsection (1) or (2), the compensation payer or insurer is liable to
24 pay to the Agency the amount specified in the notice.

25 (4) The amount to be specified in the notice is the lesser of the
26 following:

- 27 (a) an amount equal to the sum of the NDIS amounts referred to
28 in paragraph (1)(a) or (2)(a);
29 (b) an amount equal to the recoverable amount in relation to the
30 judgement, consent judgement or settlement to which the
31 liability relates.

32 (5) A notice under this section must contain a statement of the effect of
33 section 114 (offences) so far as it relates to such a notice.

- 1 (6) This section applies to an amount payable by way of compensation
2 in spite of any law of the Commonwealth, a State or Territory
3 (however expressed) under which the compensation is inalienable.
- 4 (7) If the CEO gives a person a notice under this section that the CEO
5 proposes to recover a specified amount from the person, the
6 specified amount is a debt due by the person to the Agency.

7 **112 Preliminary notice or recovery notice suspends liability to pay**
8 **compensation**

- 9 (1) If a person (the *compensation payer*) has been given a notice under
10 subsection 109(1) or 111(1) in relation to the compensation payer's
11 liability, or possible liability, to pay compensation, the
12 compensation payer is not liable to pay that compensation while
13 the notice has effect.
- 14 (2) If an insurer has been given a notice under subsection 109(2) or
15 111(2) in relation to the insurer's liability, or possible liability, to
16 indemnify a compensation payer against a liability arising from a
17 claim for compensation:
- 18 (a) the insurer is not liable to so indemnify the compensation
19 payer; and
- 20 (b) the compensation payer is not liable to pay that
21 compensation;
- 22 while the notice has effect.

23 **113 Compensation payer's or insurer's payment to Agency**
24 **discharges liability to participant**

- 25 (1) Payment to the Agency of an amount that a compensation payer is
26 liable to pay under section 111 in relation to a participant operates,
27 to the extent of the payment, as a discharge of:
- 28 (a) the compensation payer's liability to pay compensation to the
29 participant; and
- 30 (b) the participant's liability to pay the Agency.
- 31 (2) Payment to the Agency of an amount that an insurer is liable to pay
32 under section 111 in relation to a participant operates, to the extent
33 of the payment, as a discharge of:

Section 114

- 1 (a) the insurer's liability to the compensation payer; and
2 (b) the compensation payer's liability to pay compensation to the
3 participant; and
4 (c) the participant's liability to pay the Agency.

5 **114 Offence—making compensation payment after receiving**
6 **preliminary notice or recovery notice**

7 (1) A person (the *potential compensation payer*) commits an offence
8 if:

- 9 (a) the potential compensation payer has been given a notice
10 under subsection 109(1) or 111(1) in relation to the payment
11 of compensation to a participant or prospective participant;
12 and
13 (b) the potential compensation payer makes the compensation
14 payment to the participant or prospective participant.

15 **Penalty:** Imprisonment for 12 months or 60 penalty units, or both.

16 **Note:** If a body corporate is convicted of an offence against this section,
17 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
18 fine of up to 5 times the pecuniary penalty stated above.

19 (2) Subsection (1) does not apply if:

- 20 (a) in the case of a notice under section 109—the CEO has given
21 the potential compensation payer written notice that the
22 notice is revoked; or
23 (b) in the case of a notice under section 111—the potential
24 compensation payer has paid to the Agency the amount
25 specified in the notice; or
26 (c) the CEO has given the potential compensation payer written
27 permission to pay the amount.

28 (3) An insurer commits an offence if:

- 29 (a) the insurer has been given a notice under subsection 109(2)
30 or 111(2) in relation to a liability to indemnify a person; and
31 (b) the insurer makes a payment in relation to that liability.

32 **Penalty:** Imprisonment for 12 months or 60 penalty units, or both.

Section 115

1 Note: If a body corporate is convicted of an offence against this section,
2 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
3 fine of up to 5 times the pecuniary penalty stated above.

- 4 (4) Subsection (3) does not apply if:
- 5 (a) in the case of a notice under section 109—the CEO has given
6 the insurer written notice that the notice is revoked; or
 - 7 (b) in the case of a notice under section 111—the insurer has
8 paid to the Agency the amount specified in the notice; or
 - 9 (c) the CEO has given the insurer written permission to pay the
10 amount.

11 **115 Liability to pay the Agency if there is a contravention of**
12 **section 114**

- 13 (1) A potential compensation payer or insurer who contravenes
14 section 114 is, in addition to being liable under that section, liable
15 to pay to the Agency:
- 16 (a) if the contravention relates to a notice under section 109—an
17 amount determined by the CEO; or
 - 18 (b) if the contravention relates to a notice under section 111—the
19 amount specified in the notice.
- 20 (2) The amount determined by the CEO under paragraph (1)(a) must
21 not be more than the amount that would have been specified in a
22 notice under section 111 if one had been given.
- 23 (3) This section applies in relation to a payment by way of
24 compensation in spite of any law of the Commonwealth, a State or
25 Territory (however expressed) under which the compensation is
26 inalienable.
- 27 (4) The amount determined by the CEO under paragraph (1)(a) or
28 specified in the notice under section 111 is a debt due by the
29 compensation payer or the insurer to the Agency.
30

Section 116

1 **Part 4—CEO may disregard certain payments**
2

3 **116 CEO may disregard certain payments**

4 For the purposes of this Chapter, the CEO may treat the whole or
5 part of a compensation payment as not having been fixed by a
6 judgement (including a consent judgement) or settlement, if the
7 CEO thinks it is appropriate to do so in the special circumstances
8 of the case.
9

1 **Chapter 6—National Disability Insurance**
2 **Scheme Launch Transition Agency**

3 **Part 1—National Disability Insurance Scheme**
4 **Launch Transition Agency**
5

6 **117 Establishment**

7 (1) The National Disability Insurance Scheme Launch Transition
8 Agency is established by this section.

9 (2) The Agency:

10 (a) is a body corporate; and

11 (b) must have a seal; and

12 (c) may acquire, hold and dispose of real and personal property;
13 and

14 (d) may sue and be sued.

15 Note: The CAC Act applies to the Agency. That Act deals with matters
16 relating to Commonwealth authorities, including reporting and
17 accountability, banking and investment, and conduct of officers.

18 (3) The seal of the Agency is to be kept in such custody as the Board
19 directs and must not be used except as authorised by the Board.

20 **118 Functions of the Agency**

21 (1) The Agency has the following functions:

22 (a) to deliver the National Disability Insurance Scheme;

23 (b) to manage, and to advise and report on, the financial
24 sustainability of the National Disability Insurance Scheme
25 including by:

26 (i) regularly making and assessing estimates of the current
27 and future expenditure of the National Disability
28 Insurance Scheme; and

29 (ii) identifying and managing risks and issues relevant to
30 the financial sustainability of the National Disability
31 Insurance Scheme;

Section 119

- 1 (c) to develop and enhance the disability sector, including by
2 facilitating innovation, research and contemporary best
3 practice in the sector;
- 4 (d) to build community awareness of disabilities and the social
5 contributors to disabilities;
- 6 (e) to collect, analyse and exchange data about disabilities and
7 the supports (including early intervention supports) for
8 people with disability;
- 9 (f) to undertake research relating to disabilities, the supports
10 (including early intervention supports) for people with
11 disability and the social contributors to disabilities;
- 12 (g) any other functions conferred on the Agency by or under this
13 Act, the regulations or an instrument made under this Act;
- 14 (h) to do anything incidental or conducive to the performance of
15 the above functions.
- 16 (2) In performing its functions, the Agency must use its best
17 endeavours to:
- 18 (a) act in accordance with any relevant intergovernmental
19 agreements; and
20 (b) act in a proper, efficient and effective manner.

21 **119 Powers of the Agency**

- 22 (1) The Agency has power to do all things necessary or convenient to
23 be done for or in connection with the performance of its functions.
- 24 (2) The Agency's powers include, but are not limited to, the following
25 powers:
- 26 (a) the power to enter into contracts;
27 (b) the power to accept gifts, devises, bequests and assignments.

28 **120 Charging of fees**

- 29 (1) The Agency may charge fees in accordance with an instrument
30 made under subsection (2).
- 31 (2) The Minister may, by legislative instrument, prescribe:

- 1 (a) the things that the Agency does in the performance of its
2 functions for which it may charge fees; and
3 (b) the amount, or a method of working out the amount, of those
4 fees.
- 5 (3) An instrument made under subsection (2) must not allow:
6 (a) a fee to be charged in relation to an access request; or
7 (b) a participant to be charged a fee.
- 8 (4) The Minister must not make an instrument under subsection (2)
9 unless the Commonwealth and each host jurisdiction agree to the
10 making of the instrument.
- 11 (5) A fee must not be such as to amount to taxation.

12 **121 Minister may give directions to the Agency**

- 13 (1) The Minister may, by legislative instrument, give directions to the
14 Agency about the performance of its functions.
- 15 Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative*
16 *Instruments Act 2003* do not apply to the directions (see sections 44
17 and 54 of that Act).
- 18 (2) A direction given under subsection (1):
19 (a) must not relate to a particular individual; and
20 (b) must not be inconsistent with:
21 (i) this Act, the regulations or an instrument made under
22 this Act; or
23 (ii) the CAC Act, or the regulations or an instrument made
24 under that Act.
- 25 (3) The Minister must not give a direction under subsection (1) unless
26 the Commonwealth and each host jurisdiction agree to the giving
27 of the direction.
- 28 (4) The Agency must comply with a direction given under
29 subsection (1).

Section 122

1 **122 Agency does not have privileges and immunities of the Crown**

2 The Agency does not have privileges and immunities of the Crown
3 in right of the Commonwealth.
4

1 **Part 2—Board of the Agency**

2 **Division 1—Establishment and functions**

3 **123 Establishment**

4 The Board of the Agency is established by this section.

5 **124 Functions of the Board**

- 6 (1) The Board has the following functions:
- 7 (a) to ensure the proper, efficient and effective performance of
- 8 the Agency's functions;
- 9 (b) to determine objectives, strategies and policies to be followed
- 10 by the Agency;
- 11 (c) any other functions conferred on the Board by or under:
- 12 (i) this Act, the regulations or an instrument made under
- 13 this Act; or
- 14 (ii) any other law of the Commonwealth.
- 15 (2) The Board has the power to do all things necessary or convenient
- 16 to be done for or in connection with the performance of its
- 17 functions.
- 18 (3) Anything done in the name of, or on behalf of, the Agency by the
- 19 Board, or with the authority of the Board, is taken to have been
- 20 done by the Agency.

21 **125 Minister may give the Board a statement setting out strategic**

22 **guidance for the Agency**

- 23 (1) The Minister may give the Board a written statement setting out
- 24 strategic guidance for the Agency.
- 25 (2) A statement given under subsection (1):
- 26 (a) must be of a general nature only; and
- 27 (b) must not relate to a particular individual; and
- 28 (c) must not be inconsistent with:

Section 125

- 1 (i) this Act, the regulations or an instrument made under
2 this Act; or
3 (ii) the CAC Act, or the regulations or an instrument made
4 under that Act.
- 5 (3) The Minister must not give a statement under subsection (1) unless
6 the Commonwealth and each host jurisdiction agree to the giving
7 of the statement.
- 8 (4) In performing its functions, the Board must have regard to a
9 statement given under subsection (1).
- 10 (5) A statement given under subsection (1) is not a legislative
11 instrument.
12

1 **Division 2—Members of the Board**

2 **126 Membership**

3 The Board consists of the Chair and 8 other members.

4 **127 Appointment of Board members**

- 5 (1) The Board members are to be appointed by the Minister, by written
6 instrument, on a part-time basis.
- 7 (2) A person is eligible for appointment as a Board member only if the
8 Minister is satisfied that the person has skills, experience or
9 knowledge in at least one of the following fields:
- 10 (a) the provision or use of disability services;
- 11 (b) the operation of insurance schemes, compensation schemes
12 or schemes with long-term liabilities;
- 13 (c) financial management;
- 14 (d) corporate governance.

15 *Procedures relating to appointment*

- 16 (3) The Minister must consult the host jurisdictions about the
17 appointment of the Chair.
- 18 (4) Before the Minister appoints a Board member other than the Chair,
19 the Minister must:
- 20 (a) seek the support of all the host jurisdictions for the
21 appointment; and
- 22 (b) be satisfied that the appointment is supported by:
- 23 (i) the Commonwealth; and
- 24 (ii) a majority of the group consisting of the
25 Commonwealth and the host jurisdictions.

26 *Persons ineligible for appointment*

- 27 (5) Despite subsection (2), a person is not eligible for appointment as a
28 Board member if the person is:
- 29 (a) a member (however described) of:

Section 128

- 1 (i) the Parliament of the Commonwealth or a State; or
2 (ii) the legislature of a Territory; or
3 (iii) a local government authority; or
4 (b) an employee of the Commonwealth, a State, a Territory or a
5 local government authority; or
6 (c) the holder of a full-time office under a law of the
7 Commonwealth, a State or a Territory.

8 *Balance of skills etc.*

- 9 (6) In appointing the Board members, the Minister must ensure that
10 the Board members collectively possess an appropriate balance of
11 skills, experience or knowledge in the fields mentioned in
12 subsection (2).

13 **128 Term of appointment**

14 A Board member holds office for the period specified in the
15 instrument of appointment. The period must not be more than 3
16 years.

17 Note: For reappointment, see section 33AA of the *Acts Interpretation Act*
18 *1901*.

19 **129 Acting appointments**

20 *Appointment to act during vacancy*

- 21 (1) The Minister may, by written instrument, appoint a person to act as
22 the Chair, for a specified period of not more than 12 months,
23 during a vacancy in the office of the Chair, whether or not an
24 appointment has previously been made to the office.
- 25 (2) The Minister may, by written instrument, appoint a person to act as
26 a Board member other than the Chair, for a specified period of not
27 more than 12 months, during a vacancy in the office of a Board
28 member other than the Chair, whether or not an appointment has
29 previously been made to the office, if:
- 30 (a) the Minister has sought the support of all the host
31 jurisdictions for an appointment (the *proposed substantive*

- 1 **appointment**) of a particular person to the office to be made
2 under section 127; and
3 (b) the Minister is satisfied that either:
4 (i) it is not possible to make the proposed substantive
5 appointment in accordance with subsection 127(4); or
6 (ii) 90 days have passed since the Minister sought the
7 support and it is not known whether the proposed
8 substantive appointment can be made in accordance
9 with subsection 127(4).

10 *Appointment to act during absence etc.*

- 11 (3) The Minister may, by written instrument, appoint a person to act as
12 a Board member during any period, or during all periods, when a
13 Board member:
14 (a) is absent from duty or from Australia; or
15 (b) is, for any reason, unable to perform the duties of the office.

16 Note: The Minister must tell the Ministerial Council as soon as practicable
17 after the Minister appoints a person to act as the Chair or another
18 Board member: see subsection 176(2).

19 *Eligibility for appointment*

- 20 (4) A person is eligible for appointment under subsection (1), (2) or (3)
21 only if the Minister is satisfied that the person has skills,
22 experience or knowledge in at least one of the fields mentioned in
23 subsection 127(2).
24 (5) Despite subsection (4), a person is not eligible for appointment
25 under subsection (1), (2) or (3) if the person is:
26 (a) a member (however described) of:
27 (i) the Parliament of the Commonwealth or a State; or
28 (ii) the legislature of a Territory; or
29 (iii) a local government authority; or
30 (b) the holder of a full-time office under a law of the
31 Commonwealth, a State or a Territory.

32 Note: For rules that apply to acting appointments, see sections 33AB and
33 33A of the *Acts Interpretation Act 1901*.

Section 130

1 **130 Remuneration and allowances**

- 2 (1) A Board member is to be paid the remuneration that is determined
3 by the Remuneration Tribunal. If no determination of that
4 remuneration by the Tribunal is in operation, the member is to be
5 paid the remuneration that is prescribed by the regulations.
- 6 (2) A Board member is to be paid the allowances that are prescribed
7 by the regulations.
- 8 (3) This section has effect subject to the *Remuneration Tribunal Act*
9 1973.

10 **131 Leave of absence**

11 *Chair*

- 12 (1) The Minister may grant leave of absence to the Chair on the terms
13 and conditions that the Minister determines.
- 14 (2) Before the Minister grants leave of absence to the Chair under
15 subsection (1), the Minister must consult the host jurisdictions
16 about the grant.

17 *Other Board members*

- 18 (3) The Chair may grant leave of absence to another Board member on
19 the terms and conditions that the Chair determines.
- 20 (4) The Chair must notify the Minister if the Chair grants another
21 Board member leave of absence for a period that exceeds 3
22 months.

23 **132 Outside employment**

24 A Board member must not engage in any paid employment that, in
25 the Minister's opinion, conflicts or may conflict with the proper
26 performance of the member's duties.

1 **133 Resignation of Board members**

- 2 (1) A Board member may resign his or her appointment by giving the
3 Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.
- 7 (3) The later day specified in the resignation must not be more than 90
8 days after the day the resignation is received by the Minister.

9 **134 Termination of appointment of Board members**

- 10 (1) The Minister may terminate the appointment of a Board member:
11 (a) for misbehaviour; or
12 (b) if the member is incapable of performing the duties of his or
13 her office.
- 14 (2) The Minister may terminate the appointment of a Board member if:
15 (a) the member:
16 (i) becomes bankrupt; or
17 (ii) applies to take the benefit of any law for the relief of
18 bankrupt or insolvent debtors; or
19 (iii) compounds with his or her creditors; or
20 (iv) makes an assignment of his or her remuneration for the
21 benefit of his or her creditors; or
22 (b) the member is absent, except on leave of absence, from 3
23 consecutive meetings of the Board; or
24 (c) the member engages in paid employment that, in the
25 Minister's opinion, conflicts or may conflict with the proper
26 performance of the member's duties (see section 132); or
27 (d) the member fails, without reasonable excuse, to comply with
28 an obligation imposed on him or her by section 27F or 27J of
29 the CAC Act; or
30 (e) the Minister is satisfied that the performance of the member
31 has been unsatisfactory for a significant period.

Section 135

1

Procedures relating to termination

2

- (3) The Minister must consult the host jurisdictions about the termination of the appointment of the Chair.

3

4

- (4) Before the Minister terminates the appointment of a Board member other than the Chair, the Minister must:

5

6

- (a) seek the support of all the host jurisdictions for the termination; and

7

8

- (b) be satisfied that the termination is supported by:

9

- (i) the Commonwealth; and

10

- (ii) a majority of the group consisting of the

11

- Commonwealth and the host jurisdictions.

12

135 Other terms and conditions of Board members

13

- (1) A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

14

15

16

- (2) Before the Minister determines terms and conditions on which a Board member holds office, the Minister must be satisfied that the Commonwealth and a majority of host jurisdictions agree to the terms and conditions.

17

18

19

20

1 **Division 3—Meetings of the Board**

2 **136 Convening meetings**

3 (1) The Board must hold the meetings that are necessary for the
4 efficient performance of its functions.

5 (2) Meetings are to be held at the times and places that the Board
6 determines.

7 Note: Section 33B of the *Acts Interpretation Act 1901* contains further
8 information about the ways in which Board members may participate
9 in meetings.

10 (3) The Chair:

11 (a) may convene a meeting; and

12 (b) must convene at least 4 meetings each calendar year; and

13 (c) must convene a meeting within 30 days of receiving a written
14 request to do so from another Board member.

15 **137 Presiding at meetings**

16 (1) The Chair must preside at all meetings at which he or she is
17 present.

18 (2) If the Chair is not present at a meeting:

19 (a) a Board member nominated by the Chair presides; or

20 (b) if a Board member has not been nominated by the Chair to
21 preside—the other Board members present must appoint one
22 of themselves to preside.

23 **138 Quorum**

24 (1) At a meeting of the Board, a quorum is constituted by 5 Board
25 members.

26 (2) However, if:

27 (a) a Board member is required by section 27J of the CAC Act
28 not to be present during the deliberations, or to take part in
29 any decision, of the Board with respect to a particular matter;
30 and

Section 139

- 1 (b) when the member leaves the meeting concerned there is no
2 longer a quorum present;
3 the remaining members at the meeting constitute a quorum for the
4 purpose of any deliberation or decision at that meeting with respect
5 to that matter.

6 **139 Voting at meetings**

- 7 (1) A question arising at a meeting is to be determined by a majority of
8 the votes of the Board members present and voting.
9 (2) The person presiding at a meeting has a deliberative vote and, if
10 the votes are equal, a casting vote.

11 **140 Conduct of meetings**

12 The Board may, subject to this Division, regulate proceedings at its
13 meetings as it considers appropriate.

14 **141 Minutes**

15 The Board must keep minutes of its meetings.

16 **142 Decisions without meetings**

- 17 (1) The Board is taken to have made a decision at a meeting if:
18 (a) without meeting, a majority of the Board members entitled to
19 vote on the proposed decision indicate agreement with the
20 decision; and
21 (b) that agreement is indicated in accordance with the method
22 determined by the Board under subsection (2); and
23 (c) all the Board members were informed of the proposed
24 decision, or reasonable efforts were made to inform all the
25 members of the proposed decision.
26 (2) Subsection (1) applies only if the Board:
27 (a) has determined that it may make decisions of that kind
28 without meeting; and
29 (b) has determined the method by which Board members are to
30 indicate agreement with proposed decisions.

Section 142

- 1 (3) For the purposes of paragraph (1)(a), a Board member is not
2 entitled to vote on a proposed decision if the member would not
3 have been entitled to vote on that proposal if the matter had been
4 considered at a meeting of the Board.
- 5 (4) The Board must keep a record of decisions made in accordance
6 with this section.
7

1 **Part 3—Independent Advisory Council**

2 **Division 1—Establishment and function**

3 **143 Establishment**

4 The Independent Advisory Council is established by this section.

5 **144 Function of the Advisory Council**

6 (1) The Advisory Council's function is to provide, on its own initiative
7 or at the written request of the Board, advice to the Board about the
8 way in which the Agency:

9 (a) performs its functions relating to the National Disability
10 Insurance Scheme; and

11 (b) supports the independence and social and economic
12 participation of people with disability; and

13 (c) provides reasonable and necessary supports, including early
14 intervention supports, for participants in the National
15 Disability Insurance Scheme launch; and

16 (d) enables people with disability to exercise choice and control
17 in the pursuit of their goals and the planning and delivery of
18 their supports; and

19 (e) facilitates the development of a nationally consistent
20 approach to the access to, and the planning and funding of,
21 supports for people with disability; and

22 (f) promotes the provision of high quality and innovative
23 supports to people with disability; and

24 (g) raises community awareness of the issues that affect the
25 social and economic participation of people with disability,
26 and facilitates greater community inclusion of people with
27 disability.

28 (2) In providing advice, the Advisory Council must have regard to the
29 role of families, carers and other significant persons in the lives of
30 people with disability.

31 (3) Advice provided by the Advisory Council must not relate to:

32 (a) a particular individual; or

- 1 (b) the approval of a person or entity as a registered provider of
2 supports or the revocation of that approval; or
3 (c) the corporate governance of the Agency; or
4 (d) the money paid to, or received by, the Agency.
- 5 (4) The Advisory Council has power to do all things necessary or
6 convenient to be done for or in connection with the performance of
7 its function.

8 **145 Advice of the Advisory Council**

- 9 If the Advisory Council provides advice to the Board under
10 subsection 144(1), the Board must:
11 (a) have regard to the advice in performing its functions; and
12 (b) give the Ministerial Council a copy of the advice and a
13 statement setting out what has been done, or is to be done, in
14 response to the advice.
15

Section 146

1 **Division 2—Members of the Advisory Council**

2 **146 Membership**

- 3 The Advisory Council is to consist of the following members:
- 4 (a) the Principal Member of the Council;
- 5 (b) not more than 12 other members.

6 **147 Appointment of members of the Advisory Council**

- 7 (1) The members of the Advisory Council are to be appointed by the
- 8 Minister, by written instrument, on a part-time basis.

9 *Procedures relating to appointment*

- 10 (2) The Minister must consult the host jurisdictions about the
- 11 appointment of the Principal Member.
- 12 (3) Before the Minister appoints a member of the Advisory Council
- 13 other than the Principal Member, the Minister must:
- 14 (a) seek the support of all the host jurisdictions for the
- 15 appointment; and
- 16 (b) be satisfied that the appointment is supported by:
- 17 (i) the Commonwealth; and
- 18 (ii) a majority of the group consisting of the
- 19 Commonwealth and the host jurisdictions.

20 *Persons ineligible for appointment*

- 21 (4) A person is not eligible for appointment as a member of the
- 22 Advisory Council if the person is a member (however described)
- 23 of:
- 24 (a) the Parliament of the Commonwealth or a State; or
- 25 (b) the legislature of a Territory; or
- 26 (c) a local government authority.

27 *Membership requirements*

- 28 (5) In appointing the members of the Advisory Council, the Minister
- 29 must:

- 1 (a) have regard to the desirability of the membership of the
2 Advisory Council reflecting the diversity of people with
3 disability; and
4 (b) ensure that:
5 (i) at least 4 of the members are people with disability who
6 have skills, experience or knowledge relating to
7 disability services; and
8 (ii) at least 2 of the members are carers of people with
9 disability and have skills, experience or knowledge
10 relating to disability services; and
11 (iii) at least one of the members is a person who has skills,
12 experience or knowledge in the supply of equipment, or
13 the provision of services, to people with disability; and
14 (iv) any other members are persons with skills, experience
15 or knowledge that will help the Advisory Council
16 perform its function.

17 **148 Term of appointment**

18 A member of the Advisory Council holds office for the period
19 specified in the instrument of appointment. The period must not
20 exceed 3 years.

21 Note: For reappointment, see section 33AA of the *Acts Interpretation Act*
22 *1901*.

23 **149 Acting appointments**

24 *Appointment to act during vacancy*

- 25 (1) The Minister may, by written instrument, appoint a person to act as
26 the Principal Member, for a specified period of not more than 12
27 months, during a vacancy in the office of the Principal Member,
28 whether or not an appointment has previously been made to the
29 office.
- 30 (2) The Minister may, by written instrument, appoint a person to act as
31 a member of the Advisory Council other than the Principal
32 Member, for a specified period of not more than 12 months, during
33 a vacancy in the office of a member of the Advisory Council other

Section 150

- 1 than the Principal Member, whether or not an appointment has
2 previously been made to the office, if:
- 3 (a) the Minister has sought the support of all the host
4 jurisdictions for an appointment (the *proposed substantive*
5 *appointment*) of a particular person to the office to be made
6 under section 147; and
- 7 (b) the Minister is satisfied that either:
- 8 (i) it is not possible to make the proposed substantive
9 appointment in accordance with subsection 147(3); or
- 10 (ii) 90 days have passed since the Minister sought the
11 support and it is not known whether the proposed
12 substantive appointment can be made in accordance
13 with subsection 147(3).

14 *Appointment to act during absence etc.*

- 15 (3) The Minister may, by written instrument, appoint a person to act as
16 a member of the Advisory Council during any period, or during all
17 periods, when a member of the Advisory Council:
- 18 (a) is absent from duty or from Australia; or
19 (b) is, for any reason, unable to perform the duties of the office.

20 Note 1: The Minister must tell the Ministerial Council as soon as practicable
21 after the Minister appoints a person to act as the Principal Member or
22 another member of the Advisory Council: see subsection 176(2).

23 Note 2: For rules that apply to acting appointments, see sections 33AB and
24 33A of the *Acts Interpretation Act 1901*.

25 **150 Remuneration and allowances**

- 26 (1) A member of the Advisory Council is to be paid the remuneration
27 that is determined by the Remuneration Tribunal. If no
28 determination of that remuneration by the Tribunal is in operation,
29 the member is to be paid the remuneration that is prescribed by the
30 regulations.
- 31 (2) A member of the Advisory Council is to be paid the allowances
32 that are prescribed by the regulations.
- 33 (3) This section has effect subject to the *Remuneration Tribunal Act*
34 *1973*.

1 **151 Leave of absence**

2 *Principal Member*

- 3 (1) The Minister may grant leave of absence to the Principal Member
4 on the terms and conditions that the Minister determines.
- 5 (2) Before the Minister grants leave of absence to the Principal
6 Member under subsection (1), the Minister must consult the host
7 jurisdictions about the grant.

8 *Other members*

- 9 (3) The Principal Member may grant leave of absence to another
10 member of the Advisory Council on the terms and conditions that
11 the Principal Member determines.
- 12 (4) The Principal Member must notify the Minister if the Principal
13 Member grants another member of the Advisory Council leave of
14 absence for a period that exceeds 3 months.

15 **152 Disclosure of interests to the Minister**

16 A member of the Advisory Council must give written notice to the
17 Minister of all interests, pecuniary or otherwise, that the member
18 has or acquires and that conflict or could conflict with the proper
19 performance of the member's functions.

20 **153 Disclosure of interests to the Advisory Council**

- 21 (1) A member of the Advisory Council who has an interest, pecuniary
22 or otherwise, in a matter being considered or about to be
23 considered by the Council must disclose the nature of the interest
24 to a meeting of the Council.
- 25 (2) The disclosure must be made as soon as possible after the relevant
26 facts have come to the member's knowledge.
- 27 (3) The disclosure must be recorded in the minutes of the meeting.
- 28 (4) Unless the Advisory Council otherwise determines, the member:

Section 154

- 1 (a) must not be present during any deliberation by the Council
2 on the matter; and
3 (b) must not take part in any decision of the Council with respect
4 to the matter.
- 5 (5) For the purposes of making a determination under subsection (4),
6 the member:
7 (a) must not be present during any deliberation of the Council
8 for the purpose of making the determination; and
9 (b) must not take part in making the determination.
- 10 (6) A determination under subsection (4) must be recorded in the
11 minutes of the meeting of the Council.

12 **154 Resignation of members of the Advisory Council**

- 13 (1) A member of the Advisory Council may resign his or her
14 appointment by giving the Minister a written resignation.
- 15 (2) The resignation takes effect on the day it is received by the
16 Minister or, if a later day is specified in the resignation, on that
17 later day.
- 18 (3) The later day specified in the resignation must not be more than 90
19 days after the day the resignation is received by the Minister.

20 **155 Termination of appointment of members of the Advisory**
21 **Council**

- 22 (1) The Minister may terminate the appointment of a member of the
23 Advisory Council:
24 (a) for misbehaviour; or
25 (b) if the member is incapable of performing the duties of his or
26 her office.
- 27 (2) The Minister may terminate the appointment of a member of the
28 Advisory Council if:
29 (a) the member:
30 (i) becomes bankrupt; or

- 1 (ii) applies to take the benefit of any law for the relief of
2 bankrupt or insolvent debtors; or
3 (iii) compounds with his or her creditors; or
4 (iv) makes an assignment of his or her remuneration for the
5 benefit of his or her creditors; or
6 (b) the member is absent, except on leave of absence, from 3
7 consecutive meetings of the Council; or
8 (c) the member fails, without reasonable excuse, to comply with
9 section 152 or 153 (which deal with the disclosure of
10 interests); or
11 (d) the Minister is satisfied that the performance of the member
12 has been unsatisfactory for a significant period.

13 *Procedures relating to termination*

- 14 (3) The Minister must consult the host jurisdictions about the
15 termination of the appointment of the Principal Member.
16 (4) Before the Minister terminates the appointment of a member of the
17 Advisory Council other than the Principal Member, the Minister
18 must:
19 (a) seek the support of all the host jurisdictions for the
20 termination; and
21 (b) be satisfied that the termination is supported by:
22 (i) the Commonwealth; and
23 (ii) a majority of the group consisting of the
24 Commonwealth and the host jurisdictions.

25 **156 Other terms and conditions of members of the Advisory Council**

- 26 (1) A member of the Advisory Council holds office on the terms and
27 conditions (if any) in relation to matters not covered by this Act
28 that are determined by the Minister.
29 (2) Before the Minister determines terms and conditions on which a
30 member of the Advisory Council holds office, the Minister must be
31 satisfied that the Commonwealth and a majority of host
32 jurisdictions agree to the terms and conditions.

Section 157

1 **Division 3—Procedures of the Advisory Council**

2 **157 Procedures of the Advisory Council**

3 The Advisory Council may determine its own procedures.

4

1 **Part 4—Chief Executive Officer and staff etc.**

2 **Division 1—Chief Executive Officer**

3 **158 Establishment**

4 There is to be a Chief Executive Officer of the Agency.

5 **159 Functions of the CEO**

- 6 (1) The CEO is responsible for the day-to-day administration of the
7 Agency.
- 8 (2) The CEO has power to do all things necessary or convenient to be
9 done for or in connection with the performance of his or her duties.
- 10 (3) The CEO is to act in accordance with the objectives, strategies and
11 policies determined by the Board under paragraph 124(1)(b).
- 12 (4) The Board may give written directions to the CEO about the
13 performance of the CEO's duties.
- 14 (5) The CEO must comply with a direction under subsection (4).
- 15 (6) A direction under subsection (4) is not a legislative instrument.

16 **160 Appointment of the CEO**

- 17 (1) The CEO is to be appointed by the Board.
- 18 (2) The appointment is to be made by written instrument.
- 19 (3) The CEO holds office on a full-time basis.
- 20 (4) The CEO holds office for the period specified in the instrument of
21 appointment. The period must not exceed 3 years.

22 Note: For reappointment, see section 33AA of the *Acts Interpretation Act*
23 *1901*.

- 24 (5) The CEO must not be a member of the Board.

Section 161

- 1 (6) Despite subsection (1), the first CEO is to be appointed by the
2 Minister.
- 3 (7) Before the Minister makes an appointment under subsection (6),
4 the Minister must consult the host jurisdictions about the
5 appointment.
- 6 (8) This Part (other than subsection (1)) applies to the CEO appointed
7 under subsection (6) as if the CEO had been appointed under
8 subsection (1).

9 **161 Acting appointments**

10 The Board may, by written instrument, appoint a person (other than
11 a Board member) to act as the CEO:

- 12 (a) during a vacancy in the office of the CEO, whether or not an
13 appointment has previously been made to the office; or
14 (b) during any period, or during all periods, when the CEO:
15 (i) is absent from duty or from Australia; or
16 (ii) is, for any reason, unable to perform the duties of the
17 office.

18 Note: For rules that apply to acting appointments, see sections 33AB and
19 33A of the *Acts Interpretation Act 1901*.

20 **162 Remuneration and allowances**

- 21 (1) The CEO is to be paid the remuneration that is determined by the
22 Remuneration Tribunal. If no determination of that remuneration
23 by the Tribunal is in operation, the CEO is to be paid the
24 remuneration that is prescribed by the regulations.
- 25 (2) The CEO is to be paid the allowances that are prescribed by the
26 regulations.
- 27 (3) This section has effect subject to the *Remuneration Tribunal Act*
28 *1973*.

29 **163 Leave of absence**

- 30 (1) The CEO has the recreation leave entitlements that are determined
31 by the Remuneration Tribunal.

- 1 (2) The Board may grant the CEO leave of absence, other than
2 recreation leave, on the terms and conditions as to remuneration or
3 otherwise that the Board determines.

4 **164 Outside employment**

- 5 The CEO must not engage in paid employment outside the duties
6 of his or her office without the Board's approval.

7 **165 Disclosure of interests**

- 8 The CEO must give written notice to the Board of all interests,
9 pecuniary or otherwise, that the CEO has or acquires and that
10 conflict or could conflict with the proper performance of the
11 CEO's duties.

12 **166 Resignation of the CEO**

- 13 (1) The CEO may resign his or her appointment by giving the Board a
14 written resignation.
15 (2) The resignation takes effect on the day it is received by the Board
16 or, if a later day is specified in the resignation, on that later day.
17 (3) The later day specified in the resignation must not be more than 90
18 days after the day the resignation is received by the Board.

19 **167 Termination of appointment of the CEO**

- 20 (1) The Board may terminate the appointment of the CEO:
21 (a) for misbehaviour; or
22 (b) if the CEO is incapable of performing the duties of his or her
23 office.
24 (2) The Board may terminate the appointment of the CEO if:
25 (a) the CEO:
26 (i) becomes bankrupt; or
27 (ii) applies to take the benefit of any law for the relief of
28 bankrupt or insolvent debtors; or
29 (iii) compounds with his or her creditors; or

Section 168

- 1 (iv) makes an assignment of his or her remuneration for the
2 benefit of his or her creditors; or
3 (b) the CEO is absent, except on leave of absence, for 14
4 consecutive days or for 28 days in any 12 months; or
5 (c) the CEO engages, except with the Board's approval, in paid
6 employment outside the duties of his or her office (see
7 section 164); or
8 (d) the CEO fails, without reasonable excuse, to comply with
9 section 165 (which is about the disclosure of interests); or
10 (e) the Board is satisfied that the performance of the CEO has
11 been unsatisfactory for a significant period.
- 12 (3) If the Board terminates the appointment of the CEO, the Board
13 must notify the Minister of the termination.

14 **168 Other terms and conditions of the CEO**

15 The CEO holds office on the terms and conditions (if any) in
16 relation to matters not covered by this Act that are determined by
17 the Board.
18

1 **Division 2—Staff etc.**

2 **169 Staff**

3 (1) The staff of the Agency must be persons engaged under the *Public*
4 *Service Act 1999*.

5 (2) For the purposes of that Act:

6 (a) the CEO and the staff of the Agency together constitute a
7 Statutory Agency; and

8 (b) the CEO is the Head of that Statutory Agency.

9 **170 Services of other persons to be made available to the Agency**

10 (1) The Agency may arrange with:

11 (a) an Agency Head (within the meaning of the *Public Service*
12 *Act 1999*) of an Agency (within the meaning of that Act); or

13 (b) a body established for a public purpose by or under a law of
14 the Commonwealth;

15 for the services of officers or employees of the Agency referred to
16 in paragraph (a) or body to be made available to assist the Agency
17 in the performance of its functions.

18 (2) The Agency may arrange with the appropriate authority of a State
19 or Territory for the services of officers or employees of the
20 following to be made available to assist the Agency in the
21 performance of its functions:

22 (a) the Public Service of the State or Territory;

23 (b) a body established for a public purpose by or under a law of
24 the State or Territory.

25 **171 Consultants**

26 The Agency may engage consultants to assist in the performance of
27 its functions.
28

1 **Part 5—Reporting and planning**

2 **Division 1—Reporting**

3 **Subdivision A—Reporting by Board members**

4 **172 Annual report**

- 5 (1) The Board members must include in each annual report on the
6 Agency under section 9 of the CAC Act the things described in
7 subsections (2), (4) and (5).
- 8 (2) The annual report must include the following for the period to
9 which the report relates:
- 10 (a) details of any directions given under section 121 in the
11 period;
- 12 (b) details of any statements given under section 125 in the
13 period;
- 14 (c) information (including statistics) and analysis that relates to
15 either or both of the following in the period:
- 16 (i) participants;
- 17 (ii) funding or provision of supports by the Agency.
- 18 (3) The Minister may, by legislative instrument, prescribe particular
19 information, or analysis, described in paragraph (2)(c) that must be
20 included in the annual report.
- 21 (4) The annual report must include a report on the estimated future
22 expenditure of the National Disability Insurance Scheme that was
23 prepared by an actuary at or after the end of the period to which the
24 annual report relates.
- 25 (5) The annual report must include a review that:
- 26 (a) is of the actuary's report described in subsection (4); and
27 (b) was conducted by another actuary, who, when he or she
28 conducted the review:
- 29 (i) was a Fellow of The Institute of Actuaries of Australia;
30 and

- 1 (ii) was not a member of the staff of the Agency under
2 section 169; and
3 (c) includes a statement by the actuary who conducted the
4 review that he or she is satisfied that the Agency made all
5 arrangements necessary for him or her to conduct the review.

6 *Prerequisite to making instrument under subsection (3)*

- 7 (6) The Minister must not make an instrument under subsection (3)
8 unless a majority of the members of the Ministerial Council agree
9 to the making of the instrument.

10 **173 Giving certain information to the Ministerial Council**

- 11 (1) The Board members must give the Ministerial Council a copy of
12 each of the following when, or as soon as practicable after, the
13 Board members give it to the Minister or the Finance Minister:
14 (a) an annual report given to the Minister under section 9 of the
15 CAC Act;
16 (b) an interim report given to the Minister under section 13 of the
17 CAC Act;
18 (c) particulars of a proposal given to the Minister under
19 section 15 of the CAC Act;
20 (d) information, a report or a document given to the Minister or
21 the Finance Minister under section 16 of the CAC Act.
- 22 (2) The Board members must cause a copy of information the Agency
23 gives the Minister or a Minister of a host jurisdiction under
24 section 175 to be given to the Ministerial Council as soon as
25 practicable after the Agency gives the information to that Minister.
- 26 (3) As soon as practicable after any of the following events happens to
27 a person, the Board members must tell the Ministerial Council that
28 the event has happened to the person:
29 (a) appointment of the person as the CEO by the Board;
30 (b) resignation of the person as the CEO;
31 (c) termination of the person's appointment as the CEO.

Section 174

1 **174 Quarterly report to the Ministerial Council**

- 2 (1) The Board members must:
- 3 (a) prepare a report on the operations of the Agency for each
- 4 period of 3 months starting on 1 July, 1 October, 1 January or
- 5 1 April; and
- 6 (b) give the report to the Ministerial Council within 1 month
- 7 after the end of the period to which the report relates.
- 8 (2) The report must include information (including statistics) that
- 9 relates to either or both of the following in the period to which the
- 10 report relates:
- 11 (a) participants in each host jurisdiction;
- 12 (b) funding or provision of supports by the Agency in relation to
- 13 each host jurisdiction.
- 14 (3) The Minister may, by legislative instrument, prescribe particular
- 15 information described in subsection (2) that must be included in the
- 16 report.

17 *Prerequisite to making instrument under subsection (3)*

- 18 (4) The Minister must not make an instrument under subsection (3)
- 19 unless a majority of the members of the Ministerial Council agree
- 20 to the making of the instrument.

21 *First report*

- 22 (5) If this section commences on a day other than a day (a **quarter**
- 23 **start day**) mentioned in paragraph (1)(a):
- 24 (a) the Board members are not required to prepare a report for
- 25 the period ending immediately before the next quarter start
- 26 day; and
- 27 (b) the first report under this section must be for the period:
- 28 (i) starting on the day this section commences; and
- 29 (ii) ending immediately before the second quarter start day
- 30 after the day this section commences.

1 **Subdivision B—Reporting by the Agency**

2 **175 Giving information requested by Commonwealth, State or**
3 **Territory Ministers**

- 4 (1) The Agency must give the Minister information requested by the
5 Minister about:
- 6 (a) expenditure, relating to a particular host jurisdiction, of
7 money received by the Agency from the Commonwealth or
8 that host jurisdiction; or
 - 9 (b) activities of the Agency relating to a particular host
10 jurisdiction.
- 11 (2) The Agency must give a Minister of a host jurisdiction who is a
12 member of the Ministerial Council information requested by that
13 Minister about:
- 14 (a) expenditure of money received by the Agency from that
15 jurisdiction; or
 - 16 (b) expenditure, relating to that jurisdiction, of money received
17 by the Agency from the Commonwealth; or
 - 18 (c) activities of the Agency relating to that jurisdiction.

19 **Subdivision C—Reporting by the Minister**

20 **176 Giving certain information to the Ministerial Council**

- 21 (1) As soon as practicable after giving a direction to the Agency under
22 section 121 or a statement to the Board under section 125, the
23 Minister must give a copy of the direction or statement to the
24 Ministerial Council.
- 25 (2) As soon as practicable after any of the following events happens to
26 a person, the Minister must tell the Ministerial Council that the
27 event has happened to the person:
- 28 (a) appointment of the person as:
 - 29 (i) the Chair or another member of the Board; or
 - 30 (ii) the Principal Member or another member of the
31 Advisory Council; or
 - 32 (iii) the first CEO;

Section 176

- 1 (b) appointment of the person to act as:
2 (i) the Chair or another member of the Board; or
3 (ii) the Principal Member or another member of the
4 Advisory Council;
5 (c) grant of leave of absence for the person for a period that
6 exceeds 3 months under section 131 or 151;
7 (d) resignation of the person as a Board member or a member of
8 the Advisory Council;
9 (e) termination of the person's appointment as a Board member
10 or a member of the Advisory Council.
11

1 **Division 2—Planning**

2 **177 Corporate plan**

3 (1) The Board must prepare a corporate plan for the Agency at least
4 once a year.

5 (2) The plan must cover a period of at least 3 years.

6 (3) In preparing the plan, the Board must have regard to a statement
7 given under section 125.

8 *Content of the corporate plan*

9 (4) Without limiting subsection (1), the plan must include details of
10 the following matters:

11 (a) the objectives, strategies and policies to be followed by the
12 Agency;

13 (b) the performance indicators for the assessment of the
14 Agency's performance of its functions;

15 (c) the performance of the Agency in the year before the year in
16 which the plan is prepared as assessed against those
17 performance indicators;

18 (d) the financial sustainability of the National Disability
19 Insurance Scheme (including estimates of the current and
20 future expenditure of the National Disability Insurance
21 Scheme);

22 (e) the risks and issues relevant to the financial sustainability of
23 the National Disability Insurance Scheme and the
24 management of those risks and issues.

25 *Copy to be given to the Ministerial Council etc.*

26 (5) The Board must give a copy of the plan to the Ministerial Council
27 before the start of the period covered by the plan.

28 (6) If the Board varies the plan, the Board must notify the Ministerial
29 Council of the variation.
30

Section 178

1 **Part 6—Finance**
2

3 **178 Payments to the Agency by the Commonwealth**

- 4 (1) There is payable to the Agency such money as is appropriated by
5 the Parliament for the purposes of the Agency.
- 6 (2) The Finance Minister may give directions about the amounts in
7 which, and the times at which, money payable under subsection (1)
8 is to be paid to the Agency.
- 9 (3) If a direction under subsection (2) is given in writing, the direction
10 is not a legislative instrument.

11 **179 Payments to the Agency by the host jurisdictions**

12 The Agency may receive money paid to it by a host jurisdiction for
13 the purpose of funding reasonable and necessary supports for
14 participants in the National Disability Insurance Scheme launch
15 who are in the host jurisdiction.

16 **180 Application of money by the Agency**

- 17 (1) The money of the Agency consists of:
18 (a) money paid to the Agency under section 178; and
19 (b) money received by the Agency under section 179; and
20 (c) any other money paid to, or received by, the Agency.
- 21 (2) Subject to subsection (3), the money of the Agency is to be applied
22 only:
23 (a) in payment or discharge of any expenses, charges and
24 obligations incurred or undertaken by the Agency in the
25 performance of its functions and the exercise of its powers;
26 and
27 (b) in payment of remuneration and allowances payable under
28 this Act.

Section 180

- 1 (3) The money of the Agency that was received by the Agency under
2 section 179 is to be applied only for the purpose mentioned in that
3 section.
- 4 (4) Subsections (2) and (3) do not prevent investment of surplus
5 money of the Agency under section 18 of the CAC Act.
6

Section 181

1 **Part 7—Miscellaneous**
2

3 **181 Taxation**

4 The Agency is not subject to taxation under any law of the
5 Commonwealth or of a State or Territory.

6 Note: However, the Agency may be subject to taxation under certain laws
7 (see, for example, section 177-5 of the *A New Tax System (Goods and*
8 *Services Tax) Act 1999* and section 66 of the *Fringe Benefits Tax*
9 *Assessment Act 1986*).
10

1 **Chapter 7—Other matters**

2 **Part 1—Debt recovery**

3 **Division 1—Debts**

4 **182 Debts due to the Agency**

5 (1) If:

6 (a) a payment is made to a person that is, or purports to be, a
7 payment of an NDIS amount to or in respect of a participant;
8 and

9 (b) the person is not entitled for any reason to the payment of the
10 NDIS amount;

11 the amount of the payment is a debt due to the Agency by the
12 person and the debt is taken to arise when the person receives the
13 payment.

14 (2) Without limiting paragraph (1)(b), a person is taken not to have
15 been entitled to the payment of an NDIS amount if the payment
16 should not have been made for one or more of the following
17 reasons:

18 (a) the payment was made as a result of a computer error or an
19 administrative error;

20 (b) the payment was made as a result of:

21 (i) a contravention of this Act, the regulations or the
22 National Disability Insurance Scheme rules; or

23 (ii) a false or misleading statement or a misrepresentation;

24 (c) the participant died before the payment was made.

25 (3) If a person does not comply with subsection 46(1) in relation to an
26 NDIS amount, an equal amount is a debt due to the Agency by the
27 person.

28 (4) The National Disability Insurance Scheme rules may provide that,
29 if records are not retained for the period prescribed as mentioned in
30 subsection 46(2) in relation to an NDIS amount, an equal or lesser
31 amount is a debt due to the Agency by the person.

1 **Division 2—Methods of recovery**

2 **183 Legal proceedings**

- 3 (1) A debt under this Act is recoverable by the Agency by means of
4 legal proceedings brought by the CEO on behalf of the Agency in a
5 court of competent jurisdiction.
- 6 (2) Subject to subsections (3), (4) and (5), legal proceedings for the
7 recovery of the debt are not to be commenced after the end of the
8 period (the *recovery period*) of 6 years starting on the first day an
9 officer becomes aware, or could reasonably be expected to have
10 become aware, of the circumstances that gave rise to the debt.
- 11 (3) If, within the recovery period, part of the debt is paid, legal
12 proceedings for the recovery of the balance of the debt may be
13 commenced within the period of 6 years starting on the day of
14 payment.
- 15 (4) If, within the recovery period, the person who owes the debt
16 acknowledges that he or she owes it, legal proceedings for the
17 recovery of the debt may be commenced within the period of 6
18 years starting on the day of acknowledgement.
- 19 (5) If, within the recovery period, any of the following activities
20 occurs:
- 21 (a) a review of a file relating to action for the recovery of the
22 debt;
- 23 (b) other internal Agency activity relating to action for the
24 recovery of the debt;
- 25 action under this section for the recovery of the debt may be
26 commenced within the period of 6 years after the end of the
27 activity.

28 **184 Arrangement for payment of debt**

- 29 (1) The CEO may enter into an arrangement with a person under
30 which the person is to pay a debt, owed by the person to the
31 Agency under this Act, or the outstanding amount of such a debt,
32 in a way set out in the arrangement.

- 1 (2) An arrangement entered into under subsection (1) has effect, or is
2 taken to have had effect, on and after the day specified in the
3 arrangement as the day the arrangement commences (whether that
4 day is the day the arrangement is entered into or an earlier or later
5 day).
- 6 (3) If an arrangement entered into under subsection (1) does not
7 specify a day as mentioned in subsection (2), it has effect on and
8 after the day on which it is entered into.
- 9 (4) The CEO may terminate or alter an arrangement entered into under
10 subsection (1):
11 (a) at the debtor's request; or
12 (b) after giving 28 days' notice to the debtor of the proposed
13 termination or alteration; or
14 (c) without notice, if the CEO is satisfied that the person has
15 failed to disclose material information about his or her true
16 capacity to repay the debt.

17 **185 Recovery of amounts from financial institutions**

- 18 (1) If:
19 (a) an NDIS amount or NDIS amounts are paid to a financial
20 institution for the credit of an account kept with the
21 institution; and
22 (b) the CEO is satisfied that the payment or payments were
23 intended to be made to someone who was not the person or
24 one of the persons in whose name or names the account was
25 kept;
26 the CEO may give a written notice to the institution setting out the
27 matters mentioned in paragraphs (a) and (b) and requiring the
28 institution to pay to the Agency, within a reasonable period stated
29 in the notice, the lesser of the following amounts:
30 (c) an amount specified in the notice, being an amount equal to
31 the NDIS amount or the sum of the NDIS amounts;
32 (d) the amount standing to the credit of the account when the
33 notice is received by the institution.
- 34 (2) If:
-

Section 185

- 1 (a) an NDIS amount or NDIS amounts that are intended to be
2 made to or in respect of a person (the *first person*) are made
3 to a financial institution for the credit of an account that was
4 kept with the institution by the first person or by the first
5 person and one or more other persons; and
6 (b) the first person died before the payment or payments were
7 made;
- 8 the CEO may give a written notice to the institution setting out the
9 matters mentioned in paragraphs (a) and (b) and requiring the
10 institution to pay to the Agency, within a reasonable period stated
11 in the notice, the lesser of the following amounts:
- 12 (c) an amount specified in the notice that is equal to the NDIS
13 amount or the sum of the NDIS amounts;
- 14 (d) the amount standing to the credit of the account when the
15 notice is received by the institution.
- 16 (3) As soon as possible after issuing a notice under subsection (2), the
17 CEO must inform the deceased estate in writing of:
- 18 (a) the amount sought to be recovered from the deceased
19 person's account; and
20 (b) the reasons for the recovery action.
- 21 (4) A financial institution must comply with a notice given to it under
22 subsection (1) or (2).
- 23 Penalty: 300 penalty units.
- 24 (5) It is a defence to a prosecution of a financial institution for failing
25 to comply with a notice given to it under subsection (1) or (2) if the
26 financial institution proves that it was incapable of complying with
27 the notice.
- 28 (6) If a notice is given to a financial institution under subsection (1)
29 (payment made to wrong account) or under subsection (2) (death of
30 person in whose name the account was kept) in respect of an NDIS
31 amount or NDIS amounts, any amount recovered by the Agency
32 from the institution in respect of the debt reduces any debt owed to
33 the Agency by any other person in respect of the NDIS amount or
34 NDIS amounts.
35

1 **Division 3—Information relating to debts**

2 **186 Power to obtain information from a person who owes a debt to**
3 **the Agency**

4 The CEO may require a person who owes a debt to the Agency
5 under this Act to do one or more of the following:

- 6 (a) give to the Agency information that is relevant to the
7 person's financial situation;
8 (b) produce to the Agency a document that the CEO has
9 reasonable grounds to believe is in the person's custody, or
10 under the person's control, and is relevant to the person's
11 financial situation;
12 (c) if the person's address changes—inform the Agency of the
13 new address within 14 days after the change.

14 **187 Power to obtain information about a person who owes a debt to**
15 **the Agency**

16 If the CEO has reasonable grounds to believe that a person has
17 information, or has custody or control of a document:

- 18 (a) that would help the Agency locate another person (the
19 *debtor*) who owes a debt to the Agency under this Act; or
20 (b) that is relevant to the debtor's financial situation;
21 the CEO may require the person to give the information, or
22 produce the document, to the Agency.

23 **188 Written notice of requirement**

- 24 (1) A requirement under this Division must be made by written notice
25 given to the person of whom the requirement is made.
26 (2) The notice must specify:
27 (a) the nature of the information or document that is required to
28 be given or produced; and
29 (b) how the person is to give the information or produce the
30 document; and
31 (c) the period within which the person is to give the information
32 or produce the document to the Agency; and

Section 189

- 1 (d) the officer to whom the information is to be given or the
2 document is to be produced; and
3 (e) that the notice is given under this section.
- 4 (3) The period specified under paragraph (2)(c) must be a period of at
5 least 14 days beginning on the day on which the notice is given.
- 6 (4) The notice may require the person to give the information by
7 appearing before a specified officer to answer questions.
- 8 (5) If the notice requires the person to appear before an officer, the
9 notice must specify a time and place at which the person is to
10 appear. The time must be at least 14 days after the notice is given.

11 **189 Offence—refusal or failure to comply with requirement**

- 12 (1) A person must not refuse or fail to comply with a requirement
13 under this Division to give information or produce a document.
- 14 Penalty: 30 penalty units.
- 15 Note: If a body corporate is convicted of an offence against this subsection,
16 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
17 fine of up to 5 times the penalty stated above.
- 18 (2) Subsection (1) does not apply if the person has a reasonable
19 excuse.
- 20 Note: A defendant bears an evidential burden in relation to the matter in this
21 subsection: see subsection 13.3(3) of the *Criminal Code*.
22

1 **Division 4—Non-recovery of debts**

2 **190 CEO may write off debt**

3 (1) Subject to subsection (2), the CEO may, on behalf of the Agency,
4 decide to write off a debt, for a stated period or otherwise.

5 (2) The CEO may decide to write off a debt under subsection (1) if,
6 and only if:

7 (a) the debt is irrecoverable at law; or

8 (b) the debtor has no capacity to repay the debt; or

9 (c) the debtor's whereabouts are unknown after all reasonable
10 efforts have been made to locate the debtor; or

11 (d) it is not cost effective for the Agency to take action to
12 recover the debt.

13 (3) For the purposes of paragraph (2)(a), a debt is irrecoverable at law
14 if, and only if:

15 (a) the debt cannot be recovered by means of deductions, or legal
16 proceedings, because the relevant 6 year period mentioned in
17 section 183 has elapsed; or

18 (b) there is no proof of the debt capable of sustaining legal
19 proceedings for its recovery; or

20 (c) the debtor is discharged from bankruptcy and the debt was
21 incurred before the debtor became bankrupt and was not
22 incurred by fraud; or

23 (d) the debtor has died leaving no estate or insufficient funds in
24 the debtor's estate to repay the debt.

25 (4) A decision made under subsection (1) takes effect:

26 (a) if no day is specified in the decision—on the day the decision
27 is made; or

28 (b) if a day is specified in the decision—on the day so specified
29 (whether that day is before, on or after the day the decision is
30 made).

31 (5) Nothing in this section prevents anything being done at any time to
32 recover a debt that has been written off under this section.

Section 191

1 **191 Power to waive Agency’s right to recover debt**

2 (1) On behalf of the Agency, the CEO may waive the Agency’s right
3 to recover the whole or a part of a debt from a debtor only in the
4 circumstances described in section 192, 193, 194 or 195.

5 (2) A waiver takes effect:

6 (a) on the day specified in the waiver (whether that day is before,
7 on or after the day the decision to waive is made); or

8 (b) if the waiver does not specify when it takes effect—on the
9 day the decision to waive is made.

10 Note: If the CEO waives the Agency’s right to recover all or part of a debt,
11 this is a permanent bar to recovery of the debt or part of the debt and
12 the debt or part of the debt effectively ceases to exist.

13 **192 Waiver of debt arising from error**

14 The CEO must waive the right to recover the proportion of a debt
15 that is attributable solely to an administrative error made by the
16 Agency if the debtor received in good faith the payment or
17 payments that gave rise to that proportion of the debt and:

18 (a) the debt is not raised within 6 weeks from the first payment
19 that caused the debt; or

20 (b) if the debt arose because a person has complied with a
21 notification obligation—the debt is not raised within 6 weeks
22 from the end of the notification period;

23 whichever is the later.

24 Note: This section does not allow waiver of a part of a debt that was caused
25 partly by administrative error and partly by one or more other factors
26 (such as error by the debtor).

27 **193 Waiver of small debt**

28 The CEO must waive the right to recover a debt if:

29 (a) the debt is, or is likely to be, less than \$200; and

30 (b) it is not cost effective for the Agency to take action to
31 recover the debt.

1 **194 Waiver in relation to settlements**

- 2 (1) If the Agency has agreed to settle a civil action against a debtor for
3 recovery of a debt for less than the full amount of the debt, the
4 CEO must waive the right to recover the difference between the
5 debt and the amount that is the subject of the settlement.
- 6 (2) If the CEO has agreed to settle proceedings before the
7 Administrative Appeals Tribunal relating to recovery of a debt on
8 the basis that the debtor will pay less than the full amount of the
9 debt, the CEO must waive the right to recover the difference
10 between the debt and the amount that is the subject of the
11 settlement.
- 12 (3) If:
- 13 (a) the Agency has recovered at least 80% of the original value
14 of a debt from a debtor; and
- 15 (b) the Agency and the debtor agree that the recovery is in full
16 satisfaction for the whole of the debt; and
- 17 (c) the debtor cannot repay a greater proportion of the debt;
18 the CEO must waive the remaining 20% or less of the value of the
19 original debt.
- 20 (4) If the CEO and a debtor agree that the debtor's debt will be fully
21 satisfied if the debtor pays the Agency an agreed amount that is
22 less than the amount of the debt outstanding at the time of the
23 agreement (the *unpaid amount*), the CEO must waive the right to
24 recover the difference between the unpaid amount and the agreed
25 amount.
- 26 (5) The CEO must not make an agreement described in subsection (4)
27 unless the CEO is satisfied that the agreed amount is at least the
28 present value of the unpaid amount if it is repaid in instalments of
29 amounts, and at times, determined by the CEO.
- 30 (6) For the purposes of subsection (5), the present value of the unpaid
31 amount is the amount worked out in accordance with the method
32 prescribed by the National Disability Insurance Scheme rules.

Section 195

1 **195 Waiver in special circumstances**

2 The CEO may waive the right to recover a debt if:

3 (a) the debt did not arise in whole or part as a result of:

4 (i) a contravention of this Act, the regulations or the
5 National Disability Insurance Scheme rules; or

6 (ii) a false or misleading statement or a misrepresentation;
7 and

8 (b) there are special circumstances (other than financial hardship
9 or the disability of the debtor) that the CEO is satisfied make
10 waiver appropriate; and

11 (c) the CEO is satisfied that waiver is more appropriate than
12 writing off the debt.
13

1 **Part 2—General matters**
2

3 **196 Method of notification by CEO**

4 If this Act, the regulations or the National Disability Insurance
5 Scheme rules require or permit the CEO to notify a person, the
6 CEO may notify the person:

- 7 (a) by sending the notice by prepaid post addressed to the person
8 at his or her postal address last known to the CEO; or
9 (b) by giving the notice to the person personally; or
10 (c) in any other way the CEO considers appropriate.

11 **197 CEO not required to make a decision**

- 12 (1) If this Act, the regulations or the National Disability Insurance
13 Scheme rules require a request or application to be in a form
14 approved by the CEO, the CEO is not required to make a decision
15 on the request or application if it is not in that form.
- 16 (2) If this Act, the regulations or the National Disability Insurance
17 Scheme rules permit the CEO to require information or documents
18 for the purposes of, or for purposes relating to, making a decision
19 or doing a thing, the CEO is not required to make the decision or
20 do the thing until the information or documents are provided.

21 **198 Protection of participant against liability for actions of persons**

22 Nothing in this Part renders a participant guilty of an offence
23 against this Act in relation to any act or omission of a person who
24 does a thing because of section 74.

25 **199 Protection against criminal liability**

26 A person who does a thing because of section 74 is not subject to
27 any criminal liability under this Act in relation to:

- 28 (a) any act or omission of the participant concerned; or
29 (b) anything done, or omitted to be done, in good faith, because
30 of section 74.

Section 200

1 **200 Evidentiary effect of CEO's certificate**

2 (1) For the purposes of paragraph 21B(1)(c) of the *Crimes Act 1914*, as
3 it applies in relation to an offence against Part 7.3 or 7.4 of the
4 *Criminal Code* relating to the Agency or this Act, a certificate
5 signed by the CEO is evidence of the matters specified in the
6 certificate.

7 (2) The certificate may specify:

8 (a) the person to whom, or in relation to whom, an NDIS amount
9 has been paid because of an act or omission for which the
10 person or another person has been convicted of an offence
11 against Part 7.3 or 7.4 of the *Criminal Code* relating to the
12 Agency or this Act; and

13 (b) the amount paid; and

14 (c) the act or omission.

15 Note: Parts 7.3 and 7.4 of the *Criminal Code* deal with certain fraudulent
16 conduct and false or misleading statements.

17 **201 Delegation by the Minister**

18 (1) The Minister may, in writing, delegate to the CEO his or her
19 powers under section 209.

20 (2) The Minister must not delegate to the CEO his or her powers under
21 section 209 unless each host jurisdiction has agreed to the
22 delegation.

23 (3) When exercising powers under a delegation, the CEO must comply
24 with any directions of the Minister.

25 **202 Delegation by the CEO**

26 (1) The CEO may, in writing, delegate to an officer any or all of his or
27 her powers or functions under this Act, the regulations or the
28 National Disability Insurance Scheme rules.

29 (2) Despite subsection (1), the CEO may delegate the CEO's powers
30 under Part 2 of Chapter 4 (privacy) only to an officer who is a
31 member of staff of the Agency under section 169.

Section 203

- 1 (3) A person exercising powers or functions under a delegation under
2 this section must comply with any directions of the CEO.

3 **203 Application of Act to unincorporated bodies**

- 4 (1) This Act applies to an entity that is a registered provider of
5 supports, or an entity that wishes to apply for approval as a
6 registered provider of supports as if it were a person, but it applies
7 with the changes mentioned in subsections (3), (4) and (5).
- 8 (2) In addition, Division 2 of Part 1 of Chapter 4 applies to an entity as
9 if it were a person, but it applies with the changes mentioned in
10 subsections (3), (4) and (5).
- 11 (3) An obligation that would be imposed on the entity is imposed
12 instead on:
13 (a) if the entity is a partnership—each partner; or
14 (b) in any other case—each member of the committee of
15 management of the entity;
16 but may be discharged by any of the partners or any of those
17 members.
- 18 (4) A thing that the entity would be permitted to do may instead be
19 done by:
20 (a) if the entity is a partnership—any partner; or
21 (b) in any other case—any member of the committee of
22 management of the entity.
- 23 (5) An offence against this Act that would otherwise be committed by
24 the entity is taken instead to have been committed by:
25 (a) if the entity is a partnership—any partner:
26 (i) who was knowingly concerned in, or party to, the act or
27 omission constituting the offence; or
28 (ii) who aided, abetted, counselled or procured that act or
29 omission; or
30 (b) in any other case—any member of the committee of
31 management of the entity:
32 (i) who was knowingly concerned in, or party to, the act or
33 omission constituting the offence; or

Section 204

- 1 (ii) who aided, abetted, counselled or procured that act or
2 omission.

3 **204 Time frames for decision making**

- 4 (1) If this Act requires the CEO to make a decision or do a thing
5 within a specified period, the National Disability Insurance
6 Scheme rules may prescribe that the decision is to be made, or the
7 thing done, within a longer period that is not more than double the
8 length of the specified period.
- 9 (2) If this Act requires or provides for a person other than the CEO to
10 do a thing within a specified period, the National Disability
11 Insurance Scheme rules may prescribe that the thing is to be done
12 within a longer period.
13

1 **Part 3—Constitutional matters**
2

3 **205 Act binds Crown**

- 4 (1) This Act binds the Crown in each of its capacities.
5 (2) However, this Act does not make the Crown liable to be prosecuted
6 for an offence.

7 **206 Alternative constitutional basis**

- 8 (1) Without limiting its effect apart from this subsection, this Act also
9 has the effect it would have if its operation were expressly
10 confined to:
11 (a) the provision of pharmaceutical, sickness or hospital benefits;
12 or
13 (b) the provision of medical services or dental services (without
14 any form of civil conscription).
- 15 (2) Without limiting its effect apart from this subsection, this Act also
16 has the effect it would have if its operation were expressly
17 confined to acts, matters or things occurring in, or in relation to, a
18 Territory or a place acquired by the Commonwealth for a public
19 purpose.
- 20 (3) Without limiting its effect apart from this subsection, this Act also
21 has the effect it would have if its operation were expressly
22 confined to acts, matters or things in relation to trade or commerce:
23 (a) between Australia and other countries; or
24 (b) among the States; or
25 (c) between a Territory and a State or another Territory.
- 26 (4) Without limiting its effect apart from this subsection, this Act also
27 has the effect it would have if its operation were expressly
28 confined to acts, matters or things in relation to communication by
29 means of a postal, telegraphic, telephonic or other like service
30 (within the meaning of paragraph 51(v) of the Constitution).
- 31 (5) Without limiting its effect apart from this subsection, this Act also
32 has the effect it would have if its operation were expressly

Section 207

1 confined to acts, matters or things in relation to census and
2 statistics (within the meaning of paragraph 51(xi) of the
3 Constitution).

4 (6) Without limiting its effect apart from this subsection, this Act also
5 has the effect it would have if its operation were expressly
6 confined to acts, matters or things in relation to a corporation to
7 which paragraph 51(xx) of the Constitution applies.

8 (7) Without limiting its effect apart from this subsection, this Act also
9 has the effect it would have if its operation were expressly
10 confined to acts, matters or things in relation to:

- 11 (a) the Commonwealth; or
12 (b) an authority of the Commonwealth.

13 **207 Concurrent operation of State laws**

14 It is the intention of the Parliament that this Act is not to apply to
15 the exclusion of a law of a State or Territory to the extent that that
16 law is capable of operating concurrently with this Act.
17

1 **Part 4—Review of the Act**
2

3 **208 Review of operation of Act**

- 4 (1) The Minister must cause an independent review of the operation of
5 this Act to be undertaken commencing on the second anniversary
6 of the commencement of Chapter 3.
- 7 (2) The review is to be undertaken by a person or persons chosen by
8 the Minister with the agreement of the Ministerial Council.
- 9 (3) The terms of reference of the review must be agreed by the
10 Ministerial Council.
- 11 (4) The person or persons undertaking the review must give the
12 Minister a written report of the review within 6 months of the
13 commencement of the review.
- 14 (5) Upon receiving the report, the Minister must give a copy to the
15 Ministerial Council and ask the Ministerial Council to:
16 (a) make recommendations in response to the report; and
17 (b) obtain COAG's response to the report within the period of 6
18 months after giving the copy of the report to the Ministerial
19 Council.
- 20 (6) The Minister must consider the report.
- 21 (7) The Minister must cause copies of the report to be tabled in each
22 House of the Parliament within 15 sitting days of that House after
23 receiving the report.
- 24 (8) The Minister must cause copies of COAG's response to the report
25 to be tabled in each House of the Parliament within 6 months of
26 giving the copy of the report to the Ministerial Council.
- 27 (9) If the Minister fails to cause copies of the response to be tabled in
28 each House of the Parliament within the period referred to in
29 subsection (8), the Minister must cause an explanation of the
30 failure to be tabled in each House of the Parliament within 15
31 sitting days of that House after the end of that period.
32

1 **Part 5—Legislative instruments**
2

3 **209 The National Disability Insurance Scheme rules**

- 4 (1) The Minister may, by legislative instrument, make rules called the
5 National Disability Insurance Scheme rules prescribing matters:
6 (a) required or permitted by this Act to be prescribed by the
7 National Disability Insurance Scheme rules; or
8 (b) necessary or convenient to be prescribed in order to carry out
9 or give effect to this Act.
- 10 (2) Despite section 14 of the *Legislative Instruments Act 2003*,
11 National Disability Insurance Scheme rules may make provision
12 for or in relation to a matter by applying, adopting or incorporating
13 any matter contained in an instrument or other writing as in force
14 or existing from time to time.
- 15 (3) When making National Disability Insurance Scheme rules, the
16 Minister must have regard to the need to ensure the financial
17 sustainability of the National Disability Insurance Scheme.
- 18 (4) The Minister must not make Category A National Disability
19 Insurance Scheme rules unless the Commonwealth and each host
20 jurisdiction have agreed to the making of the rules.
- 21 (5) The Minister must not make Category B National Disability
22 Insurance Scheme rules relating to an area, law or program of a
23 host jurisdiction unless the host jurisdiction has agreed to the
24 making of the rules.
- 25 (6) The Minister must not make Category C National Disability
26 Insurance Scheme rules unless the Commonwealth and a majority
27 of host jurisdictions have agreed to the making of the rules.
- 28 (7) The Minister must not make Category D National Disability
29 Insurance Scheme rules unless each host jurisdiction has been
30 consulted in relation to the making of the rules.
- 31 (8) The following table sets out the categories of National Disability
32 Insurance Scheme rules for the purposes of this section.

Section 209

Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
1	Category A National Disability Insurance Scheme rules	<p>Rules made for the purposes of any of the following provisions:</p> <p>(a) section 17;</p> <p>(b) paragraph 23(1)(c), except to the extent that the rules are of a kind mentioned in subsection 23(3);</p> <p>(c) section 27;</p> <p>(d) section 33;</p> <p>(e) section 35;</p> <p>(f) section 66;</p> <p>(g) section 67;</p> <p>(h) section 74;</p> <p>(i) section 75;</p> <p>(j) section 76;</p> <p>(k) section 80;</p> <p>(l) section 88;</p> <p>(m) section 93.</p> <p>All other rules, except Category B National Disability Insurance Scheme rules, Category C National Disability Insurance Scheme rules and Category D National Disability Insurance Scheme rules</p>
2	Category B National Disability Insurance Scheme rules	<p>Rules made for the purposes of any of the following provisions:</p> <p>(a) paragraph 21(2)(b);</p> <p>(b) section 22;</p> <p>(c) subsection 23(3);</p> <p>(d) section 58.</p>
3	Category C National Disability Insurance Scheme rules	<p>Rules made for the purposes of any of the following provisions:</p> <p>(a) section 70;</p> <p>(b) section 73.</p>
4	Category D National Disability Insurance Scheme rules	<p>Rules made for the purposes of any of the following provisions:</p> <p>(a) section 40;</p>

Section 210

Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
		(b) section 44;
		(c) section 45;
		(d) section 46;
		(e) section 48;
		(f) section 106;
		(g) section 107;
		(h) section 182;
		(i) section 194;
		(j) section 204.

210 Regulations

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Before the Governor-General makes regulations under subsection (1), the Minister must:
- (a) if the regulations are for the purposes of section 130, 150 or 162 (which relate to the remuneration and allowances of Board members, members of the Advisory Council and the CEO)—consult the host jurisdictions about the making of the regulations; or
 - (b) otherwise—be satisfied that the Commonwealth and each host jurisdiction have agreed to the making of the regulations.